

# UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict

## A. 2001 Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict

**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, S/2001/331, 30 March 2001, this report and other UN documents cited are available on <http://www.un.org>]

## REPORT OF THE SECRETARY-GENERAL TO THE SECURITY COUNCIL ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

### I. Towards a culture of protection [...]

1. [...] Recruitment and use of child soldiers, the proliferation of small arms, the indiscriminate use of landmines, large-scale forced displacement and ethnic cleansing, the targeting of women and children, the denial of even the most basic human rights, and widespread impunity for atrocities are still all too familiar features of war. The growing number of threats to the lives of local and international staff members of international organizations and other aid groups has added one more shameful characteristic to the reality of today's conflicts.
2. The context is therefore clear: as internal armed conflicts proliferate, civilians have become the principal victims. It is now conventional to say that, in recent decades, the proportion of war victims who are civilians has leaped dramatically, to an estimated 75 per cent, and in some cases even more. I say "conventional" because the truth is that no one really knows. Relief agencies rightly devote their resources to helping the living rather than counting the dead. Whereas armies count their losses, there is no agency mandated to keep a tally of civilians killed. The victims of today's atrocious conflicts are not merely anonymous, but literally countless. To some extent, this can be explained by changes in the nature of conflict. The decline of inter-State warfare waged by regular armies has been matched by a rise in intra-State warfare waged by irregular forces. Furthermore, and particularly in conflicts with an element of ethnic or religious hatred, the affected civilians tend not to be the incidental victims of these new irregular forces; they are their principal object.
3. In September 2000, all the States Members of the Organization pledged, in the United Nations Millennium Declaration (General Assembly resolution 55/2), to expand and strengthen the protection of civilians in complex emergencies, in conformity with international humanitarian law. Yet just as Member States have too often failed to address the calamitous impact of modern warfare on civilians, so, too, has the United Nations often been unable to respond adequately to their need for protection and assistance. My hope now is to move beyond an analysis of our past failures and to identify ways in which the international system can be strengthened to help meet the growing needs of civilians in war. [...] In the present report, I wish to focus on additional steps which Member States must take to strengthen their own capacity to protect the civilian victims of war more effectively, and on initiatives that the Security Council and other organs of the United Nations can take to complement these efforts.
4. I believe that Member States, supported by the United Nations and other actors, must work towards creating a culture of protection. In such a culture, Governments would live up to their responsibilities, armed groups would respect the recognized rules of international humanitarian law, the private sector would be conscious of the impact of its engagement in crisis areas, and Member States and international organizations would display the necessary commitment to ensuring decisive and rapid action in the face of crisis. [...]

### II. Parameters of protection [...]

1. The primary responsibility for the protection of civilians rests with Governments, as set out in the guiding principles on humanitarian assistance adopted by the General Assembly in its resolution 46/182 of 19 December 1991. At the same time, armed groups have a direct responsibility, according to Article 3 common to the four Geneva Conventions of 1949 and to customary international humanitarian law, to protect civilian populations in armed conflict. International instruments require not only Governments but also armed groups to behave responsibly in conflict situations, and to take measures to ensure the basic needs and protection of civilian populations. Where Governments do not have resources and capacities to do this unaided, it is incumbent on them to invoke the support of the international system. Protection efforts must be focused on the individual rather than the security interests of the State, whose primary function is precisely to ensure the security of its civilian population. [...]

### III. Measures to enhance protection

#### A. Prosecution of violations of international criminal law

1. Internationally recognized standards of protection will be effectively upheld only when they are given the force of law, and when violations are regularly and reliably sanctioned. The establishment of the *ad hoc* tribunals for the former Yugoslavia and Rwanda, and the adoption of the Rome Statute to establish a permanent International Criminal Court are important steps in this direction. Safe havens for mass murderers and torturers are disappearing. These developments are complemented by significant advances in international criminal law through the jurisprudence of the two *ad hoc* tribunals and by the rapidly growing number of ratifications of the Rome Statute. This emerging paradigm of international criminal justice confronts perpetrators of grave violations with the real possibility of prosecution for past, present and future crimes.

##### 1. Denial of amnesty for serious crimes

1. The recent arrest, indictment and eventual sentencing of former or current heads of State or Government has allowed prosecutors to further penetrate the shield of immunity. Courts are increasingly willing to send the message that nobody is above the law. Let me therefore be clear: the granting of amnesties to those who committed serious violations of international humanitarian and criminal law is not acceptable. [...]

##### 2. Impact of criminal justice

1. The fair prosecution and trial of individual suspects can help significantly to build confidence and facilitate reconciliation in post-conflict societies, by removing collective attributions of guilt. Well-publicized prosecutions can deter crimes in current and future conflicts. [...] Establishing courts without secure and sustained funding, and without follow-up efforts to rebuild national criminal justice systems, can do a disservice to victims of large-scale violence and undermine their confidence in justice. [...]

##### 3. Importance of national jurisdictions

1. Despite the important role that international prosecution plays in encouraging compliance with international law, consistent enforcement depends primarily on the commitment and cooperation of national jurisdictions. The prosecution of individuals is, first and foremost, a responsibility of the State concerned. International justice can only complement those efforts when States are genuinely unable or unwilling to investigate and prosecute. In particular, a growing number of States have started to apply the principle of universal jurisdiction. The most publicized examples were the arrest by the United Kingdom of Great Britain and Northern Ireland of the former President of Chile, Augusto Pinochet, on charges of torture, at the request of Spanish authorities, and the arrest of the former President of Chad, Hisssein Habré, by Senegal on similar charges. The application of this principle can be an essential stimulus for justice and reconciliation in the country of origin of the perpetrator. Its successful exercise requires closer cooperation between States, however, notably on issues of evidence and extradition. States therefore need to adapt their national legislation to the recognized standards of international humanitarian and criminal law and to ensure that they have a fair and credible judiciary.

##### 4. Truth and reconciliation efforts

1. The experiences of Rwanda and other places have shown, however, that neither international nor national judicial systems command the necessary resources to prosecute the suspected perpetrators of conflict-related crimes, who may number in the thousands. Truth and reconciliation efforts, considered exceptional only a few years ago, have become an accepted method of overcoming a violent past. [...] Truth and reconciliation, however, should not become a substitute for individual prosecution. The objective of such efforts should be to combine the search for truth, accounting for past abuses, promotion of national reconciliation and the bolstering of an emerging democratic order. [...]

#### Recommendations

1. **I urge the Security Council and the General Assembly to provide, from the outset, reliable, sufficient and sustained funding for international efforts, whether existing or future international tribunals, arrangements established in the context of United Nations peace operations, or initiatives undertaken in concert with individual Member States, to bring to justice perpetrators of grave violations of international humanitarian and human rights law.**
2. **I recommend that the Security Council consider the establishment of arrangements addressing impunity and, as appropriate, for truth and reconciliation, during the crafting of peacekeeping mandates, in particular where this response has been triggered by widespread and systematic violations of international humanitarian and human rights law.**
3. **I encourage Member States to introduce or strengthen domestic legislation and arrangements providing for the investigation, prosecution and trial of those responsible for systematic and widespread violations of international criminal law. To this end, I endorse efforts aimed at supporting Member States in building capable and credible judicial institutions that are equipped to provide fair proceedings.**

## **B. Access to vulnerable populations**

1. In many conflicts, safe and unhindered access to vulnerable civilian populations is granted only sporadically, and is often subject to conditions, delayed, or even bluntly denied. The consequences for those populations are often devastating: entire communities are deprived of even basic assistance and protection. The agony of civilians in such isolated circumstances is further exacerbated as, in modern warfare, particularly internal conflicts, civilians are often targeted as part of a political strategy. [...]
2. Because of the internal nature of most conflicts, United Nations agencies, the International Committee of the Red Cross and non-governmental organizations have increasingly had to negotiate to ensure access to those in need. [...] Common ground rules would help to make access negotiations more predictable and effective, and reduce the risk of mistakes or of agencies being played off against each other by warring parties.

### **1. Obtaining meaningful access**

1. As a general rule, access negotiations should always have a clear objective, namely, humanitarian space providing unimpeded, timely, safe and sustained access to people in need. Access must be obtained, managed and maintained throughout a conflict by keeping the parties continuously engaged. [...]

### **2. Complexities on the ground**

1. Despite the Security Council's repeated reaffirmation of the importance of safe and unimpeded access [...], gaining safe and regular access is a daily struggle marked by a plethora of practical concerns, including demands of conditionality – warring parties requesting their share of aid before granting access to vulnerable populations; the deliberate starving of civilians to attract food aid in order to feed combatants; or the delivery of dual-purpose items that could also serve the war effort. Under international law, displaced persons and other victims of conflict are entitled to international protection and assistance where this is not available from national authorities. However, negotiations on the ground often revolve around the practical implications: for example, the failure of warring parties to admit the delivery of certain food items because they are perceived as jeopardizing the objectives of their war effort.
2. The approach to these challenges often defines the credibility and effectiveness of the humanitarian effort. Strengthening access negotiations thus requires the development of common policies and common criteria for engagement among aid agencies. These criteria should address clearance procedures, monitoring of delivery to minimize diffusion of goods to combatants, and efficient coordination.

### **3. Engaging the parties to a conflict**

1. In a multi-faction conflict, such as that in the Democratic Republic of the Congo, experience has shown that, in order to gain meaningful and regular access to vulnerable populations within different combat zones, where front lines are shifting from day to day, the consent of many parties has to be obtained at the local, regional, national and international levels. [...] In most intra-State conflicts, armed groups exercise de facto control of parts of a country and the civilian population living there. Negotiating and obtaining access to those populations therefore requires the engagement of those groups.
2. Whereas Governments are sometimes concerned that such engagements might legitimize armed groups, these concerns must be balanced against the urgent need for humanitarian action. It is the obligation to preserve the physical integrity of each and every civilian within their jurisdiction, regardless of gender, ethnicity, religion or political conviction, that should guide Governments in exercising their sovereign responsibility. Where Governments are prevented from reaching civilians because they are under the control of armed groups, they must allow impartial actors to carry out their humanitarian task. Such a loss of control does not release Governments from their responsibility for all civilians within their jurisdiction.
3. Engaging armed groups in a constructive dialogue is also of vital importance for guaranteeing the security of humanitarian operations in a conflict area. Often, combatants perceive the provision of humanitarian assistance and protection to vulnerable populations as being not a neutral but rather a politically motivated act. [...] [H]umanitarian agencies, although pursuing neutral objectives enshrined in international law, are frequently perceived as partisan, and therefore become targets themselves. [...]

### **4. Internally displaced persons**

1. Meaningful access is particularly important when reaching out to the estimated 20 to 25 million people who are displaced within the borders of their country. The plight of this exceptionally vulnerable group has gained urgency in the 1990s as their number has dramatically increased in the wake of the numerous internal armed conflicts of that decade. Forced to leave their homes, they regularly suffer from severe deprivation, lack of shelter, insecurity and discrimination. Their protection is, first and foremost, a responsibility of the relevant national authorities.
2. In many cases, however, national authorities fail to provide the necessary protection and assistance to such people or to provide safe and meaningful access for international organizations. As a result, and because there is no established system of international protection and assistance for internally displaced persons, the response to their needs has often been inconsistent and ineffective. [...]

### **5. Coordinated approach**

1. Developing a coordinated approach to access negotiations can therefore be a matter of life and death, both for vulnerable populations and for humanitarian workers. Often, the large number of domestic and international aid agencies in a conflict area poses a challenge in itself. Driven by differing mandates and interests, international agencies often negotiate access independently, thereby diminishing the effectiveness of their own and other agencies' response. [...] It is therefore essential to develop more coordinated and creative approaches to access negotiations, for example, by pooling agency interests consistent with their mandates, and agreeing on mutually complementary sectoral negotiations. [...]

## Recommendations

1. **Recalling the Security Council's recognition, in its resolution 1265 (1999), of the importance of gaining safe and unimpeded access of humanitarian personnel to civilian populations in need, I urge the Council to actively engage the parties to each conflict in a dialogue aimed at sustaining safe access for humanitarian operations, and to demonstrate its willingness to act where such access is denied.**
2. **I encourage the Security Council to conduct more frequent fact-finding missions to conflict areas with a view to identifying the specific requirements for humanitarian assistance, and in particular obtaining safe and meaningful access to vulnerable populations.**

## C. Separation of civilians and armed elements

1. [...] [M]assive movements of displaced populations across international borders, most frequently prompted by civil wars in the region, have altered delicate ethnic balances in neighbouring States and thereby destabilized the recipient societies. Furthermore, there is a grave risk that the movement of people – sometimes in their hundreds of thousands – alongside armed elements will undermine the security of entire subregions or regions, and thereby internationalize an initially local conflict.
2. [...] It is therefore a matter of utmost urgency to preserve, at the earliest stage possible, the civilian character of camps and settlements for displaced persons – both refugees and internally displaced – by separating civilians from armed elements that move alongside them. Such separation can prevent further aggravation of conflict, and ensure that persons fleeing persecution or war get the protection and assistance they require.

### 1. Impact of the mixing of displaced populations and armed elements

1. Failure to separate armed elements from civilians has led to devastating situations in and around camps and settlements. As the example of West Timor (Indonesia) shows, not separating combatants from civilians allows armed groups to take control of a camp and its population, politicizing their situation and gradually establishing a military culture within the camp. The impact on the safety and security of both the refugees and the neighbouring local population is severe. Entire camp populations can be held hostage by militias that operate freely in the camps, spread terror, press-gang civilians, including children, into serving their forces, sexually assault and exploit women, and deliberately prevent displaced people from returning home. In addition, humanitarian aid and supplies are often diverted to these armed elements, depriving the intended civilian beneficiaries. Finally, blurred lines between the civilian and military character of camps expose civilians inside to the risk of attack by opposing forces, where camps are perceived to serve as launching pads for renewed fighting.

### 2. Constraints of response

1. And yet, for practical and political reasons, the response to this phenomenon has been inadequate. Host countries, which have the primary responsibility for ensuring the security of refugees on their territory, feel increasingly overburdened by the logistical, and material challenge of accommodating large influxes of population. [...] In fact, in order to avoid such strain, and in fear of being drawn into the conflict, potential host countries increasingly deny asylum by closing their borders, thereby further exacerbating the situation of displaced civilians within the conflict area. While recognizing the genuine interest of host States in preserving their neutrality in the conflict, we must be clear that it is the responsibility of States to grant asylum to distressed and persecuted populations and to ensure their protection and the provision of relief and assistance to them.
2. Humanitarian agencies, often the first and only presence on the ground in these situations, cannot identify, intern, disarm and demobilize armed elements present in refugee camps. They have neither the mandate nor the means to do so. Already, the identification of armed elements leads to enormous problems. Legally, international humanitarian law does not define fighters in internal conflicts, because Member States are reluctant to confer a formal status on those whom they consider insurgents or rebels. Practically, militia and armed elements, often attempting to hide among fleeing civilian populations, do not necessarily wear military uniforms or otherwise identify themselves. [...] The existence of part-time combatants – farmer by day, fighter by night – and the provision by civilians of basic help and shelter to combatants further obscure the issue. As a result, humanitarian operations are increasingly threatened by the lack of security in refugee camps. The murders of aid workers in West Timor (Indonesia) and Guinea are distressing illustrations. As a result, operations have had to withdraw from camps, and often an entire area, further aggravating the distress of the civilian camp population. [...]

### 3. Development of a toolkit

1. The potential for large population flows, mixed with armed elements, to destabilize entire regions and, eventually, to ignite

an international conflict has been sadly demonstrated by events in West Africa and the Great Lakes region. I therefore believe that it is within the purview of the Security Council to deter threats to international peace and security deriving from such population movements by supporting host States in taking appropriate and timely measures to separate civilians and armed elements. [...]

2. In addition, Member States should support the efforts of host States by providing bilateral assistance to their law and order authorities in establishing adequate security arrangements in camps, so as to deter infiltration by armed elements. As a first step, assistance in locating refugee camps and settlements at a significant distance from the border would help to prevent militarization. [...]

## **Recommendation**

1. **I encourage the Security Council to further develop the concept of regional approaches to regional and subregional crises, in particular when formulating mandates.**
2. **I further encourage the Security Council to support the development of clear criteria and procedures for the identification and separation of armed elements in situations of massive population displacement.**

## **D. Media and information in conflict situations**

1. The misuse of information can have deadly consequences in armed conflicts, just as information correctly employed can be life-saving. The “hate media” that were used to incite genocide in Rwanda are an extreme example of the way information can be manipulated to foment conflict and incite mass violence. Hate speech, misinformation and hostile propaganda continue to be used as blunt instruments against civilians, triggering ethnic violence and forcing displacement. Preventing such activities and ensuring that accurate information is disseminated, is thus an essential part of the work of protecting civilians in armed conflict. Impartial information on conflicts, zones of combat, the location of minefields and the availability of humanitarian assistance, can be as vital a requirement for distressed populations caught in areas of violent upheaval as shelter, food, water and medical services.

### **1. Countering hate media used to incite violence [...]**

1. The best antidote to hate speech and incitement to violence is the development of free and independent media serving the needs of all parts of society. [...]

### **2. Use of media and information in support of humanitarian operations**

1. In the global information age, giving victims a voice is essential for mobilizing the support necessary to preserve and improve the quality of human life. While recognizing that at times massive media campaigns can distort policy priorities, reliable media accounts and adequate information management are an essential basis for decisions by Governments, donors, international organizations and non-governmental organizations.
2. The awareness of even distant events allows informed assessments and helps, in particular, humanitarian agencies to shape an appropriate response before going into a conflict area. Concrete and verified information about massive displacements of people, security conditions, and violations of international humanitarian and human rights law can be vital for distressed populations and international aid workers alike. [...]

### **3. Protection of journalists**

1. Many initiatives rely on the courage and commitment of journalists in conflict areas. Their protection from harassment, intimidation and threats must therefore be of concern to all. [...]

## **Recommendation**

1. **I recommend that the Security Council make provision for the regular integration in mission mandates of media monitoring mechanisms that would ensure the effective monitoring, reporting and documenting of the incidence and origins of “hate media”. Such mechanisms would involve relevant information stakeholders from within the United Nations and other relevant international organizations, expert non-governmental organizations, and representatives of independent local media.**

## **IV. Entities providing protection**

1. [...] [T]he number of actors involved in rendering assistance and protection has significantly expanded: new actors have entered the stage and previously overlooked actors have gained greater importance. Although often profoundly differing in their resources, mandates, philosophies and interests, they can enhance our capacity to respond to violent conflict by providing additional resources, new approaches and comparative advantages. Faced with the increasingly opaque web of local and global politics, economic interests and criminal activity that characterizes many of today’s conflicts, we must make the best use of organizations’ limited resources by engaging all relevant actors in our work to improve the protection of civilians.

## A. Entities bearing primary responsibility

### 1. Governments

1. International efforts to protect civilians can only complement the efforts of Governments. [...] Where a Government is prevented from protecting its civilians, for lack of either resources or *de facto* control over part of its territory, it may need to seek the support of the international system, which has been established for precisely this purpose. Regrettably, in times of conflict, many Governments are unwilling to live up to this responsibility; in fact, they often constitute the major impediment to any meaningful humanitarian assistance and protection. This interface between national responsibility and international support continues to pose a major challenge to the international community.

### 2. Armed groups

1. 48. The recent prevalence of civil wars has drawn increasing attention to the potential role of armed groups that are parties to the conflict in protecting civilian populations. In most intra-State conflicts armed groups have gained control over part of a country's territory and the population living there. Again and again, however, we see them misuse their power by attacking defenceless civilians, in blatant disregard of international humanitarian law. I would therefore like to recall the prohibition against targeting civilians and conducting indiscriminate attacks on civilians, enshrined in customary international humanitarian law, which is binding not only on States and their Governments but equally and directly so on armed groups that are parties to the conflict, as stated in article 3 common to the Geneva Conventions of 1949. The practice of the two *ad hoc* tribunals and the statute of the International Criminal Court have underlined the principle of direct responsibility of armed groups for violations of international humanitarian law.
2. Experience has shown, however, that many armed groups deliberately operate outside the recognized normative and ethical framework in furtherance of their objectives. In order to promote respect for international humanitarian and human rights law in these situations and to facilitate the necessary provision of humanitarian assistance and protection to vulnerable populations, it is indispensable to engage these groups in a structured dialogue. In this respect, I welcome the growing tendency of the Security Council to address all parties to armed conflicts (see resolution 1261 (1999)). It is important that aid agencies reaffirm the fundamental principles of international humanitarian and human rights law in their codes of conduct and in any agreements they conclude with actors on the ground. Contacts with armed groups should be neutral and should not affect their legitimacy or the legitimacy of their claims. [...]

## Recommendations

1. **In its resolutions the Security Council should emphasize the direct responsibility of armed groups under international humanitarian law. Given the nature of contemporary armed conflict, protecting civilians requires the engagement of armed groups in a dialogue aimed at facilitating the provision of humanitarian assistance and protection.**
2. **Many armed groups have neither developed a military doctrine nor otherwise incorporated the recognized principles of international humanitarian law in their mode of operation. I therefore urge Member States and donors to support efforts to disseminate information on international humanitarian and human rights law to armed groups and initiatives to enhance their practical understanding of the implications of those rules.**

## B. Complementarity of other entities

1. While the primary responsibility for the protection of civilians rests with Governments, in places where the Government is unable or unwilling to fulfil its obligations the international community is coming to accept its own responsibilities. The United Nations, including in particular the Security Council, needs to strengthen its role in this regard by more actively engaging a range of relevant actors. [...]

## Recommendation

1. **I recommend that the Security Council develop a regular exchange with the General Assembly and other organs of the United Nations on issues pertaining to the protection of civilians in armed conflict. I suggest that the President of the General Assembly use the monthly meeting with the President of the Security Council to alert the Council to situations in which action might be required.**

### 1. Civil society

#### (a) Non-governmental organizations

1. Recent years have seen a considerable growth in the number and influence of national and transnational non-governmental organizations. Thanks to the global reach of the media and the possibilities of information technology, above all the Internet, non-governmental organizations are now better placed to form coalitions, organize and mobilize cohesive support on a global scale. In particular, non-governmental organizations have proved that they can make a significant impact on public policy and international law. In many conflicts non-governmental organizations are among the first to bear witness to violations of international humanitarian and human rights law, to conduct rigorous assessments of the

- humanitarian situation on the ground, and to solicit a coherent international response. By doing so, they often succeed in raising public awareness of a conflict, and thereby make political leaders act decisively in the face of crisis.
2. On the ground, non-governmental organizations are the daily and indispensable partners of the United Nations in providing humanitarian relief and assistance to vulnerable people. Their presence among the local population often imparts a measure of protection, not least in areas where minorities are living. Just like United Nations personnel, however, their national and international staff have more and more become the target of attack. [...] Finally, non-governmental organizations play an important and active role in negotiating humanitarian corridors and access to distressed populations, and, in some cases, in bringing warring parties to the negotiation table.
  3. It is essential that Member States, the United Nations and other international organizations and non-governmental organizations, better understand each other's comparative advantages as a first step towards working more effectively together. [...]
  4. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, of 1997, and the Rome Statute establishing an International Criminal Court a year later are examples of the power of international civil society to work with Governments to achieve a legislative goal which can help to protect civilians in armed conflict.

#### **(b) Domestic civil society**

1. Domestic civil society represents the basic source of protection, especially when all other layers of protection fail. Civil society in this context refers not only to local non-governmental organizations and human rights groups, but also to religious congregations, charities, universities, trade unions, legal associations, independent activists and human rights defenders, families, clans and more. We must continue to reach out and build partnerships with these actors, and employ their knowledge of the local context, their skill at operating in conflict zones, and their sensitivity to the needs of local populations and to local cultural norms. The funding and training of these actors is therefore an important investment. In particular, partnerships between international and domestic civil society must be strengthened in negotiating access, monitoring abuse, especially where international monitoring is not possible, and facilitating dialogue with political actors on the ground. Finally, domestic civil society actors are often best equipped to promote awareness of and respect for international law within the conflict zone.
2. International actors must make sure that displaced communities are given a say in decisions that affect them. Displaced communities are not passive. [...]

#### **(c) Women, children and youth**

1. Tragically, women and children are the principal victims of armed conflict. Women are vulnerable to sexual violence, trafficking and mutilation, whether at home, in flight or in camps for displaced populations. Yet women also play a prominent role in rebuilding war-torn societies. Women's roles as mediators and as a primary force of economic activity during armed conflict are still underexamined and underutilized. [...]
2. Children too, besides being victimized as child soldiers and in many other ways during armed conflict, have a role to play in building a more stable future for war-torn countries. [...] Both UNICEF and my Special Representative for Children and Armed Conflict have spoken repeatedly of the need to ensure the participation of adolescents in humanitarian responses and peace-building activities. [...]

#### **(d) Private sector**

1. With almost 96 per cent of the private sector engaged in the manufacturing of civilian goods and services, the private sector has a vested interest in peace-building and economic stability, and in complementing rather than obstructing humanitarian efforts. Not all businesses, however, seek to be helpful or socially responsible. The negative role of foreign businesses in the diamond industry in Angola and Sierra Leone demonstrates this fact. The impact of the pursuit of economic interests in conflict areas has come under increasingly critical scrutiny. Corporations have been accused of complicity with human rights abuses, and corporate royalties have continued to fuel wars. It has become common knowledge that by selling diamonds and other valuable minerals, belligerents can supply themselves with small arms and light weapons, thereby prolonging and intensifying the fighting and the suffering of civilians. It is therefore of critical importance that the United Nations continues to promote the exercise of responsible investment in crisis areas, by building upon and expanding its partnership with the private sector.

#### **Recommendations**

1. **I encourage the Security Council to continue investigating the linkages between illicit trade in natural resources and the conduct of war and to urge Member States and regional organizations to take appropriate measures against corporate actors, individuals and entities involved in illicit trafficking in natural resources and small arms that may further fuel conflicts.**
2. **I urge Member States to adopt and enforce executive and legislative measures to prevent private sector actors within their jurisdiction from engaging in commercial activities with parties to armed conflict that might result in or contribute to systematic violations of international humanitarian and human rights law.**

## 2. Regional organizations

1. In recent years, the United Nations has increasingly been engaged in building partnerships, on issues pertaining to the protection of civilians, with regional and intergovernmental organizations, including the Council of Europe, the Organization for Security and Cooperation in Europe, the Organization of African Unity, the Economic Community of West African States, the Southern African Development Community, the Association of Southeast Asian Nations, the League of Arab States, the Organization of the Islamic Conference, and the Inter-American Commission on Human Rights. [...]

### Recommendation

1. **I encourage the Security Council to establish a more regular cooperation with regional organizations and arrangements to ensure informed decision-making, the integration of additional resources, and the use of their comparative advantages. Such cooperation should include the establishment of a regular regional reporting mechanism, and briefings, for the Security Council. Future high-level consultations between the United Nations and regional organizations will provide a welcome opportunity to further develop cooperation on strengthening the protection of civilians in armed conflict.**

### V. Final observations

1. The instruments, political and legal, now available for the protection of civilians in armed conflict are in urgent need of updating. They were developed in a world where State actors were overwhelmingly dominant, and they reflect that fact. Similarly, the practice of the United Nations was, at its inception, almost exclusively focused on the interaction of Member States.
2. New mechanisms and strategies are required to deal with changed circumstances. The forms of conflict most prevalent in the world today are internal – communal violence, ethnic cleansing, terrorism, private wars financed by the international trade in diamonds or oil – and involve a proliferation of armed groups. These circumstances reflect, to varying degrees, the erosion of the central role of the State in world affairs. While civilians have been the principal victims of these changes, it is wrong to say that the new order is entirely hostile to the protection of civilians. There are opportunities which can be seized, such as the global reach of the media and of new information technologies; the growing influence of civil society organizations and non-governmental organizations; the interdependence of the global economy; and the reach of international commerce.
3. Whether we are able to establish the culture of protection to which I referred at the beginning of this report will largely depend on the extent to which the United Nations, and the international community at large, are able to engage with the changed world. Is there enough will to strengthen the criminal justice system – both internationally and within national jurisdictions? Is there willingness to engage with armed groups, as the majority of armed conflicts occur within the borders of States? Will we be able to harness the potential of the media and the Internet? Will we build effective partnerships with civil society, non-governmental and regional organizations, and the private sector? These are not abstract questions; they are questions which emerge daily in the struggle to reduce the suffering of civilians in conflict and which, if they are to be answered in the affirmative, will at a minimum require Member States to take the specific steps enumerated in this and my previous report.
4. To this end, I would like to draw the Council's attention to a matter of particular concern. The present report is the second in a series. Some 18 months have passed since I submitted my first report on the protection of civilians in armed conflict. I regret to note that only a few of its 40 recommendations are so far being implemented. Nevertheless, the present report adds a further set of 14 recommendations whose implementation I consider essential if a real improvement in protection is to be achieved. Reports and recommendations are no substitute for effective action. The primary responsibility for the protection of civilians falls on Governments and armed groups involved in conflict situations. Where they do not honour these responsibilities, it is up to the Security Council to take action. [...] I urge the members of the Security Council to review progress in implementing the recommendations made in this and the previous report. Further reports can have meaning when there is clear evidence that their recommendations are effecting real progress towards their goal. By shifting the focus to implementation of recommendations already agreed upon, it should be possible to ensure that future efforts will be more effective in bringing genuine relief and protection to civilians in armed conflict. [...]

## B. 2009 Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict

[Source: United Nations, S/2009/277, 29 May 2009; available on <http://www.un.org/>]

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[...]

#### III. The five core challenges

1. Ultimately, the enduring need to strengthen the protection of civilians stems from the fundamental, and equally enduring, failure of parties to conflict to comply fully with their legal obligations to protect civilians. It is a failure that demands



reinvigorated commitment and determined action so as to meet the following core challenges: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced United Nations peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations.

## A. Enhancing compliance

1. A defining feature of most, if not all, contemporary conflicts is the failure of the parties to respect and ensure respect for their legal obligations to protect civilians and spare them from the effects of hostilities. [...]
2. Constant care must be taken to spare the civilian population from the effects of hostilities. This requires, inter alia, strict compliance by parties to conflict with international humanitarian law and, in particular, the principles of distinction and proportionality, and the requirement to take all feasible precautions in attack and defence. Under no circumstances do violations of these rules by one party to a conflict justify violations by others.

[...]

1. I would remind all parties to conflict of their obligations scrupulously to respect and ensure respect for the relevant rules. I would also urge them to consider practical steps that could be taken to spare civilians from the effects of hostilities, a process that may in some situations benefit from more discussion with local populations and their leaders, civilian authorities, civil society or humanitarian actors.

[...]

1. The Security Council also has a critical role in promoting systematic compliance with the law. In particular, the Council should:
  - a. Use all available opportunities to condemn violations, without exception, and remind parties of, and demand compliance with, their obligations;
  - b. Publicly threaten and, if necessary, apply targeted measures against the leadership of parties that consistently defy the demands of the Security Council and routinely violate their obligations to respect civilians;
  - c. Systematically request reports on violations and consider mandating commissions of inquiry to examine situations where concerns exist regarding serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and prosecuting them at the national level, or referring the situation to the International Criminal Court.

## B. Enhancing compliance by non-State armed groups

[See also [The Law of Non-International Armed Conflicts, VIII. Who Is Bound by the Law of Non-International Armed Conflicts?](#)]

1. Together with the increased prevalence of non-international armed conflicts, pitting States against non-State armed groups, or two or more such groups against each other, a common feature of contemporary conflicts is the proliferation and fragmentation of such groups. They encompass a range of identities, motivations and varying degrees of willingness to observe international humanitarian law and human rights standards.
2. Armed groups are bound by international humanitarian law and must refrain from committing acts that would impair the enjoyment of human rights. For some groups, attacks and the commission of other violations against civilians are deliberate strategies, intended to maximize casualties and destabilize societies. Others may be less inclined to attack civilians deliberately, but their actions still have an adverse impact on the safety and security of civilians. We need urgently to develop a comprehensive approach towards improving compliance by all these groups with the law, encompassing actions that range from engagement to enforcement.
3. As stated in common article 3 of the Geneva Conventions and in Additional Protocol II thereto, the application of international humanitarian law does not affect the legal status of non-State parties to a conflict. In order to spare civilians the effects of hostilities, obtain access to those in need and ensure that aid workers can operate safely, humanitarian actors must have consistent and sustained dialogue with all parties to conflict, State and non-State. Moreover, while engagement with non-State armed groups will not always result in improved protection, the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties in current conflicts.
4. The extensive experience of ICRC in working with armed groups, as well as that of United Nations actors and various non-governmental organizations, has demonstrated the possible benefits of dialogue on protection. Engagement can take the form of dissemination and training on international humanitarian law and human rights law standards. The incentives for armed groups to comply with the law should be emphasized, including increased likelihood of reciprocal respect for the law by opposing parties.
5. Bearing in mind that armed groups have legal obligations, engagement may be based around the conclusion of codes of conduct, unilateral declarations and special agreements, as envisaged under international humanitarian law, through which groups expressly commit themselves to comply with their obligations or undertake commitments that go above and beyond what are required by the law. Such instruments have been concluded in a number of contexts, including in Colombia, Liberia, Nepal, the Philippines, Sierra Leone, Sri Lanka, the Sudan and the former Yugoslavia. Their conclusion can send a clear signal to the groups' members and lead to the establishment of appropriate internal disciplinary measures. They also

provide an important basis for follow-up interventions. It is, however, critically important that such tools and the commitments and principles therein are incorporated into instructions and communicated to the groups' members.

6. Other initiatives include those of my Special Representative on Children and Armed Conflict with respect to ending the recruitment and use of children by armed groups. Another specific and successful example is the Geneva Call Deed of Commitment, which seeks to end the use of anti-personnel mines by armed groups [See [Geneva Call, Puntland State of Somalia adhering to a total ban on anti-personnel mines](#)]. To date, 38 groups have signed the Deed and have, for the most part, refrained from using anti-personnel mines, cooperated in mine action in areas under their control and destroyed stockpiles.
7. Member States can themselves promote compliance by armed groups. Members of such groups have little legal incentive to comply with international humanitarian law if they are likely to face domestic criminal prosecution for their mere participation in a non-international armed conflict, regardless of whether they respect the law or not. Granting amnesty for merely participating in hostilities, though not in respect of any war crimes and serious violations of human rights law which may have been committed, as envisaged in Additional Protocol II to the Geneva Conventions, may in some circumstances help provide the necessary incentive.
8. At the absolute minimum, it is critical that Member States support, or at least do not impede, efforts by humanitarian organizations to engage armed groups in order to seek improved protection for civilians – even those groups that are proscribed in some national legislation. Engagement through training or the conclusion of special agreements can provide entry points for dialogue on more specific concerns, such as humanitarian access, protection of humanitarian workers and sexual violence. Of particular relevance to the Security Council, such dialogue can also in some instances contribute to confidence-building between parties which can lead, in time, to the cessation of hostilities and the restoration of peace and security.
9. There will be times when engagement proves futile. However, it should not be dismissed out of hand. Armed groups are not monoliths. They have entry points, such as through the local population, and members who may be more predisposed to engagement. However, when such efforts fail, alternatives must be considered, including the application of the measures outlined in paragraph 37 above, namely systematic condemnation of violations committed by armed groups and demands for compliance together with the application of targeted measures.
10. As a first step towards developing a more comprehensive approach to armed groups, it may be useful to convene an Arria formula meeting to discuss the experience of United Nations and non-governmental actors in working with armed groups and to identify additional measures that the Security Council and Member States could take to improve compliance.

### **C. Protection of civilians and United Nations peacekeeping and other relevant missions**

[...]

1. [...] [T]he “protection of civilians” mandate in peacekeeping missions remains largely undefined as both a military task and as a mission-wide task. Each mission interprets its protection mandate as best it can in its specific context. Some missions, such as the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and MONUC, have developed force directives or mission-wide guidance to this end. Of course, heads of missions and force commanders must have latitude to interpret the mandate in light of their specific circumstances. However, this should take place within a broader policy framework that includes clear direction as to possible courses of action, including in situations where the armed forces of the host State are themselves perpetrating violations against civilians, as well as indicative tasks and the necessary capabilities for their implementation.
2. Protection of civilians is not a military task alone. All components of a mission, including police, humanitarian affairs, human rights, child protection, mine action, gender, political and civil affairs, public information, rule of law and security sector reform, can and must contribute to discharging the mission's protection mandate. To this end, more missions are beginning to develop inclusive mission-specific protection strategies and plans of action, in consultation with Special Representatives of the Secretary-General, Force Commanders, humanitarian country teams, the host Government and communities. This is a welcome development and all missions should be encouraged to develop such inclusive strategies, establishing priorities, actions and clear roles and responsibilities.

[...]

### **D. Humanitarian access**

1. Access is the fundamental prerequisite for humanitarian action [...]. Under international humanitarian law, parties to conflict must protect and meet the basic needs of persons within their control. In situations where they are unwilling or unable to do so, humanitarian actors have an important subsidiary role to play. In such circumstances, parties should agree to relief operations that are humanitarian and impartial in character and conducted without any adverse distinction, and must allow and facilitate rapid and unimpeded passage of relief consignments, equipment and personnel. [...]
2. [...] Constraints on access should have consequences for those who impose them, not merely for those who suffer from them. The Council has an important role to play in ensuring an environment that is conducive to facilitating access to those in need. More specifically, key findings suggest that the Council should:
  - a. Consistently condemn and call for the immediate removal of impediments to humanitarian access that violate international humanitarian law;
  - b. Call for strict compliance by parties to conflict and third States with their obligations to allow and facilitate the rapid

and unimpeded passage of relief consignments, equipment and personnel, and encourage States to promote respect for humanitarian principles;

- c. Call upon parties to conflict to allow safe passage for civilians seeking to flee zones of fighting;
  - d. Call upon parties to conflict to agree to the temporary suspension of hostilities and implement days of tranquillity in order to enable relief actions by humanitarian actors;
  - e. Call upon parties to conflict to cooperate with humanitarian organizations in the establishment of de-conflicting arrangements in order to facilitate the delivery of assistance during hostilities;
  - f. Call upon relevant parties to conclude and implement agreements so as to expedite the deployment of humanitarian personnel and assets. Negotiations could be assisted by the development of a standard moratorium on visa requirements, work and travel permits, and on customs duties and import restrictions on humanitarian goods and equipment;
  - g. Mandate United Nations peacekeeping and other relevant missions, where appropriate and as requested, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;
  - h. Apply targeted measures against individuals obstructing access to, or the distribution of, humanitarian assistance;
  - i. Refer grave and prolonged instances of the wilful impediment of relief supplies to the International Criminal Court.
3. Considering the frequency and gravity of attacks and other violations against humanitarian workers, as detailed in the annex, the Security Council is urged to:
- a. Consistently condemn and call for the immediate cessation of all acts of violence and other forms of harassment deliberately targeting humanitarian workers;
  - b. Call for strict compliance by parties to conflict with international humanitarian law, including the duty to respect and protect relief personnel and installations, material, units and vehicles involved in humanitarian assistance;
  - c. Call upon States affected by armed conflict to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;
  - d. Call upon Member States that have not done so to ratify and implement the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol;
  - e. Apply targeted measures against individuals responsible for attacks against humanitarian workers and assets;
  - f. Refer grave instances of attacks against humanitarian workers to the International Criminal Court.

## **E. Enhancing accountability**

1. Integral to the foregoing challenges is the need to ensure accountability for violations of international humanitarian law and human rights law, both for individual perpetrators and for parties to conflict. [...]
2. [...] [E]nsuring accountability at the national level, rather than resorting to [...] international mechanisms as the International Criminal Court, would help to alleviate some of the tensions that are perceived to exist between the pursuit of justice, on the one hand, and the pursuit of peace, on the other.
3. In terms of steps at the national level, the removal in October 2008 of 25 members of the Colombian armed forces for failures relating to alleged enforced disappearances, as well as prosecutions this year in the United States of America of military personnel accused of war crimes in Iraq, are instructive of the type of national-level actions that need to be pursued. It is imperative that we move beyond such isolated examples and take concrete steps at the national level to instil, in particular among combatants, a genuine expectation of accountability in war.
4. In particular, Member States, as well as non-State parties to conflict, as appropriate, should:
  - a. Provide training to combatants on international humanitarian law and human rights law, including refresher training;
  - b. Issue manuals, orders and instructions setting out their obligations and ensure the availability of legal advisers to inform commanders on the application of the law;
  - c. Ensure that orders and instructions are observed by establishing effective disciplinary procedures, central to which must be strict adherence to the principle of command responsibility.
5. If it is not already the case, Member States should, in addition:
  - a. Adopt national legislation for the prosecution of persons suspected of genocide, crimes against humanity, war crimes and other serious violations of human rights law;
  - b. Search for and, on the basis of universal jurisdiction, prosecute persons suspected of grave breaches of international humanitarian law and serious violations of human rights law, or extradite them;
  - c. Ratify the statute of the International Criminal Court without delay;
  - d. Cooperate fully with the International Criminal Court and similar mechanisms.
6. For its part, the Security Council is urged to:
  - a. Insist that Member States cooperate fully with the International Criminal Court and similar mechanisms;
  - b. Enforce such cooperation, as necessary, through targeted measures;
  - c. Systematically request reports on violations and consider mandating commissions of inquiry to examine situations where concerns exist about serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and their being held accountable at the national level, or subjected to targeted measures and/or the situation referred to the International Criminal Court.

[...]

## **Discussion**

[Though some references to the Geneva Conventions and Additional Protocols are mentioned below, you may also find information to answer these questions in, inter alia, the Statute of the International Criminal Court [see [The International Criminal Court](#)], the 1951 Convention relating to the Status of Refugees and its 1967 Protocol [available at <http://www.unhcr.org>], and the Optional Protocol on the Involvement of Children in Armed Conflict [see [Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict](#)]]

1. (2001 Report, para. 2) How would you describe “today’s conflicts” mentioned by the Secretary-General? Are today’s conflicts more deadly than conflicts of the past? Or more unacceptable because of the increasing proportion of civilian casualties? Does this unacceptable proportion of civilian casualties only concern internal and/or ethnic-oriented conflicts?
2. (2009 Report, paras 27-37) What can be done to incite States to comply more fully with their obligation to respect and ensure respect for IHL? Are armed groups also bound by this obligation?

## I. Enhancing compliance by armed groups

1. (2001 Report, paras 19-20, 48-49 and Recommendations 9-10; 2009 Report, paras 38-47)
  - a. From the point of view of international law, what is the status of armed groups? Are they subjects of international law? Are they at least subjects of IHL? Does such status confer any legitimacy upon them? Do negotiations or talks with armed groups confer on them a specific legal status or provide them with some kind of legitimacy? What does IHL say about the legal status of armed groups? ([GC I-IV, common Art. 3; P II, Art. 3](#))
  - b. Can armed groups be subjects of international law, and thus parties to treaties (peace treaties, IHL treaties, etc.)? How can they be bound by rules of international law? Does IHL explicitly contain rules directly applicable to armed groups? Which IHL obligations are binding for armed groups in non-international armed conflicts? What is the importance of customary IHL in terms of the law of non-international armed conflicts? Is the customary IHL of non-international armed conflicts the same for armed groups and for States? Are all rules of the IHL of non-international armed conflicts realistic for armed groups? If they control territory? If they do not control territory?
  - c. Why are armed groups bound by the IHL of non-international armed conflicts? How can an armed group express its intention to comply with the rules of IHL in international or non-international armed conflicts? For them to be bound, is an expression of their willingness to that effect necessary? If not, why would it nevertheless be useful to obtain their commitment? ([GC I-IV, common Art. 3; P I, Art. 96\(3\)](#))
  - d. Why do you think States are reluctant to allow humanitarian organizations to engage with armed groups? May the initiatives referred to in the 2009 Report (such as that of the Secretary-General’s Special Representative on Children and Armed Conflict, and that of Geneva Call) change the status of armed groups under IHL? Do these initiatives give armed groups legitimacy? Do they legitimize the use of force against government soldiers and military objectives? (2009 Report, para. 43)

## II. Access to humanitarian assistance

1. (2001 Report, paras 14-18, 25 and Recommendations 4-5; 2009 Report, paras 58-60)
  - a. What are the rules of IHL concerning the civilian population’s right to receive humanitarian assistance? What are the specific rules concerning the access of humanitarian organizations to vulnerable populations? The protection of humanitarian staff and vehicles? In international armed conflict? In non-international armed conflict? ([GC I, Arts 19-26, 33-37, 39-43 and 53-54; GC II, Arts 22-27, 34 and 36-43; GC IV, Arts 18, 21-23, 55-56 and 59; P I, Arts 12-16, 18, 21-23 and 69-70; P II, Arts 9-12 and 18\(2\)](#))
  - b. What is the importance of neutrality for a humanitarian organization? Is the ICRC the only neutral and independent organization? What are the differences between the ICRC and other international or non-governmental humanitarian organizations? What are the advantages and shortcomings of the multiplication of humanitarian organizations, at the international and national or local levels?
  - c. What do you think of the complexities of humanitarian operations on the ground as described in the 2001 Report (para. 17)? Should humanitarian organizations accept conditions such as giving a certain proportion of the aid to a warring party? If yes, isn’t this behaviour fuelling the conflict and a breach of neutrality? If no, isn’t this behaviour equivalent to abandoning the starving population?
  - d. Is the deliberate starving of civilians forbidden by IHL? In international armed conflicts? In non-international armed conflicts? Is it a war crime? A crime against humanity? ([P I, Art. 54; P II, Art. 14](#))
  - e. Do the demands listed in para. 59 of the 2009 Report have their equivalent under IHL? For instance, is there an obligation under IHL for parties to agree to the temporary suspension of hostilities in order to enable relief actions by aid agencies?

## III. Internally displaced persons and refugees

1. (2001 Report, paras 22-23, 28-36 and Recommendations 6-7)
  - a. How does IHL protect internally displaced persons (IDPs) and refugees? Are the rules the same for international and non-international armed conflicts? Can a fighter be granted refugee status? A fighter who has never committed violations of IHL? Who is responsible for granting refugee status? ([GC IV, Arts 23 and 35-46; P I, Arts 70 and 73](#))
  - b. Who is responsible for keeping civilians separate from armed elements in refugee camps? In IDP camps? The UNHCR, the international community (peacekeeping forces, etc.), the country of origin, the country of asylum, the

ICRC, other organizations? Is this separation a rule of international law? Of refugee law? Of IHL?

- c. Is there an obligation for a third country to grant asylum to civilians fleeing a conflict in their country of origin? Might it not be a threat to that neighbouring country's security to do so? Is there an obligation for the international community and/or the UNHCR to help the country of asylum to cope with the arrival of refugees?

#### IV. Media

1. (2001 Report, paras 38-45 and Recommendation 8) Taking into account the important role of certain media in warfare, would you consider media infrastructures as legitimate military targets? Only if that media organization is spreading hate and inciting violence? Who can decide if a media organization is "hate media"? What about the staff working in "hate media" inciting the commission of acts of violence? Are they legitimate targets? What about genuine journalists who are doing their job in a conflict situation? What is the status of those journalists, in general, under IHL? Is their protection under IHL sufficient? ([GC III, Art. 4\(A\)\(4\)](#); [P I, Arts 52](#) and [79](#))

#### V. Women and children

1. (2001 Report, paras 59-60) What protection does IHL provide for women and children? In international and non-international armed conflict? What are the specific rules concerning child recruitment and child soldiers? What kind of rules could increase their protection? ([GC I, Art. 12](#); [GC II, Art. 12](#); [GC III, Arts 14, 25, 88, 97](#) and [108](#); [GC IV, Arts 14, 16-17, 21-27, 38, 50, 76, 82, 85, 89, 91, 94, 97, 124, 127](#) and [132](#); [P I, Arts 70](#) and [75-78](#); [P II, Arts 4, 5\(2\)](#) and [6\(4\)](#))

#### VI. Other actors

1.
  - a. What is the responsibility of private companies which finance the conflict either indirectly, for instance through the trade of diamonds, or directly by providing weapons to warring parties? Which commercial activities with parties to armed conflict result in or contribute to violations of IHL? Every activity facilitating the continuation of the conflict? At least if the company concerned knows that violations of IHL are committed in that conflict? Or must the commercial activity itself be related to violations of IHL? Must the company know about the violations and have intent to contribute to them?
  - b. Could the personnel of such companies be held individually accountable and be prosecuted for war crimes committed by armed groups they are supporting?
  - c. Is a mining company extracting raw materials in an area controlled by an armed group, while authorized by that group but not by the government, violating the prohibition of pillage?

#### VII. Enhancing accountability

1. (2001 Report, paras 9-13 and Recommendations 1-3; 2009 Report, paras 61-67)
  - a. Do you agree with the Secretary-General that the prosecution of war criminals is a good method to protect the civilian population? Do you believe that especially during non-international armed conflicts, people responsible for serious violations of IHL think of and/or fear potential future judicial consequences of their acts? Is prosecution in post-conflict situations a good method to prevent future violations of IHL during a conflict? To promote reconciliation?
  - b. Whose primary responsibility is it to prosecute violations of IHL? Why should accountability be promoted at the national level, rather than accountability before international jurisdictions? (2009 Report, para. 63)
  - c. Do armed groups have any responsibility for enhancing accountability for violations of IHL? May they prosecute their members who have committed violations? Or may they only take disciplinary measures? Is it realistic to require them to hand their members suspected of war crimes over to the national justice system or to international tribunals?
  - d. Does IHL provide for amnesty? In what circumstances? Is amnesty acceptable for grave breaches of IHL? If not, then for what type of crimes? How would you classify illegal behaviour for which amnesty can be granted, and for which it cannot? ([P II, Art. 6\(5\)](#))
  - e. Isn't it contradictory to set up, within one post-conflict situation, both a judicial prosecution system and a truth and reconciliation commission? How should the two institutions interact? How do you determine who should be prosecuted, and who should be heard before the truth and reconciliation commission? What is the best system for the protection of civilians? For conflict prevention? For the status of the victims, their interests and their rights?