



UNITED NATIONS
OFFICE OF LEGAL AFFAIRS

Security Council meeting

Statement

by

Mr. Miguel de Serpa Soares

Under-Secretary-General for Legal Affairs and
United Nations Legal Counsel

13 August 2019

Security Council Chamber

Thank you, Mr. President.

I would like to thank the Security Council for inviting me to this meeting.

Just over 70 years ago, on 11 August 1949, a Diplomatic Conference convened in Geneva adopted the four Geneva Conventions, and, on the following day, its Final Act was signed by the participating States.

The four Conventions entered into force around a year later, on 21 October 1950, and have been at the core of international humanitarian law ever since.

The four Geneva Conventions were by no means completely novel at the time. The first three Conventions found their origins in previous treaties and were revised versions of them. These three Conventions are: the First Convention that deals with the wounded and sick in armed forces in the field; the Second Convention with wounded, sick and shipwrecked members of armed forces at sea; and the Third Convention with prisoners of war.

The Fourth Convention was, however, the first treaty that was specifically dedicated to the protection of civilian persons in time of war.



Most of the provisions in these four Conventions are applicable to international armed conflicts; in other words, armed conflicts between States.

However, there is a provision in each of the four Conventions that applies to non-international armed conflicts, which is Article 3 common to the Geneva Conventions. This provision contains basic rules on the humane treatment of persons taking no active part in hostilities, including members of the armed forces who have laid down their arms or who have been placed hors de combat by sickness, wounds, or detention, as well as civilians.

The inclusion of common Article 3 in the Geneva Conventions was a historic moment for humanity. It was the first instance in which non-international armed conflicts were regulated by a multilateral treaty. The significance is augmented by the fact that the Geneva Conventions are now universally adhered to.

There is no doubt that common Article 3 has become one of the most important provisions in the Geneva Conventions, not only because of its nature, which I have just mentioned, but also because it is perhaps the most frequently applied provision in contemporary armed conflicts, which are mostly non-international in character.

Common Article 3 was subsequently developed and supplemented by Protocol II Additional to the Geneva Conventions, and a number of customary rules have been recognized as being applicable to non-international armed conflicts. But common Article 3 still occupies a special place in international humanitarian law.

* * *

The relevance of the Geneva Conventions to the work of the United Nations might not have been so obvious in the early years of the Organization, as the Charter does not specifically refer to international humanitarian law.

However, the United Nations was established in the aftermath of World War II, which saw violations of international humanitarian law on a massive scale. The Charter, in its preamble, contains a solemn declaration

of a determination “to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”, and in its Article 1, further provides that one of the Purposes of the United Nations is “to achieve international cooperation in solving international problems





of a humanitarian character and in promoting and encouraging respect for human rights”.

In this regard, it is not surprising that international humanitarian law has become one of the most important areas of international law that guide the work of the Organization today, including the Security Council.

The role of the United Nations in situations of serious violations of international humanitarian law has also been specifically recognized in Article 89 of Protocol I Additional to the Geneva Conventions, which requires that High Contracting Parties act, jointly or individually, in cooperation with the United Nations in situations of serious violations of the Geneva Conventions and of the Protocol.

* * *

In practice, all competent principal organs of the United Nations have dealt with issues related to international humanitarian law in one way or another. As far as the Security Council is concerned, it has, on several occasions, recalled “its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and in this context, the need to promote respect for the rules and principles of international humanitarian law”, such as in resolution 2474 of 11 June 2019.

With respect to the Geneva Conventions specifically, it was only in 1967 that the Council invoked those Conventions for the first time in one of its resolutions – almost 20 years after their adoption. Since then, the Security Council has made express references to the Geneva Conventions or to specific provisions from them in its resolutions, but in a large majority of instances, the Council has invoked international humanitarian law generally or its customary rules rather than specific treaties or provisions from them.

With respect to international humanitarian law generally, the Council has played a crucial role in ensuring respect for that law.

Apart from the Council’s frequent condemnation of violations of international humanitarian law and its call on the parties to the conflict to respect the obligations that it lays down, the Council has taken concrete measures, such as:

- Establishing international criminal tribunals to prosecute war crimes, as well as the crime of genocide and crimes against humanity;





- Authorizing the establishment of commissions of inquiry to investigate alleged violations of international humanitarian law;
- Mandating peacekeeping operations to protect civilians, particularly in the context of ongoing armed conflicts, including by the use of force;
- Authorizing humanitarian agencies to carry out cross-border humanitarian assistance pursuant to a binding decision of the Council;
- Requesting the Secretary-General, his special representatives and envoys, peacekeeping operations and special political missions to monitor potential violations of international humanitarian law in ongoing conflicts;
- Requesting the Secretary-General to report on certain thematic areas, such as the protection of civilians in armed conflict, children in armed conflict, and the protection of medical and humanitarian personnel exclusively engaged in medical duties; and
- Imposing sanctions on individuals and entities involved in violations of applicable international humanitarian law.

The breadth of actions taken by the Security Council shows that the Council has great potential and flexibility for ensuring respect for international humanitarian law.

* * *

While the United Nations has a role in ensuring respect for international humanitarian law by others, it is, at the same time, an entity to which international humanitarian law applies. This is relevant to all United Nations personnel in armed conflict situations, but is particularly relevant to United Nations peacekeeping operations deployed to armed conflict situations, some of which have increasingly been targeted by armed groups.





The Geneva Conventions and other instruments of international humanitarian law do not contain specific provisions concerning the protection of United Nations peacekeepers.

However, there is no doubt that they are protected by international humanitarian law in situations of armed conflict. That they are entitled to the humane treatment set out in Article 3 common to the Geneva Conventions was specifically recognized most recently by the International Tribunal for the former Yugoslavia in the *Karadzic* case. The Rome Statute of the International Criminal Court further criminalized intentional attacks against peacekeepers as a war crime, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

The Convention on the Safety of United Nations and Associated Personnel of 1994 provides further protection to United Nations peacekeepers by prohibiting attacks against United Nations and associated personnel, and by requiring States parties to submit relevant cases to the competent authorities for the purpose of prosecution. However, as many host countries are not yet parties to the Convention, in practice, the application of the Convention in those countries has been made possible only by ad hoc arrangements, namely by including a specific provision in the relevant status-of-forces and status-of-mission agreements.

In view of the fact that United Nations peacekeepers continue to be attacked, I appeal to the Council and Member States to further reflect upon ways to ensure that attacks against peacekeepers are properly investigated and, where appropriate, prosecuted.

* * *

United Nations peacekeeping operations are not only protected by international humanitarian law but are also bound by it in certain circumstances. That this is the case is recognized in the Organization's status-of-forces agreements and in the Secretary-General's bulletin on the observance by United Nations forces of international humanitarian law. As far as MONUSCO in the Democratic Republic of the Congo is concerned, the Security Council has specifically mandated it to carry out targeted offensive operations "in strict compliance with international law, including international humanitarian law".

In order to ensure compliance with international humanitarian law, a number of measures have to be taken, including:





- Providing guidance to the mission so that military operations are carried out in accordance with the rules of international humanitarian law concerning the conduct of hostilities;
- Establishing procedures so that any persons captured by the mission are handled in accordance with international law and standards;
- Concluding an agreement with the host country to ensure that persons transferred by the mission to the host country are treated in accordance with its obligations under international law; and
- Providing guidance to the mission so that any act by mission personnel that may be contrary to international humanitarian law is properly addressed.

The Secretariat will continue to make every effort to ensure that relevant peacekeeping operations comply with international humanitarian law, and it counts on the support of the Security Council and Member States in that regard.

Thank you, Mr. President.

