



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

39th Round-table on Current Issues of International Humanitarian law

“Weapons and the International Rule of Law”

**organized by the International Institute of Humanitarian Law
in cooperation with the International Committee of the Red Cross**

Statement by

**Mr. Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel**

**8 September 2016
International Congress Centre,
Grand Hotel de Londres, Sanremo, Italy**

Madam Prefetto di Imperia,
Mr. Biancheri, Mayor of San Remo,
Ambassador Mati,
Professor Pocar,
Vice-President Beerli,
Ladies and Gentlemen,

[Opening Remarks]

I would first like to thank Professor Pocar for his kind invitation to the Secretary-General to attend this Round-table.

Over the past year, we have been celebrating the 70th year of the United Nations, and I have participated in a number of events to celebrate this occasion. That has been an excellent opportunity for me to reflect on the achievements of the United Nations in many different areas over the past 70 years. In this regard, I would like to take this opportunity to briefly look back at the role of the United Nations in the development of IHL, and compliance with IHL.



[UN's role in IHL matters]

At a first glance, it seems natural to me that the United Nations has been involved in IHL matters since the early years of the Organization.

The United Nations was established in the aftermath of the Second World War, which saw violations of IHL on a massive scale. Thus, it is hard to imagine a United Nations that would not deal with IHL matters.

Looking at the Charter of the United Nations, its language is couched broadly to allow the United Nations to deal with humanitarian issues. The Charter therefore sets out in the first article that one of its purposes is “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character”. It is significant that it refers to “international problems of a humanitarian character”.

The legislative actions of the principal organs of the United Nations also reveal the extensive role played by the Organization in IHL matters. In the late 1960s to the 1970s, the General Assembly adopted a series of resolutions entitled “Respect for human rights in armed conflict”, which contributed to the reaffirmation and development of IHL rules, particular those pertaining to the protection of civilians, and supported the successful conclusion of the Additional Protocols in 1977. Since then, the Assembly has regularly dealt with IHL matters pertaining to specific conflicts and thematic areas.

The Security Council has also reaffirmed in its resolution 1502 adopted in 2003, “its primary responsibility for the maintenance of international peace and security and, in this context, the need to promote and ensure respect for the principles and rules of international humanitarian law”.

Additional Protocol I of 1977 further confirms the role of the United Nations in IHL matters in a concrete manner. Article 89 of that Protocol therefore provides that “[i]n situations of serious violations of the [Geneva] Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.”

These elements all confirm that the United Nations has a crucial role to play in IHL matters.



[Development of IHL]

One area that I wish to highlight is the role of the United Nations in developing IHL instruments. Looking back at the history, many multilateral treaties related to IHL have been negotiated and adopted within the framework of the United Nations.

In fact, many of them relate to weapons, which is the theme of this Roundtable. These treaties are:

- The Convention on Conventional Weapons;
- Its first three Protocols;
- The Convention on Chemical Weapons; and most recently
- The Arms Trade Treaty.

The General Assembly played a key role in developing these treaties by convening diplomatic conferences and instructing the Conference on Disarmament to draw up the treaties. As far as the Arms Trade Treaty is concerned, after the Final Conference held in 2013 failed to adopt the draft Treaty, the General Assembly instead successfully adopted the Treaty. The Arms Trade Treaty entered into force on 24 December 2014.

There are also other relevant treaties related to IHL which were negotiated and adopted within the UN framework, such as the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

The General Assembly was also instrumental in these instances, as it mandated the International Law Commission and the Commission on Human Rights, and convened diplomatic conferences to draw up these treaties. As far as the Optional Protocol is concerned, it was adopted directly by the General Assembly.

I should also mention that these multilateral treaties that I have just mentioned are all deposited with the Secretary-General of the United Nations, and my Office, the Office of Legal Affairs, discharges the depositary functions on behalf of the Secretary-General.

In this regard, my Office annually organizes a Treaty Event in September during the high-level week of the General Assembly, which provides a unique opportunity for Heads of States, Heads of Governments, Foreign



Ministers and other senior government officials to undertake various treaty actions, including signature to and ratification of IHL-related treaties.

We hope to contribute to wider acceptance of IHL-related treaties through these Treaty Events.

[Compliance with IHL]

I wish to note that the United Nations' contribution to IHL has not been limited to the development of new instruments, but has also extended to the strengthening of compliance with the existing rules of IHL.

Among other bodies, the Security Council, the General Assembly and the Human Rights Council in particular have played a key role in ensuring compliance with IHL.

A well-known example of Security Council's contribution in this area is the establishment of and support to international and hybrid criminal tribunals, including ICTY, ICTR, their Residual Mechanism, and the Special Court for Sierra Leone.

The Security Council has also mandated the Secretary-General, his special representatives and envoys, peacekeeping missions and special political missions to monitor potential violations of IHL in ongoing conflicts. These mandates now cover a number of conflict situations around the world, ranging from high-profile conflicts such as Syria to other protracted conflicts such as the Democratic Republic of the Congo and Afghanistan.

These mandates also cover thematic areas such as protection of civilians in armed conflict, children in armed conflict and conflict-related sexual violence. In particular, the Secretary-General is specifically mandated to indicate those parties which have recruited children, committed violence against children, attacked schools and hospitals, as well as parties which may have committed sexual violence in times of armed conflict.

For its part, the General Assembly has regularly dealt with a number of conflict situations and has exerted pressure on the parties to the conflict to abide by IHL, such as with respect to the conflicts in Afghanistan, the Occupied Palestinian Territory, Syria and the former Yugoslavia.

It has also made efforts to ensure wider acceptance of various IHL treaties, particularly the Additional Protocols of 1977, and has adopted resolutions



specifically dedicated to the status of the Additional Protocols. In these resolutions, the Assembly has also requested the Secretary-General to submit reports on the measures taken to strengthen the existing body of IHL, based on information provided by Member States and the ICRC.

The General Assembly has also occasionally recommended the Government of Switzerland, as the depositary of the Fourth Geneva Convention, to convene a Conference of High Contracting Parties to ensure compliance with the Fourth Geneva Convention in the Occupied Palestinian Territory. The General Assembly made such recommendations in 1999, 2009 and 2010.

With respect to the Human Rights Council, which is a subsidiary organ of the General Assembly specialized in human rights issues, has also mandated a number of fact-finding missions, commissions of inquiry, special rapporteurs and independent experts to report on violations of international human rights law. Their reports have, in practice, also included accounts of possible violations of IHL. Currently, these mandates cover such situations of great concern such as in Syria, the Central African Republic, Mali, Somalia, the Sudan, the Occupied Palestinian Territory and Libya.

In the next few minutes, I would like to explore more in detail two particular areas in which the United Nations has played a role in improving compliance with IHL.

[Protection of civilians]

First is the issue of the protection of civilians in times of armed conflict. This issue has been particularly high on the agenda of the Secretary-General

In his latest report to the Security Council on the protection of civilians in armed conflict, the Secretary-General has reported that, at the end of 2015, more than 60 million people had been forced to flee their homes as a result of conflict, violence and persecution. He also warned that humanitarian needs are at record levels and more than 80 per cent of United Nations humanitarian funding is directed at conflict response.

In this context, the Secretary-General has taken the initiative to urge parties to the conflict to renew their commitments to protect civilians by complying with IHL. The Secretary-General has therefore issued a joint statement with the President of the ICRC last October, and convened the World Humanitarian Summit this May to, among other things, call upon all those concerned to renew their commitments to protect civilians in times of armed



conflict.

The concept of “protection of civilians” has been around in the United Nations for quite a while now, and I would like to take this opportunity to take a step back to reflect upon this concept.

IHL is evidently the primary source of rules that deal with the protection of civilians in times of armed conflict, and there are specific and detailed rules in this regard.

These include:

- The obligation to distinguish between civilians and combatants;
- The obligation not to direct attacks against civilians;
- to attack only combatants;
- The obligation not to carry out indiscriminate attacks; and
- The obligation to take precautions before and during an attack to minimize civilian casualties.

IHL also envisages the establishment of zones under special protection, such as neutralized zones and demilitarized zones, in order to provide protection for the wounded, sick and civilians from the effects of hostilities.

So, the protection of civilians in the context of IHL is based on a number of detailed rules of IHL. These rules comprehensively deal with the protection of civilians in times of armed conflict.

However, “protection of civilians” is also a notion that has increasingly been used in the context of United Nations peacekeeping activities, and not strictly within the context of IHL.

You may recall that, in 1999, the Security Council for the first time tasked a peacekeeping operation with protecting civilians under imminent threat of physical violence. More specifically, the United Nations Mission in Sierra Leone was tasked with that mandate in the context of the conflict in Sierra Leone.

Since then, the Security Council has regularly mandated peacekeeping operations to protect civilians under imminent threat. Today, United Nations operations in Abyei, the Central African Republic, Côte d’Ivoire, Darfur, the DRC, Lebanon, Liberia, Mali, and South Sudan are all mandated to protect civilians, and in most cases, to “take all necessary measures” to carry out this mandate.



In practice, the mandate to protect civilians under imminent threat has been implemented in various ways, such as by monitoring compliance with international human rights law and IHL, conducting patrols, setting up safe areas, and, in exceptional cases, by offensive operations against armed groups.

Recently, the United Nations Mission in the Republic of South Sudan, or “UNMISS”, has been facing immense challenges in dealing with civilians who were displaced by the conflict and sought refuge in UNMISS premises. According to the latest report of the Secretary-General, there were nearly 170,000 people who were residing in six UNMISS sites for the protection of civilians. Early this year, in February 2016, there was large scale violence inside the Malakal protection site, where more than 47,000 people were housed, which resulted in many deaths and injuries. This gives an idea of how difficult it is to implement the protection-of-civilians mandate.

I wish to note at this juncture that the notion of “protection of civilians” in the context of peacekeeping is not based on IHL, but is a mandate that is given by the Security Council pursuant to the Charter of the United Nations.

While the notion of “protection of civilians” is separate and distinct in the context of IHL and peacekeeping, the actions taken by peacekeeping operations to protect civilians could be complementary to the actions taken by the conflicting parties to protect civilians pursuant to their obligations under IHL.

However, while recognizing this complementarity, I should also emphasize that the measures under IHL to protect civilians, and those measures authorized by the Security Council should, at times, be very clearly distinguished.

For example, during the conflict in Bosnia and Herzegovina in the early 1990s, the Security Council, under Chapter VII of the Charter, designated certain towns as “safe areas”, including Srebrenica, and mandated a peacekeeping operation to protect them, including by the use of force. At the same time, based on IHL provisions, the parties to the conflict voluntarily concluded an agreement which required them to withdraw their forces from Srebrenica, and ensure the security of Srebrenica by removing hostile elements from the town.

In his report on the “Fall of Srebrenica”, the Secretary-General indicated that the confusion between the two types of measures may have contributed to



the tragic events in Srebrenica. In this connection, the Secretary-General stated that there might have been confusion as to whether the “safe areas” were imposed on the parties to the conflict and protected by a military force, or rather voluntarily agreed to by the parties and protected by demilitarizing those areas.

The report also refers to concerns expressed at the time that “in failing to provide a credible military deterrent, the safe area policy would be gravely damaging to the [Security] Council’s reputation and, indeed, to the United Nations as a whole.”

I believe that we have a lot to learn from the past experience, and that the caution of the previous Secretary-General is still valid today in the context of protection of civilians by peacekeeping operations in ongoing armed conflicts.

[Humanitarian access]

Apart from the protection of civilians, I would like to briefly touch upon the issue of humanitarian access. In recent years, we have witnessed increasing difficulties in providing humanitarian assistance to civilians affected by armed conflicts, such as in Syria, Yemen and Ukraine. The United Nations has been particularly concerned with the obstacles in delivering humanitarian assistance to Syria across the border.

IHL clearly provides for the obligation of the parties to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. However, the requirement to obtain consent of the host State in crossing the border to deliver humanitarian assistance was particularly problematic in the context of Syria.

This has prompted the Security Council to take measures. Resolution 2165 adopted in 2014, which is binding, authorized UN humanitarian agencies and their partners to use specific border crossings of Syria, in order to ensure that humanitarian assistance reaches people in need throughout Syria through the most direct routes. This authorization has most recently been extended to 10 January 2017.

Pursuant to this authorization, a number of humanitarian convoys have used the border crossings to delivery aid to Syria. According to the latest report of the Secretary-General, during the month of July 2016, 335 trucks crossed the Syrian border under the terms of the Security Council resolutions.



Resolution 2165, however, still required the United Nations to notify the Syrian authorities of the instances in which the border crossings were used by the United Nations humanitarian agencies and their partners.

Moreover, the resolution established a United Nations mechanism to monitor the loading and any subsequent inspection of UN humanitarian consignments passing through the Syrian border crossings, in order to ensure that the consignments are humanitarian in nature. The Monitoring Mechanism is also required to notify the Syrian authorities that the consignments were humanitarian in nature.

I believe that the Security Council took an important step to improve the humanitarian situation in Syria and to complement the obligations already provided for in IHL. However, it goes without saying that more needs to be done to put an end to the seemingly endless suffering in Syria.

[Closing remarks]

In closing, I wish to note that the United Nations has been engaged extensively in IHL matters, and will have an important role to play in this area. My Office, the Office of Legal Affairs, has also been dealing with a variety of IHL matters, and the ICRC has, in particular, been an indispensable partner in addressing these matters. We also look forward to engaging with practitioners as well as the academia on IHL matters of common interest.

I thank you for your attention, and I wish you all a successful Round-table.