



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**38th Annual Seminar for Diplomats on
International Humanitarian Law**

**jointly organized by the International Committee of the Red Cross and
New York University School of Law**

Statement

by

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Judge Meron,

Ms. Courtois,

Distinguished delegates and colleagues,

[Opening Remarks]

I would first like to thank the New York University and the International Committee of the Red Cross for, once again, inviting me to this annual seminar.



This is my sixth time to participate in this annual seminar and it has always been a privilege to be able to make a statement at the beginning of the seminar to share some thoughts on international humanitarian law from my perspective as United Nations Legal Counsel.

From my perspective, the years 2020 and 2021 have been a landmark, at least in two respects. First, as you are well aware, virtually every corner of the world has suffered from the COVID-19 pandemic, but I have also seen the resilience of our colleagues in these difficult times. The fact that the NYU and the ICRC managed to hold its annual seminar last year, and again this year, is a sign of this resilience – that important work has to continue in difficult times.

The other landmark from my perspective is the 75th anniversary of the United Nations. Even in these difficult times, the United Nations has seized this opportunity to take stock of its remarkable achievements in the past 75 years, and the challenges that lie ahead.

In particular, on the 21st of September last year, the General Assembly adopted the “Declaration on the commemoration of the seventy-fifth anniversary of the United Nations” at a high-level meeting of the Assembly dedicated for the purpose of this commemoration.





From my perspective as United Nations Legal Counsel, I was particularly pleased to see that Member States, in the declaration, resolved that they will “abide by international law and ensure justice”. The declaration also makes a specific reference to international humanitarian law and provides that “[i]nternational humanitarian law must be fully respected.” This was a clear indication that international humanitarian law, also known as by its acronym “IHL”, plays a key role in the work of the United Nations.

In the declaration, Member States also recognized that “[t]here is no other global organization with the legitimacy, convening power and normative impact of the United Nations.” Many of us in the United Nations often take this for granted – the power of the United Nations to bring together Member States.

This power is clearly stipulated in the Charter, namely in Article 1, paragraph 4, which envisages the United Nations to be “a centre for harmonizing the actions of nations” in the attainment of the common ends set out in Article 1. This convening power of the United Nations has made a significant contribution to the development of international humanitarian law.

Based on the mandate in the General Assembly’s declaration, the Secretary-General will report back to the Assembly later this year with recommendations to advance the common agenda contained in the declaration, and the future of international law would be one of the topics to be covered in this landmark report.





While I am not in a position to elaborate on what might be in this report, I would like to craft my presentation around the commitments made in the General Assembly's declaration, and divide it into four parts:

- First, the United Nations' role in the development of IHL treaties and IHL-related treaties;
- Second, its role in the wider acceptance of IHL treaties and IHL-related treaties;
- Third, its role in the interpretation and application of IHL; and
- Fourth, its role in ensuring compliance with IHL by United Nations peacekeeping operations.

[UN's role in the development of IHL]

As far as the United Nations' role in the development of IHL is concerned, in the early years of the United Nations, it was active in the development of international human rights law treaties but was less so with respect to IHL treaties.

While IHL treaties were not directly adopted in the United Nations at the time, the General Assembly, nevertheless, played a crucial role in the development of





Additional Protocols I and II adopted in 1977, which form the core of IHL alongside the Geneva Conventions of 1949.

In particular, the General Assembly adopted a series of resolutions from 1968 onwards, well before the adoption of the Additional Protocols, and declared certain basic principles for the protection of civilian populations that must be respected in times of armed conflict. These principles include:

- The distinction between persons actively taking part in the hostilities and civilian populations;
- The prohibition on making civilian populations the object of military operations; and
- Precautions to avoid injury, loss or damage to civilian populations.

The Diplomatic Conference at which the two Additional Protocols were adopted formally recognized the contribution of the General Assembly to the successful adoption of the two Protocols in the Final Act of the Diplomatic Conference.

The United Nations has, since then, become gradually involved in the adoption of IHL treaties and IHL-related treaties.





One area in which the United Nations became involved shortly after the adoption of the two Additional Protocols was the regulation of the use of certain conventional weapons. This was discussed at the Diplomatic Conference at which the two Additional Protocols were adopted, but was not completed, and the Diplomatic Conference, in fact, invited the General Assembly to take the matter forward.

The General Assembly, therefore, convened a United Nations conference in 1979 and 1980, which successfully adopted the Convention on Certain Conventional Weapons, as well as its three Protocols. These three Protocols deal with non-detectable fragments; incendiary weapons; and mines, booby-traps and other devices.

Thereafter, a number of IHL and IHL-related treaties have been adopted in the framework of the United Nations, including:

- The Statute of the International Criminal Court;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- The Arms Trade Treaty; and
- The Treaty on the Prohibition of Nuclear Weapons.





In this regard, the United Nations has provided different types of forums to elaborate and adopt treaties. Subsidiary organs have often provided a forum to discuss elements of a possible treaty, and United Nations conferences have often been convened by the General Assembly to negotiate and adopt the text of a treaty. The General Assembly has also served as a forum for the final adoption of the text of a treaty that has been recommended by a United Nations conference or a subsidiary organ.

The International Law Commission occupies a unique place in this regard, as it is the only subsidiary organ that is permanently dedicated to the promotion of the progressive development of international law and its codification.

In the area of IHL and international criminal law, the Commission prepared a draft statute for an international criminal court, which formed the basis of negotiations amongst States at a later stage at an ad hoc committee and a preparatory committee established by the General Assembly, and which was later adopted as the Rome Statute of the International Criminal Court at a diplomatic conference held in 1998.

Apart from the Statute of the International Criminal Court, the topic “Protection of the environment in relation to armed conflicts” is currently on the programme of work of the Commission. The Commission provisionally adopted an entire set of draft principles on the topic on first reading in July 2019, and adopted the commentaries to those draft principles in August 2019.





The current draft principles deal with issues such as the protection of the natural environment in the conduct of hostilities; protected zones for areas of major environmental and cultural importance; and the general obligations of an occupying power to protect the environment of the occupied territory.

I understand that the ICRC has done some work in this area and has issued a publication last year entitled “Guidelines on the Protection of the Natural Environment in Armed Conflict”. I hope that the International Law Commission and the ICRC will continue their interaction on this subject.

More recently, the Commission adopted the draft articles on prevention and punishment of crimes against humanity in 2019. These draft articles were drawn up since, unlike genocide and war crimes, there is no global treaty dedicated to preventing and punishing crimes against humanity.

The Commission recommended the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. The General Assembly, in turn, decided to continue examining this recommendation at its seventy-sixth session of the Assembly to be held later this year.





The matter is now in the hands of the Sixth Committee and I encourage Member States to work together to identify a way forward in that framework.

[UN's role in the wider acceptance of IHL treaties and IHL-related treaties]

The United Nations' role is not limited to the development of IHL treaties and IHL-related treaties. The United Nations also plays a crucial role in the wider acceptance of those treaties once they are adopted.

The Secretary-General of the United Nations is the depositary of more than 600 multilateral treaties, which include IHL treaties and IHL-related treaties.

The level of acceptance varies from one treaty to another. For example, the Treaty on the Prohibition of Nuclear Weapons entered into force only recently and currently has 51 States Parties. On the other hand, there are treaties that have achieved near-universal participation, such as the Chemical Weapons Convention which has 193 States Parties. There are others which fall somewhere in between, such as the Rome Statute of the International Criminal Court with 123 States Parties and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict with 170 States Parties.





The Treaty Section of my Office, the Office of Legal Affairs, performs the functions of the depositary on behalf of the Secretary-General, and is responsible for ensuring the proper execution of all treaty actions to a particular treaty. This includes, facilitating the signature of a treaty by States and accepting instruments of ratification, acceptance, approval or accession in deposit.

Every year since 2000, the Treaty Section has organized a Treaty Event during the general debate of the General Assembly held in September, in order to provide Heads of State and Government, Ministers for Foreign Affairs and other Member State representatives a unique opportunity to sign treaties deposited with the Secretary-General and deposit instruments of ratification and other instruments.

Unfortunately, it was not possible to hold a Treaty Event last September due to the pandemic, but I encourage all Member States to take advantage of the next Treaty Event and consider becoming parties to IHL treaties and IHL-related treaties deposited with the Secretary-General.

States are also welcome to sign treaties deposited with the Secretary-General or deposit instruments of ratification and other instruments throughout the year, and I encourage States to approach our Treaty Section whenever they wish to do so.

[UN's role in the interpretation and application of IHL]





The United Nations has also contributed to the interpretation and application of IHL rules in force.

Among the principal organs of the United Nations, the International Court of Justice has, from time to time, interpreted and applied IHL rules in its judgments and in advisory opinions. When it has done so, it has been in the context of high-profile cases, such as:

- The 1986 judgment in the Nicaragua case between Nicaragua and the United States;
- The 1996 advisory opinion in the Nuclear Weapons case;
- The 2004 advisory opinion in the Wall case; and
- The 2005 judgment in the Armed Activities case between the Democratic Republic of the Congo and Uganda.

Another principal organ of the United Nations, the Security Council, has also made a major contribution to the interpretation and application of IHL. While the Security Council itself is a political organ, it has established several judicial organs.

In 1993 and 1994 respectively, the Security Council established the International Tribunal for the former Yugoslavia, also known as ICTY, and the International





Criminal Tribunal for Rwanda, also known as ICTR, by means of resolutions adopted under Chapter VII of the Charter.

Pursuant to their respective Statutes, ICTR, *inter alia*, had the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions, and ICTY, *inter alia*, had the power to prosecute persons violating the laws or customs of war.

Just as an example, I would like to say a few words about the contribution of these tribunals in the interpretation and application of Article 3 common to the Geneva Conventions which remains the key IHL provision that applies to non-international armed conflicts, and which is perhaps the most frequently applied provision in contemporary armed conflicts, which are mostly non-international in character.

First, it is notable that the International Court of Justice, in the Nicaragua case, declared that common Article 3 reflects elementary considerations of humanity and applies to armed conflicts regardless of their character.

The Court further indicated in its Nuclear Weapons Advisory Opinion that the Geneva Conventions, which includes common Article 3, are fundamental rules to be observed by all States as customary international law.





ICTY and ICTR, on the other hand, contributed to the interpretation of more specific aspects of common Article 3.

At the most fundamental level, these Tribunals clarified the circumstances in which common Article 3 applied. While common Article 3 indicates that it applies to “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”, it does not elaborate further on how the existence of an “armed conflict not of an international character” is to be determined.

ICTY, in the Tadic case, elaborated on this point and clarified that “an armed conflict exists whenever there is...protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”

This firmly established the two core criteria that should be met to establish the existence of a non-international armed conflict. First, the armed group involved in the hostilities should have some degree of organization, and second, the hostilities between the parties should reach a minimum level of intensity.

The two Tribunals have also clarified the personal scope of application of common Article 3. It is recalled that the provisions concerning humane treatment in common Article 3 applies to “persons taking no active part in hostilities”, and





specifically lists “members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause”.

In the Karadzic case, the accused argued that combatants did not fall within the category of “persons taking no active part in hostilities”, and, as a consequence, did not fall within the protective scope of common Article 3.

ICTY rejected this argument and concluded that even combatants are entitled to humane treatment as soon as they cease to take part in hostilities, such as due to detention.

The Karadzic case was also a case where ICTY examined an incident in which over 200 military personnel of the United Nations Protection Force were taken hostage in Bosnia and Herzegovina in 1995.

The ICTY in this case concluded that these military personnel were “persons taking no active part in hostilities” and were afforded the protection of common Article 3, which prohibits taking of hostages.

These cases clearly indicate that UN peacekeeping personnel, including military personnel, fall within the scope of common Article 3. This is of particular interest to the United Nations as there are a number of peacekeeping operations that are





deployed to situations of non-international armed conflict, and the protection of their personnel is of particular concern.

The United Nations has contributed to the interpretation and application of IHL not only through judicial organs but has also provided a forum to discuss how IHL might apply in a particular context.

In this regard, the General Assembly has established an “open-ended working group on developments in the field of information and telecommunications in the context of international security” in December 2018, and also mandated the Secretary-General to establish a group of governmental experts around the same time, both of which were mandated to study how international law applies to the use of information and communications technologies, or ICTs, by States.

I understand that the issue of how IHL applies to the use of ICTs was one of the key issues discussed in the working group, but I also understand that the final substantive report of the working group, which was adopted just last month, did not include an outcome on how IHL applies to the use of ICTs.

On the other hand, it seems that States agreed on the need to continue discussions on how international law applies to the use of ICTs by States.





In this connection, the General Assembly, in a resolution adopted last December, decided to convene a new open-ended working group from 2021 to 2025 which would, among other things, discuss how international law applies to the use of ICTs by States.

I encourage States to actively engage in the work of the working group and to work together with a view to bringing further clarity to the question of how IHL applies to the use of ICTs in the context of armed conflict.

[UN's role in ensuring compliance with IHL by UN peacekeeping operations]

Finally, I would like to conclude my presentation by saying a few words about the United Nations' role in ensuring compliance with IHL by United Nations peacekeeping operations.

In the early years of the United Nations, there was some uncertainty as to whether IHL was applicable to peacekeeping operations. However, today, there is no doubt that IHL can be applied to peacekeeping operations as reflected in the Secretary-General's bulletin on the observance by United Nations forces of international humanitarian law issued in 1999.





With respect to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, or MONUSCO, the Security Council has specifically mandated it to carry out targeted offensive operations “in strict compliance with international law, including international humanitarian law”. MONUSCO was first mandated to carry out targeted offensive operations to neutralize armed groups in 2013, but this mandate continues to be relevant today as armed groups still continue to threaten the security of civilians.

A number of measures have been taken in order to ensure compliance with IHL by MONUSCO, including:

- Providing guidance to the mission so that military operations are carried out in accordance with the rules of IHL 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 IHL is properly addressed.

My Office will continue to make every effort to ensure that peacekeeping operations comply with IHL where this is applicable.

[Concluding remarks]

In concluding, I would like to recall the relevant parts of the General Assembly's "Declaration on the commemoration of the seventy-fifth anniversary of the United Nations":

- "We will abide by international law and ensure justice."
- "International humanitarian law must be fully respected."
- "There is no other global organization with the legitimacy, convening power and normative impact of the United Nations."

Inspired by these statements, in this brief presentation, I have tried to provide an overview of the ways in which the United Nations can play to advance these commitments made by Member States.





I encourage delegates from Member States participating in this seminar to also reflect on the commitments your Heads of State and Government have made on the 21st of September last year, with a particular focus on international humanitarian law.

Thank you.

