

A. Press Release

N.B. As per the disclaimer ^[1], 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: *ICRC News*, 96/19, May 15, 1996]

ICRC-UN, Guidelines for UN Forces

On 10 May in New York ICRC President Cornelio Sommaruga handed over to UN Secretary-General Boutros Boutros-Ghali a document entitled Guidelines for UN forces regarding respect for international humanitarian law. The document specifies the principles and rules of the 1949 Geneva Conventions and their 1977 Additional Protocols applicable to UN forces deployed in areas affected by armed conflicts. Until now the situation was ill-

defined since it is the States, not the UN, that are party to the humanitarian law treaties. Thanks to the new guidelines, it should be possible in future to ensure that UN military operations do not have adverse consequences for war victims or certain categories of prisoners.

The guidelines, which are the result of a series of meetings of legal experts organized by the ICRC, were drafted in close cooperation with the UN services concerned and must be observed by all UN contingents, whatever the mandate involved. Their main purpose, as that of international humanitarian law as a whole, is to preserve human dignity.

The rules applicable to UN forces are essentially those prohibiting attacks on civilian property, those prohibiting or restricting certain means or methods of warfare and those stipulating that only the urgency of a wounded person's medical condition should determine the order in which he is treated.

The guidelines also stress that in all circumstances the ICRC must be notified without delay of all persons captured or detained by UN forces so that those persons can be visited by ICRC delegates and their families informed of their whereabouts.

B. Guidelines for UN Forces Regarding Respect for International Humanitarian Law

[Source: UN Doc. ST/SGB/1999/13 (August 6, 1999)]

Secretary-General's Bulletin Observance by United Nations forces of international humanitarian law

The Secretary-General, for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control, promulgates the following:

Section 1: Field of application

1.1 The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.

1.2 The promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel [See Convention on the Safety of UN Personnel ^[2]] or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

Section 2: Application of national law

The present provisions do not constitute an exhaustive list of principles and rules of international humanitarian law binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation.

Section 3: Status-of-forces agreement

In the status-of-forces agreement concluded between the United Nations and a State in whose territory a United Nations force is deployed, the United Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel. The United Nations

also undertakes to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principles and rules is applicable to United Nations forces even in the absence of a status-of-forces agreement.

Section 4: Violations of international humanitarian law

In case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts.

Section 5: Protection of the civilian population

5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In its area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6: Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

6.5 It is forbidden to order that there shall be no survivors.

6.6 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

6.7 The United Nations force is prohibited from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuff, crops, livestock and drinking-water installations and supplies.

6.8 The United Nations force shall not make installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of military operations if such operations may cause the release of dangerous forces and consequent severe losses among the civilian population.

6.9 The United Nations force shall not engage in reprisals against objects and installations protected under this section.

Section 7: Treatment of civilians and persons *hors de combat*

7.1 Persons not, or no longer, taking part in military operations, including civilians, members of armed forces who have laid down their weapons and persons placed hors de combat by reason of sickness, wounds or detention, shall, in all circumstances, be treated humanely and without any adverse distinction based on race, sex, religious convictions or any other ground. They shall be accorded full respect for their person, honour and religious

and other convictions.

7.2 The following acts against any of the persons mentioned in section 7.1 are prohibited at any time and in any place: violence to life or physical integrity; murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; reprisals; the taking of hostages; rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement; and pillage.

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

7.4 Children shall be the object of special respect and shall be protected against any form of indecent assault.

Section 8: Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them *mutatis mutandis*. In particular:

- (a) Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;
- (b) They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;

(c) They shall be entitled to receive food and clothing, hygiene and medical attention;

(d) They shall under no circumstances be subjected to any form of torture or ill-treatment;

(e) Women whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under the immediate supervision of women;

(f) In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;

(g) ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

Section 9: Protection of the wounded, the sick, and medical and relief personnel

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units. These shall at all times be respected and protected, unless they are used, outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or medical equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

Section 10: Entry into force

The present bulletin shall enter into force on 12 August 1999.

(Signed)

Kofi A. Annan

Secretary-General

Discussion

1.
 1. What is the value of these Guidelines? Are they binding? Do you think that the fact that UN forces are bound by IHL has become customary law?
 2. Before the Guidelines came into force, were the UN forces involved in an armed conflict allowed not to respect IHL? Are UN forces involved in an armed conflict now bound by IHL? By all of IHL? By customary IHL? In which circumstances? By which rules?
 3. As UN forces are military personnel placed at the UN's disposal by contributing States that are party to the Geneva Conventions, are these forces not already bound by IHL?
2. Were the Guidelines the only possibility for IHL to apply to UN forces? Could the UN become a party to the Geneva Conventions and the Additional Protocols? Can the UN conceivably be a party to an international armed conflict in the sense of Art. 2 common to the Conventions?
3. (Guidelines, Section 1) Who do the Guidelines apply to? Do they apply to all UN forces? Do they apply to UN forces as soon as they are deployed in the context of an armed conflict? Only when they become party to the conflict?
4.
 1. (Guidelines, Section 2) Are UN forces obliged to respect only the provisions listed in the Guidelines? Or are they bound by all the provisions of IHL?
 2. Are all rules of the Guidelines customary IHL? Do the Guidelines contain all rules of customary IHL? Are UN forces bound by customary IHL independently of the Guidelines?
 3. Which rules of the IHL of international armed conflicts do not appear in the Guidelines? Only those that the UN, not being a State, not having legislation,

and not having a territory, by definition cannot respect?

4. Are UN forces never bound by the IHL of military occupation? By the rules of Convention IV applicable to aliens on the territory of a State?
5.
 1. (Guidelines, Section 4) May members of UN forces be prosecuted only if they violate the provisions listed in the Guidelines? Or may they be prosecuted for any violation of IHL? Does not this mean that they are bound by all the rules of IHL?
 2. (Guidelines, Section 4) May members of UN forces be prosecuted only in their national courts? Could any international or regional tribunal have jurisdiction to prosecute violations of IHL committed by UN forces?
6. Do the Guidelines distinguish between international and non-international armed conflict? Does this mean that UN forces must respect the provisions listed in the Guidelines regardless of the law applicable in each type of conflict? Are all the listed provisions applicable in non-international armed conflict?
7.
 1. Do the Guidelines clarify the status of UN forces involved in an armed conflict? Should they always be considered as civilians? Should they always be considered as combatants? May their status vary according to the circumstances?
 2. As long as members of UN forces are civilians [see *The International Criminal Court [A. The Statute], Art. 8(2)(b)(iii)* ^[3] and (e)(iii) ^[4]], are they bound by the Guidelines? By IHL? Are only combatants bound by IHL?
 3. If a member of UN forces is attacked and reacts by attacking those who attack him, is he a combatant? Is he a civilian? Is he a civilian directly participating in hostilities, losing protection against attacks? What if the member of the UN forces uses force first? In which of these circumstances do the Guidelines apply? [See ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* ^[5]]
8. (Guidelines, Section 8)
 - a. Do UN military personnel captured by armed forces of a State during a hostile encounter have prisoner-of-war status? Do members of the armed forces of a State captured by UN military forces during a hostile encounter have prisoner-of-war status? Is it conceivable that the answers to these two questions differ? (GC III ^[6], Arts 2 ^[7] and 4 ^[8])

- b. Does Section 8 mean that all members of enemy forces captured by UN forces must be treated in accordance with the relevant provisions of GC III? Or at least with the provisions listed in Section 8? Even if they are members of an organized armed group captured during a non-international armed conflict? Does this preclude their punishment for having attacked members of the UN forces? Does this preclude their transfer to the host government? (GC III ^[6], Art. 12 ^[9])
- c. If members of an organized armed group capture UN forces in the context of a non-international armed conflict, must they treat the UN forces according to the provisions listed in Section 8? Are organized armed groups bound by these provisions? Are they bound by similar provisions of IHL applicable in non-international armed conflict?
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