INTERNATIONAL PEACE OPERATIONS

AND

INTERNATIONAL HUMANITARIAN LAW

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INTERNATIONAL PEACE OPERATIONS
AND
INTERNATIONAL HUMANITARIAN LAW

Contributions presented at the Seminar on

"International Peace Operations
and International Humanitarian Law"

organized by the

International Institute of Humanitarian Law, Sanremo

in co-operation with

Centro Alti Studi per la Difesa, Roma

and

Società Italiana per l'Organizzazione Internazionale, Roma

with the support of the

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TABLE OF CONTENTS

FOREWARD

The International Institute of Humanitarian Law is glad to publish the proceedings of the seminar on "International Peace Operations and International Humanitarian Law" which took place at the *Centro Alti Studi per la Difesa*, Rome, on 27th March 2008, thanks to the invaluable support of the Italian Ministry of Foreign Affairs.

Government leaders, military commanders, representatives of international organisations directly involved in peace operations (UN, NATO, EU, OSCE, ICRC, etc.), academics and legal experts took part in this important seminar that would not have been possible without the generous assistance of CASD and SIOI. More than 300 persons attended the debate, including 150 high-ranking officers of different nationalities, participating at the CASD military courses, and 40 students taking SIOI Master courses.

I think that the seminar has played an important role in the preparation of the XXXI Round Table, which will take place in Sanremo between 4th and 6th September, focusing on the issue of "*International Humanitarian Law and Human Rights in Peace Operations*", contributing fresh ideas and useful advice to the development of the agenda.

I hope that the publication of the full transcription of the seminar debate will help to underscore the increasing importance of promotion and implementation of international humanitarian law in a rapidly changing international environment.

Ambassador Maurizio Moreno
President
International Institute of Humanitarian Law

Sanremo, June 2008

The International Institute of Humanitarian Law wishes to express thanks and gratitude to Prof. Giovanni Barberini, Academic coordinator and to Navy Captain Giuseppe Siragusa (IIHL), Dr. Sara Cavelli (SIOI), Lt. Col. Francesco Elia (CASD), Dr. Daniele Riggio (NATO) for their invaluable assistance in the organization of the Seminar "International Peace Operations and International Humanitarian Law".

The Institute thanks CASD and SIOI for their cooperation and NATO Public Diplomacy Division for its financial contribution.

Special thanks to Dr. Erica Filippi, Mrs Adriana Baroni, Dr. Sania D. Albaghdadi, Dr. Francesca Caiazzo and all the members of the Seminar's staff which contributed to the success of this event and to the realization of this book.

PREFACE

After an interval of centuries, it is very interesting to re-read Plato's views on how to behave with the enemy ("*Res Publica*", V, 466e-469b). He opposed the reducing of other Greeks to slavery; he spoke about *jus in bello* and his text contained "humanitarian" concepts which called for moderation when dealing with the conquered.

Writings on "the theory of humanitarian intervention" appeared at the beginning of the XX Century, underlining the duties of "civilised nations" whose political system was based on the respect of the law and the protection of the freedom of citizens (A. Rougier, *La théorie de l'intervention d'humanité,* in "Revue générale de droit international public", 17, 1910, p.468 s.). The cases the author recalled included Syria (1860), Crete (1866), Bulgaria (1877), Macedonia (1887), Cuba (1895 and 1898) and cases in favour of the Israelites in Romania and in Russia (1902). A number involved military operations promoted by European Powers and the United States of America, which were, at that time, considered as "humanitarian interventions" although certainly inspired by important national interests. However, it is of significance to remember that the following concept had already been expressed: "*les Etats prennent aujourd'hui de plus en plus conscience qu'ils ne sont pas des êtres isolés, pleinement indépendants et libres de tout faire à l'intérieur de leurs frontières, mais qu'ils sont les membres d'une collectivité supérieure…*". We could re-call other statements which, today, sound like general principles of international humanitarian law. It was also affirmed that "*l'intervention d'humanité est par hypothèse désintéressée et ne suppose chez l'intervenant aucun préjudice direct et personnel. Fondée sur le respect des lois de l'humanité, l'action est ouverte à tous ceux qui se croient qualifiés pour parler au nom de celle-ci à la façon d'une actio popularis*". But a wider and more general problem was also underlined: "*Il s'agit en définitive de savoir s'il existe une règle impérative, générale, obligatoire pour tout Etat aussi bien que pour tout individu, supérieure aux législations nationales aussi bien qu'aux conventions internationales et qui constituerait droit commun de l'humanité…*".

We can say, with a note of satisfaction, that the International Community has adopted these convictions and requirements.

In XVII Century Europe, which was characterized by the balance of power sanctioned in Westfalia in 1648, by the elaborations worked out by Grotius (1583-1694), Pufendorf (1632-1694) and De Vattel (1714-1767), and through the reflections of Spanish theologians and lawyers of Vitoria (1483-1546) and Suarez (1548-1617), the doctrine of "just war" became part of the conscience of the International Community.

These drastic changes, affecting the life of the International Community, as a whole, have led to the need for careful thought aimed at improving the study of *jus ad bellum* and the implementation of *jus in bello* through a new approach, a new political philosophy and, maybe, through new rules. Today, a thoughtful assessment is essential as deep changes provoke queries in people's minds and the greater common sensibility of the community projects them into the more general framework of ethics in international relations. This need is all the more marked in the case of international humanitarian law.

In modern times, the doctrine of "just war" meets with the need of the International Community to resort to force. Today, this creates many problems and queries. Here, we can only consider a few of them. Is regulated use of force legitimate in the fight against terrorism? Are war or military operations conducted to prevent terrorist attacks justified? In this case, we are aware that it is not possible to foresee all situations from a military and strategic point of view. Careful consideration must be given to the grave consequences provoked by the violence of terrorism affecting the civilian population. At the same time, however, the consequences of not resorting to force to prevent such violence should also be taken into consideration. The provisions of Chapter VII of the Statute of the United Nations, concerning the action to be taken with respect to threats to the peace, breaches of the peace and other acts of aggression, are very difficult to apply to the phenomenon of terrorism. However, the UN is taking action in this field by promoting the adoption of Conventions against terrorism. Moreover, can action taken against terrorism be considered a just war?

Modern international organizations, each within its own scope and objectives, intend to deal, in a decisive and coordinated way, with situations where wars, ethnic conflicts, political rivalries, needs of the civilian population hit by technologically sophisticated weapons, and problems of refugees, all form a complex scenario with no easy solutions.

We believe that the power and the effectiveness of international law, with its rules ratified by States and the legally-binding duties of States, cannot and should not be exaggerated. However, we should all support the force of law, and consequently, not accuse the UN flippantly. The International Community should be able to organize a universal government with effective powers and the task of dictating new rules regarding rapidly-changing international relations. Can we say that the rules covered by international conventions and the Statute of the UN are outdated, at least where

certain issues are concerned? And if so, would international institutions be in some way paralyzed? Furthermore, it should be taken into consideration that the UN is an international legal body, distinct from member States, although it does not express a political will of the Organization as such, it does express the political will of the majority of the States, or rather of the stronger States. Written norms are impotent if the political will of the interested parties is lacking. We have a great quantity of Conventions and Protocols but we cannot underestimate the basic problem arising from the acceptance and effective respect of operational decisions made by the UN, also through military interventions, adopted in the interest of peace.

Among the many queries arising nowadays, we should consider at least the following ones:

1) Is it possible to re-elaborate the traditional doctrine on war to reflect modern reality, or, considering the grave consequences caused by war (even where atomic or nuclear weapons are not used), should a brand new doctrine be elaborated capable of identifying the extreme hypothesis of the use of force? In this framework is it possible to affirm the exercise of the right/duty to intervene on humanitarian grounds?

2) Shouldn't traditional humanitarian law be complemented so as to effectively oppose contemporary phenomena such as torture, human trafficking, hidden use of bacteriological weapons, etc? Which contemporary humanitarian needs should be considered as not being covered by the Geneva Conventions and Additional Protocols?

To summarize, international humanitarian law has solid cultural and political foundations consolidated by history. Nevertheless, it must be prepared to adapt itself to the new challenges arising from new geo-political situations.

The drastic changes affecting the life of the international community depict a variety of scenarios of civil and military operations, all peace-oriented. There is an increasing need for careful consideration of the effective and good-faith observance of current international humanitarian law; a need to study *jus ad bellum* more closely, and to implement *jus in bello* through a new approach and possibly through new rules.

The International Institute of Humanitarian Law is preparing its XXXI Round Table, which will take place in Sanremo between 4th and 6th September next, and will address the issue of "*International Humanitarian Law and Human Rights in Peace Operations*".

The present Seminar, organized in collaboration with the *Centro Alti Studi della Difesa (CASD)* and the *Società Italiana per l'Organizzazione Internazionale (SIOI)*, with the support of the Italian Ministry of Foreign Affairs, aims to contribute to the preparation of the annual Sanremo Round Table, which has, over the years, developed into a large, prestigious forum where major issues concerning international humanitarian law are addressed.

The two working sessions of the Seminar will provide an opportunity to bring together diplomats, military officers, legal experts and representatives of International Organisations for an informal debate. Participants will have the opportunity to offer their contributions and opinions with regard to a broad range of issues stretching from *jus conditum* to *jus condendum*.

The first session of the Seminar will be dedicated to "*The Implementation and the Respect of Humanitarian Rules in Current International Peace Operations*". The second session will turn its attention to "*New Challenges of International Humanitarian Law. Perspectives of Development: its further Evolution*".

Prof. Dr. Giovanni Barberini

WELCOME ADDRESSES

Maj. Gen. CC Sergio SORBINO*

Signor Sottosegretario di Stato, Autorità, gentili ospiti, il mio più cordiale benvenuto a Palazzo Salviati, storico edificio rinascimantale già dimora del Cardinale da cui ha preso il nome e, dal 1971, sede del Centro Alti Studi per la Difesa, massimo organo di studio e ricerca delle Forze Armate del nostro Paese.

Sono il Generale di Divisione CC Sergio Sorbino, Direttore Coordinatore agli Studi dell'Istituto Alti Studi per la Difesa e "Deputy President" del Centro Alti Studi per la Difesa che nel suo ambito, oltre al citato Istituto, accoglie anche l'Istituto Superiore di Stato Maggiore Interforze, i cui frequentatori vedo numerosi qui presenti, e il Centro Militare di Studi Strategici.

Questo è il primo seminario sulle "Operazioni Internazionali di Pace e il Diritto Internazionale Umanitario" organizzato congiuntamente da tre Istituti, l'*International Institute of Humanitarian Law*, la Società Italiana per l'Organizzazione Internazionale e questo centro, impegnati, in primissimo piano, nella promozione del diritto internazionale umanitario e dei diritti umani.

È, pertanto, con particolare entusiasmo che mi accingo ad aprire i lavori di questa giornata che, tra l'altro, per una fortunata coincidenza, va ad arricchire i contenuti di un seminario sul "Diritto Umanitario dei Conflitti Armati" che i frequentatori della 59ª Sessione dell'Istituto Alti Studi per la Difesa, oltre 60 alti ufficiali e dirigenti nazionali e dei Paesi amici e alleati qui presenti, stanno seguendo da ieri.

Vorrei, inoltre, esprimere la mia più ampia soddisfazione per l'elevato numero di adesioni da parte di autorità politiche e militari, docenti e cultori della materia nazionali ed esteri.

Questo aspetto conferma non solo il carattere internazionale dell'evento ma anche il notevole interesse e la grande attualità delle tematiche che verranno trattate.

Il Seminario intende affrontare le sfide presenti e future del diritto internazionale umanitario, con particolare attenzione alle concrete applicazioni in un contesto di Peace Support Operations e alle problematiche che possono emergere

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da un punto di vista strettamente operativo.

L'applicazione del diritto internazionale nelle PSOs, sempre più caratterizzate dalla fondamentale importanza conferita al rispetto dei diritti umani in generale, rappresenta una nuova prospettiva che va perfettamente conosciuta: a tal fine, gli autorevoli relatori di oggi analizzeranno detta applicazione da tutti i punti di vista.

Il programma degli interventi è riportato nella *brochure* ma vorrei ricordare che, dopo il mio benvenuto in qualità di "padrone di casa", e quelli dell'Ambasciatore Maurizio Moreno, presidente dell'*International Institute of Humanitarian Law* e dell'Ambasciatore Umberto La Rocca, Presidente della Società Italiana per l'Organizzazione Internazionale, il Signor Sottosegretario di Stato onorevole Lorenzo Forcieri porterà il suo saluto ai presenti.

La prolusione iniziale sarà tenuta dal Generale di Corpo d'Armata Fabrizio Castagnetti, Capo di Stato Maggiore dell'Esercito.

Seguiranno due sessioni di lavori. La prima fornirà uno spaccato puntuale e realistico della complessità giuridica delle operazioni internazionali di pace.

Chairman, il Generale di Corpo d'Armata Carlo Cabigiosu che, tra i numerosissimi e prestigiosi incarichi ricoperti, annovera anche quello di Comandante del Comando Operativo di vertice Interforze.

La sessione pomeridiana tratterà l'approfondimento delle nuove sfide che il diritto internazionale umanitario dovrà affrontare per una sua condivisa affermazione nei nuovi scenari operativi.

Chairman il Professor Michel Veuthey dell'*Institut de la Paix et du Développement* dell'Università di Nizza, Vicepresidente dell'*International Institute of Humanitarian Law*.

A chiusura dei lavori, le considerazioni conclusive del Professor Giovanni Barberini, della Facoltà di Legge presso l'Università di Perugia, coordinatore accademico del Seminario.

Nell'avviarmi a concludere, debbo sottolineare che il successo del Seminario, ampiamente ipotecato dalla presenza di così autorevoli partecipanti, dipenderà principalmente dai contributi di esperienze che ciascuno di noi saprà trasmettere.

Non ho dubbi che ciò avverrà, ampiamente ripagando gli sforzi organizzativi dei tre Istituti ma, sopratutto, fornendo un ulteriore contributo allo studio e alla divulgazione del diritto internazionale umanitario.

Nell'invitare l'Ambasciatore Moreno a prendere la parola, non mi resta che rinnovare il mio più caloroso benvenuto e augurare buon lavoro a tutti.

Ambassador Maurizio MORENO*

Sono vivamente grado al Presidente del CASD per le sue parole e la sua accoglienza.

Vorrei a mia volta rivolgere, a nome dell'Istituto Internazionale di Diritto Umanitario di Sanremo, un'espressione di caloroso benvenuto a tutti i presenti. Alle Autorità civili e militari, ai rappresentanti del Corpo Diplomatico, a tutti coloro che hanno accolto l'invito a partecipare a questo Seminario; a cominciare dal Generale Fabrizio Castagnetti, Capo di Stato Maggiore dell'Esercito, che così cortesemente ha accettato di pronunciare l'intervento di apertura dei lavori.

Sento il dovere di indirizzare un particolare ringraziamento al Ministero degli Affari Esteri, nonché alla Divisione di Diplomazia Pubblica della NATO, il cui sostegno finanziario ha reso possibile questa iniziativa.

E' la prima volta - mi sia consentito di sottolinearlo - che l'Istituto di Sanremo promuove un evento di questa portata fuori dalla propria sede.

Avevamo necessità di appoggiarci a dei partners altamente qualificati. Li abbiamo trovati nel CASD, il massimo Centro di formazione e di studi a livello militare, che ha messo a disposizione del Seminario, la sua esperienza, la sua prestigiosa sede e la sua potente macchina organizzativa; nonché nella SIOI, autorevolissima Istituzione da oltre sessant'anni all'avanguardia nella ricerca e nella promozione delle tematiche inerenti al diritto e all'organizzazione internazionale, che proprio l'anno scorso aveva promosso un convegno sulle "Operazioni di Peace-keeping". La sua collaborazione si è rivelata preziosa nel mettere a fuoco il quadro dell'iniziativa. Un vivo grazie va al Professor Giovanni Barberini, coordinatore scientifico del Seminario, ai moderatori, agli oratori. Sono particolarmente lieto che un folto gruppo di partecipanti, italiani e stranieri, ai corsi sia del CASD che della SIOI, possa assistere oggi ai nostri lavori su una tematica di così grande interesse.

Due parole sull'Istituto di cui ho da qualche mese l'onore di aver assunto la Presidenza. Esso infatti, per alcuni versi, è conosciuto più all'estero che in Italia e forse non è inutile una sua, seppur telegrafica, presentazione, in questa sede, in una fase di rilancio e potenziamento del suo impegno e delle sue attività, anche sul piano internazionale.

Costituito nel 1970 a Sanremo da un gruppo di giuristi di diversa nazionalità, l'Istituto è un'organizzazione indipendente e senza scopo di lucro, riconosciuta come Ente a carattere internazionalistico ai sensi della legislazione italiana. Il suo obiettivo primario è quello di concorrere alla promozione, allo sviluppo e al rispetto del diritto internazionale umanitario nei suoi diversi aspetti, attraverso attività nel campo della formazione, della ricerca e dell'informazione.

Dall'Istituto di Sanremo - che ha un ufficio di collegamento a Ginevra - sono passati migliaia di ufficiali provenienti da tutto il mondo. Ai corsi di formazione sul

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diritto dei conflitti armati, si sono aggiunti negli anni corsi sui diritti dell'uomo, sul diritto dei rifugiati e sul diritto delle migrazioni di cui hanno beneficiato funzionari, esperti, studenti di diversi Paesi. Un accordo concluso tre anni or sono tra l'Istituto di Sanremo e l'Università di Nizza ha consentito, grazie ad un finanziamento dell'UE, l'istituzione di un Master transfrontaliero in diritto umanitario che riscuote grande successo. Il Manuale di Sanremo sul diritto internazionale applicabile ai conflitti in mare, elaborato circa vent'anni or sono, è considerato tutt'oggi un testo di riferimento a livello mondiale, studiato in tutte le Accademie navali. Ampia diffusione ha ricevuto il manuale che l'Istituto ha più di recente consacrato alle norme concernenti i conflitti armati non internazionali. Il mese prossimo l'Istituto, su richiesta e con l'appoggio del Ministero degli Affari Esteri, porterà per la prima volta la propria esperienza nel campo della formazione in un'area di crisi, curando l'organizzazione di un corso di diritto internazionale umanitario per le forze armate e di polizia in Iraq.

Accanto alle attività di formazione, l'Istituto è impegnato nell'organizzazione di conferenze, congressi, tavole rotonde, occasioni di riflessione e di dibattito nella suggestiva cornice della Villa Ormond, messa a disposizione dell'Istituto dal Comune di Sanremo. L'annuale tavola rotonda, organizzata dall'Istituto all'inizio del mese di settembre, giunta ormai alla XXXI edizione, è considerata dal mondo scientifico, dalla diplomazia e dagli apparati militari un importante appuntamento per l'approfondimento - in quello che è ormai etichettato come lo "spirito di Sanremo" - delle problematiche di maggiore attualità inerenti allo sviluppo del diritto internazionale umanitario.

L'Istituto intrattiene tradizionalmente rapporti di stretta collaborazione con il CICR e le altre Istituzioni ginevrine a vocazione umanitaria, in particolare l'OIM e l'UNHCR. Proficui contatti sono andati altresì sviluppandosi con l'ONU, l'UE e da ultimi la NATO, l'IILA e l'UNICRI. In Italia stiamo intensificando i rapporti con le Università e i centri di studio e di ricerca interessati alla materia.

Perché questo Seminario?

In uno scenario di sicurezza internazionale in rapido mutamento, anche il diritto internazionale umanitario deve essere confrontato con le nuove sfide. Il superamento della guerra fredda e l'esigenza di rispondere con rapidità ed efficacia a nuove tipologie di minacce aventi spesso natura asimmetrica - il terrorismo, la proliferazione delle armi di distruzione di massa, l'azione eversiva di Stati-canaglia, i traffici illeciti transnazionali - hanno profondamente modificato i tradizionali scenari strategici che si ricollegavano alle guerre tra gli Stati. I conflitti armati odierni tendono prevalentemente a configurarsi come conflitti interni - religiosi, etnici, tribali - piuttosto che come conflitti internazionali. Viene ampliandosi la casistica delle fattispecie suscettibili di dar luogo all'uso legittimo della forza: vengono teorizzate nozioni, quali quelle di interventi "*pre-emptive*", di operazioni "*preventive*", di "*responsibility to protect*". Gli attori si moltiplicano: accanto alle forze armate regolari fanno la loro apparizione in teatro società di sicurezza private. Organizzazioni non governative e di volontariato sono schierate con il personale militare in prima linea nell'azione umanitaria e di soccorso.

A nessuno sfugge la complessità di un tale mutamento di prospettiva, di cui

è diretta espressione la variegata gamma di operazioni che le forze armate sono chiamate a portare avanti in diverse parti del mondo - dall'Afghanistan ai Balcani, dal Libano al Darfur ecc… - su mandato della Comunità Internazionale: interventi di "*peace-enforcing*", di interposizione armata, di "*peace-keeping*" e "*peace-support*", di ricostruzione post-conflittuale, di stabilizzazione democratica, in contesti molto diversificati dove drammaticamente elevato continua purtroppo a rivelarsi il numero delle vittime civili. Operazioni che hanno sempre più, nella terminologia dell'ONU, un carattere "multidimensionale"; dove il "*peace-keeper*" viene ad essere in definitiva il garante del rispetto del diritto umanitario e dei diritti umani, colui che tutela le vittime, che aiuta chi è più vulnerabile, che soccorre il ferito e il malato.

Di qui la necessità di meglio approfondire le relazioni esistenti tra il diritto internazionale umanitario, il diritto internazionale dei diritti umani e gli odierni interventi militari di pace, in un'ottica che deve restare quella di un rigoroso rispetto di tutte le norme applicabili e di più efficace protezione delle popolazioni contro le inutili violenze e sofferenze. Un compito non agevole dato che si colloca su una tela di fondo in cui sempre più arduo è individuare la linea di demarcazione tra la guerra e la pace, tra conflitto internazionale e conflitto interno, tra combattenti e civili; dato che gli interventi di "peace-keeping" sono chiamati ad affrontare situazioni per tanti aspetti ibride ed inedite, dove non mancano zone grigie ed elementi di ambiguità.

Questa problematica così attuale, al tempo stesso giuridicamente complessa e politicamente controversa, sarà al centro dei dibattiti della grande Tavola Rotonda annuale che l'Istituto Internazionale di Diritto Umanitario organizzerà a Sanremo dal 4 al 6 settembre prossimo venturo.

Una valenza particolarmente significativa riveste dunque, anche in tale prospettiva, l'incontro odierno, che intende da un lato fare il punto circa lo stato di applicazione del diritto umanitario nei diversi contesti operativi, grazie anche alla presenza di qualificati esperti delle principali organizzazioni internazionali operanti sul terreno; dall'altro concorrere, con l'apporto di eminenti giuristi, a individuare le nuove sfide cui è confrontato il diritto internazionale umanitario e le prospettive di una sua armoniosa evoluzione.

Ambassador Umberto La Rocca*

Mi è gradito associarmi alle calorose parole di ringraziamento e di benvenuto testè pronunciate dall'Ambasciatore Moreno e mi sia consentito rivolgere un particolare saluto al Gen. Di Corpo d'Armata Fabrizio Castagnetti, Capo di Stato Maggiore dell'Esercito, di cui la SIOI ama ricordare la significativa partecipazione al Convegno organizzato lo scorso anno ad Assisi dalla nostra Società sul tema: "Le operazioni di *peace-keeping* dell'ONU tra tradizione e rinnovamento".

Il Convegno "*International Peace Operation and International Humanitarian Law*" si occupa di un tema di sicura attualità e di altrettanta complessità.

Sotto il primo profilo basti ricordare l'ampio dibattito che l'anno scorso è stato dedicato ai due Protocolli addizionali del 1977 alle Convenzioni di Ginevra del 1949, un dibattito nel quale sono stati ampiamente focalizzati i problemi attuali del diritto internazionale umanitario, nonché le prospettive e le sfide che lo stesso si trova ad affrontare nel futuro.

Per quanto concerne la complessità, se interpreto bene lo sviluppo del programma del Convegno, essa nasce dalla diversificazione di ciò che possiamo considerare "operazioni di pace".

Se ci concentriamo sulle operazioni di pace che nascono dal contesto della Organizzazione delle Nazioni Unite - l'unico contesto nel quale, stando a ciò che prescrive il diritto internazionale, l'uso della forza militare è legale (a parte, ovviamente, la fattispecie della legittima difesa) - è noto che ci troviamo di fronte ad una duplice tipologia di interventi: le autorizzazioni a Stati e/o organizzazioni regionali all'uso della forza e le *peace-keeping operations*.

Le prime, le così dette operazioni di *enforcement*, sono affidate a forze militari di combattimento in senso proprio e, pertanto, il complesso normativo del diritto internazionale dovrebbe in questo caso trovare un'applicazione, per così dire, naturale.

Per quanto concerne le seconde, è noto che, quando costituite con ampia componente militare e specialmente se istituite dal Consiglio di Sicurezza ai termini del Capitolo VII della Carta, possono trovarsi coinvolte in operazioni di carattere militare sia per legittima difesa, sia per la realizzazione del proprio mandato.

Rispetto a queste tipologie di interventi, la prassi che si è sviluppata dopo la caduta del muro di Berlino ha messo in luce preoccupanti problemi di correttezza dei contingenti sotto il profilo del rispetto del diritto internazionale umanitario.

Vorrei ricordare che per far fronte a tali problemi e per sollecitare il rispetto delle regole del diritto internazionale umanitario da parte delle forze delle Nazioni Unite, il Segretario Generale dell'ONU, il 6 agosto 1999, promulgò una direttiva intitolata "*Observance by United Nations Forces of International Humanitarian Law*".

Questo documento merita una particolare attenzione per il tema che ci vede

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oggi qui riuniti perché ribadisce e formalizza un dato che già era desumibile dalla prassi degli interventi dell'ONU e cioè che tutte le missioni in cui sono coinvolte forze militari sotto il comando e il controllo delle Nazioni Unite hanno l'obbligo giuridico di rispettare le norme del diritto internazionale umanitario.

Non ho qui il tempo per illustrare con la necessaria attenzione i contenuti della direttiva. Posso tuttavia evidenziare che essa sintetizza in maniera efficace le regole di comportamento che le forze delle NU devono seguire in caso di uso della forza. Queste regole coprono i settori fondamentali del diritto dei conflitti armati: la protezione della popolazione civile, i mezzi e i metodi di combattimento, il trattamento dei civili e delle persone poste fuori combattimento, il trattamento delle persone detenute e, infine, la protezione dei feriti, dei malati e del personale medico e di soccorso.

Vorrei aggiungere un'ultima osservazione che mi pare possa essere collegata ad una finalità intrinseca dell'odierno Seminario.

E' ben noto che l'efficacia del diritto internazionale umanitario - come del resto quella del diritto internazionale in generale - è legata agli strumenti di garanzia di fronte alle violazioni delle sue regole. Oltre alla repressione ed ai controlli, in cui è molto rilevante anche il ruolo del Comitato Internazionale della Croce Rossa, una particolare e crescente importanza assume l'opera di prevenzione.

Rientra in quest'opera l'obbligo, che compete in primo luogo agli Stati, di offrire al personale impiegato in contingenti di *peace-keeping* un'adeguata istruzione e preparazione nell'applicazione del diritto internazionale umanitario. È un obbligo -aggiungo- ribadito dall'Organizzazione per la Sicurezza e la Cooperazione in Europa, nel cui "Codice di condotta sugli aspetti politico-militari della sicurezza" leggiamo: "Ciascuno Stato partecipante istruirà il personale delle proprie forze armate sul diritto umanitario internazionale e sulle norme, le convenzioni e gli impegni ad esso relativi che regolano i conflitti armati e assicurerà che i membri di tale personale siano consapevoli di essere individualmente responsabili delle proprie azioni, in base alla legislazione nazionale e al diritto internazionale".

E anche l'ONU si presta a fare la propria parte proponendosi di costituire presso la base di Brindisi un *integrated training team* e di predisporre una strategia di formazione da parte del Dipartimento per le operazioni di *peace-keeping*.

In contesti nei quali si opera al servizio della pace, sommo bene della Comunità Internazionale, non si può non chiedere a chi agisce sul terreno il più assoluto rispetto della legalità.

Sono certo che su questi temi ed altri ancora l'odierna manifestazione potrà fornire un significativo contributo di chiarezza e di approfondimento.

OPENING STATEMENT

Hon. Lorenzo Forcieri*

Permettetemi di esprimere un apprezzamento particolare per la qualità e l'importanza dei temi oggetto dell'incontro di studi odierno, per il quale mi congratulo con il Generale Sorbino, presidente dello IASD e nostro padrone di casa, con l'Ambasciatore La Rocca presidente della SIOI, e con l'amico Ambasciatore Moreno, presidente dell'Istituto Internazionale di Diritto Umanitario, istituto che egli sta rilanciando con competenza, passione ed energia dopo averne recentemente assunto la presidenza.

Parlare di diritto umanitario, di come esso vive nella pratica quotidiana dei nostri peace-keepers, di nuove sfide e prospettive ci porta immediatamente al ruolo che le Forze Armate italiane svolgono e al modo in cui esse operano nei vari teatri nei quali siamo impegnati, nel rispetto della Costituzione e del diritto internazionale.

Sappiamo bene che la pratica quotidiana del diritto umanitario è fondamentale per chi opera nelle missioni internazionali, poiché il rispetto delle regole, del nemico e delle popolazioni civili è un fattore imprescindibile per il successo politico di qualunque operazione militare, e quindi per il suo successo *tout court*; un successo affidato oggi più che mai alla capacità degli operatori militari di favorire e contribuire alla ricostruzione civile e istituzionale.

Voglio qui riprendere un concetto che ho già avuto occasione di esporre proprio a Sanremo, a un recente convegno organizzato dall'IIDU e sottolineare l'importanza della formazione degli operatori alla conoscenza e alla applicazione concreta del diritto umanitario, anche nei momenti di emergenza o di difficoltà. Sappiamo che in questo settore l'Italia può dirsi un Paese leader, e che le nostre Forze Armate hanno inaugurato da tempo un modello operativo che prevede un forte investimento nel dialogo rispettoso ed amichevole con le popolazioni e le istituzioni civili; sappiamo anche che questo modello è stato studiato con interesse da molti Paesi alleati e che esso oggi per molti aspetti è stato "copiato" anche in ambito NATO: le MSU dei carabinieri infatti nascono evidentemente dalla positiva esperienza italiana. Eppure questi risultati, per quanto lusinghieri, non bastano ancora, perché vi è la necessità di far avanzare in armonia tradizioni, culture e sensibilità diverse dalla nostra. Sono

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convinto che soprattutto per quanto concerne la formazione e l'addestramento delle truppe destinate ad operare congiuntamente nei contesti multilaterali molto debba ancora essere fatto per promuovere una interpretazione la più avanzata e omogenea delle regole e delle prassi del diritto umanitario da applicare nelle operazioni militari e soprattutto nel contesto con popolazioni civili già provate da anni di instabilità, di conflitti, di povertà materiali e morali. Non basta prevalere militarmente; il successo di una operazione dipende soprattutto dalla effettiva pacificazione e stabilizzazione dei teatri di crisi, cosa che spesso richiede tempo e pazienza nonché grandi capacità proprio nel settore di cui vi occupate oggi. Un tema che ha trovato questo governo attento, sensibile e in profonda sintonia con queste istanze, consapevole della tradizione delle sue Forze Armate e della necessità di investire e sostenere concretamente le iniziative nazionali e internazionali di settore, a partire proprio dell'Istituto Internazionale di Diritto Umanitario.

Il Governo Prodi ha vissuto in modo positivo il rapporto con le Forze Armate e l'esperienza della gestione delle operazioni militari internazionali. Abbiamo fatto anche tutto ciò che sembrava finanziariamente impossibile per sostenere in modo responsabile e concreto le nostre Forze Armate che noi abbiamo considerato come uno dei principali soggetti e protagonisti della nostra politica estera, di sicurezza e di difesa, nel momento del loro massimo impegno internazionale, intraprendendo una seria azione a loro sostegno; Forze Armate che si sono sempre contraddistinte per il loro comportamento virtuoso.

Pur in una difficile congiuntura economica e nella necessità di rimettere a posto i conti dello stato e, in soli diciotto mesi, abbiamo onorato tutti gli impegni verso le Forze Armate. Con le due finanziarie abbiamo aumentato gli stanziamenti per la difesa, invertendo la caduta libera degli anni precedenti quando aumentavano gli impegni e i rischi per le nostre Forze Armate e si riducevano i fondi necessari per il loro funzionamento. Siamo consapevoli del fatto che permangono ancora problemi relativi al personale e alle spese di esercizio, la cui soluzione è per ora solo avviata e che ci sentiamo impegnati a raggiungere presto. Nonostante ciò nelle missioni internazionali di pace sono stati mantenuti gli elevati livelli di impegno in Afghanistan e Kosovo, assumendo anche la leadership della missione in Libano.

La presenza di UNIFIL 2 ha fatto cessare un conflitto sanguinoso e fornisce tuttora la garanzia di sicurezza al popolo e alle fragili istituzioni libanesi.

In Libano dobbiamo rimanere e nel dire ciò mi riferisco in particolare alle preoccupanti dichiarazioni recenti di alcuni leaders politici, i quali hanno ventilato un nostro disimpegno dal Libano e un rinnovato impegno in Iraq. E' impensabile anche un semplice ridimensionamento del nostro intervento in un Paese che oggi, grazie anche al nostro impegno, ha intrapreso una strada in risalita. La nostra presenza è importante anche per la sicurezza di Israele: da quando c'è "UNIFIL 2", non si sono più verificati lanci di razzi provenienti dalla zona sud verso le città e i villaggi israeliani.

Concludo il mio intervento sottolineando l'importanza politica del diritto umanitario e dell'Istituto Internazionale nel campo dello studio e della formazione, complimentandomi ancora con il Generale Sorbino, direttore dello IASD, con l'Ambasciatore Maurizio Moreno, presidente dell'Istituto sanremese e con l'Ambasciatore Umberto La Rocca, presidente della SIOI.

MESSAGE

Hon. Gianni VERNETTI*

Precedenti inpegni istituzionali non mi consentono, con mio vivo rammarico, di partecipare al seminario che l'Istituto Internazionale di Diritto Umanitario di Sanremo, con la collaborazione del CASD e della SIOI, ha voluto dedicare al tema delle "Operazioni internazionali di pace e diritto internazionale umanitario" nella prestigiosa cornice di Palazzo Salviati.

Quella oggetto degli odierni lavori è una problematica cui l'Italia - impegnata in prima linea nelle operazioni di mantenimento della pace attualmente in corso sotto l'egida della Comunità internazionale - è particolarmente sensibile.

In un contesto di sicurezza esposto a rapidi e traumatici mutamenti, il pieno rispetto del diritto internazionale umanitario e dei diritti umani, la più efficace protezione delle popolazioni civili, acquistano oggigiorno una crescente importanza di fronte al profilarsi di minacce - quali il terrorismo - che rimettono in discussione tutti i canoni dei conflitti tradizionali.

Il Governo italiano, attualmente membro per un biennio del Consiglio di Sicurezza, più di ogni altro avverte - anche per il generoso impegno delle nostre Forze Armate nelle principali aree di crisi - l'esigenza di una puntuale applicazione delle norme del diritto internazionale umanitario in tutti i diversi contesti in cui si esplicano interventi militari che hanno sempre più anche una connotazione di ricostruzione civile e di consolidamento democratico.

Ho avuto occasione di visitare l'Istituto Internazionale di Diritto Umanitario di Sanremo e di apprezzare l'impegno che esso da quasi quarant'anni profonde per la promozione e lo sviluppo di una branca specifica dell'ordinamento internazionale, il cui fine ultimo è il contenimento della violenza e la tutela della dignità umana.

All'incontro odierno, cui la Farnesina è lieta di offrire il proprio sostegno ed il proprio appoggio, partecipano studiosi insigni, rappresentanti delle principali istituzioni internazionali a diverso titolo coinvolte nelle operazioni di peace-keeping, dall'ONU all'UE, dal CICR alla NATO, diplomatici, militari ed esponenti del volontariato che hanno maturato dirette esperienze sul campo. Sono certo che dai lavori scaturiranno valide indicazioni anche nell'ottica del rafforzamento dell'attuale cornice di garanzie entro cui sono chiamate a svilupparsi le odierne missioni di pace, nella consapevolezza che sicurezza e diritti umani rappresentano in definitiva due facce della stessa medaglia.

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KEY-NOTE ADDRESS

LEBANON AND AFGHANISTAN: THE ITALIAN WAY TO PEACEKEEPING

Lt. Gen. Fabrizio CASTAGNETTI*

Good morning, Ladies and Gentlemen.

It is really a great pleasure to give a speech before such a distinguished audience and, in this respect, let me thank Ambassador Maurizio Moreno for giving me this opportunity.

Before starting to talk on "The Italian Way to Peacekeeping", let's have a look over our contribution in the global scenario, our major commitments and the ongoing activities.

The Italian effort in the so-called "overseas missions" can be estimated at an average of more than seven thousand persons per day. A really important figure, especially taking into account the army size and, I would say, a significant one in quantity and quality within the multinational environment.

It is not that easy to specify a common accepted definition of peacekeeping. However, from a military standpoint, it includes several types of operation, whose intensity and width can vary significantly.

Currently, our three main operations are taking place in Lebanon, Afghanistan and Kosovo. However, during my speech, due to the lack of time, I will provide a more detailed description about Lebanon and only some snapshots of the situation we are facing in Afghanistan, not taking into account Kosovo.

Operation "LEONTE", in the Lebanese theatre, is one of the most recent commitment of our armed forces, with a military contingent of around 2.500 soldiers, made available to the United Nations, in order to implement UNSC Resolution 1701.

Since the beginning of February 2007, Italy has taken over the leadership of the mission, which is now led by Maj. Gen. Claudio Graziano.

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It is interesting to underline that the historical background of the UN intervention in Lebanon is rooted in the history of the country. UNIFIL was established almost 30 years ago, in 1978[1] with the aim of monitoring the withdrawal of Israeli forces from southern Lebanon and assisting the Lebanese government to restore its authority over the area.

The Council called upon Israel for an immediate cessation of its military action, the withdrawal of its forces from Lebanon and decided to immediately establish the United Nations interim force in Lebanon (UNIFIL). The first UNIFIL troops got deployed on 23 March 1978.

After long years of civil war and instability, new hostilities on the Israeli-Lebanese border started again on 12 July 2006 when Hizbollah launched several rockets from the Lebanese territory, crossed the blue line, attacked an Israeli patrol and captured two Israeli soldiers, after killing three of them and wounding others.

Tel Aviv retaliated by ground, air and sea attacks, targeting Hizbollah positions and numerous roads and bridges in southern Lebanon, within and outside the UNIFIL area of operations.

On 11 August 2006 , the Security Council passed Resolution 1701 calling for a full ceasefire in the 34-day long war based, in particular, upon *"The immediate cessation by Hizbollah of all attacks and the immediate cessation by Israel of all offensive military operations"* in Lebanon. This Resolution was still under Chapter VI of the UN Charter, but the robust roes were sufficient to ensure a pro-active attitude of UN troops.

Italy played a primary role in the expansion of UNIFIL sending, since September, an Early Entry Force (EEF) with the task of liaising with Lebanese Armed Forces (LAF) and setting up the security conditions for the Follow-On-Forces (FOF).

Italian Armed Forces had also the leadership of an Interim Maritime Task Force, entitled to remove the Israeli naval blockade over the Lebanese waters.

Let's now move to the pivotal issue, that is, UNIFIL, its mandate (extended to 31 August 2008), its deployment and its activities, its main tasks, indicated by UNSCR 1701 and aimed at assisting the Lebanese Armed Forces (LAF), are:

- assure the respect of the blue line (also from Israeli side);
- prevent the resumption of hostilities, including the establishment between the blue line and the litany river of an area free of any armed personnel, assets and weapons, other than those of the government of Lebanon and of UNIFIL;
- fully implement the relevant provisions of the taif accords, and of the

[1] UN Security Council Resolutions **425** and **426.**

Resolutions 1559 (2004) and 1680 (2006), that require the disarmament of all armed groups in Lebanon;

- no foreign forces in Lebanon without the consent of its Government;
- no sales or supply of arms and related material to Lebanon except those authorized by its government;
- assist the government of Lebanon, at its request, to secure its borders so as to prevent the clandestine entry of arms or related material;
- take all necessary actions in the areas of deployment of its forces and as deems within its capabilities;
- ensure that its area of operations is not utilized for hostile activities of any kind.

Nevertheless, as you certainly know, UNIFIL carries out its activities also at sea. The maritime area of operation, 5.000 nautical square miles wide, where since the 1st of March 2008 a Maritime Task Force (MTF), based on EUROMARFOR[2], assumed the leadership of the naval operation, setting up the new MTF 448 led by the Italian Rear Admiral Ruggiero Di Biase.

Just to recall some figures, since the start of its operations MTF has hailed more than 13.000 ships and referred 70 suspicious vessels to the Lebanese authorities for further inspection. It has also provided a training support to the Lebanese navy.

Another fundamental step forward was moved when, on September 11, UNSG decided to reinforce the structure of DPKO military division by creating the Strategic Military Cell (SMC).

This brand new organisation, led by a director (DSMC), was set up with the task of providing the guidelines and the strategic-military direction to the Force Commander.

In this respect, as indicated by the UNSG in a Report to the Security Council dated August 26th , "*The aim and the complexity of military tasks that must be undertaken by UNIFIL, suggest the need of increasing the operational capability within DPKO*". This inspired the setting up of SMC, enucleating some resources inside the DPKO, increased by military arguments from the main contributing countries.

In this initiative, Italy and France played a decisive role, contributing to overcoming some resistance inside DPKO, that hardly understood the need of a dedicated cell for a single mission.

Following consultations with several UNIFIL Troop Contributing Countries

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[2] EUROMARFOR is a Maritime Multinational Force, able to carry out naval, air and amphibious operations. It was formed in 1995, when the participating nations – France, Italy, Portugal and Spain – agreed to create a tailored force able to carry out multiple missions including humanitarian, disaster relief, crisis response and peacekeeping operations.

(TCCS), it was further decided that a general officer from a UNIFIL TCC would be appointed to lead the SMC with the deputy being a senior military officer from another TCC. The remaining staff would have been provided by all the UNIFIL TCCS.

To sum up this extensive analysis, we can state that the undeniable need for a strategic military cell can be explained through the following points:

- strategic guidance to the forces on the ground;
- freedom for the force commander to concentrate on operational issues;
- long term view of the SMC on strategic development;
- greater focus of UNIFIL issues within the DPKO.

As to the final structure of SMC, it's a typical military organization structured in 6 branches, each tasked to a specified area such as personnel, intelligence, naval and land operations, logistic and plans, currently under the direction and coordination of the French Lieutenant General Neveux, with Italian Rear Admiral Raffaele Caruso being the Deputy Director.

Let me now come back on the ground, starting from the current deployment of the Lebanese Armed Forces (LAF) in UNIFIL AOR.

In Tyre, the Command of the South Litani Sector (CSLS) has been created for a better coordination of operations between LAF and UNIFIL.

This contingent is structured in 4 brigades (3 mechanized and one armored) with approximately 10.000 troops deployed.

They have more than 140 temporary infrastructures in our Area of Responsibility (AOR), around 45 on the blue line and more than 110 permanent check-points while, at the same time, performing regular patrols - day and night - and Unexploded Ordnances (UXOs) disposal, as well as escorting UNIFIL convoys outside the area of operations (especially toward Beirut) due to the constant threat of terrorist attacks.

As to UNIFIL, it is now composed of 26 contributing Nations[3]. Providing more than 12.800 troops.

Concerning the deployment on the ground:

- the Divisional HQ located in Naqoura, not far from the Israeli border;
- two Brigade-level sectors, under Italian and Spanish responsibility[4], each sector based on 4 maneuver task forces;

[3] Belgium, China, Cyprus, Croatia, France, Fyrom, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Ireland, Italy (about 2.500 TR.), South Korea, Luxemburg, Malaysia, Nepal, Netherlands, Poland, Portugal, Slovenia, Spain, Tanzania and Turkey.

[4] At present "ARIETE" ARMD Brigade.

- the Quick Reaction Force (QRF), a Battalion-level force, under direct Operational Control (OPCON) of the Force Commander as well as an Italian Multi-Role Heli Group;
- the already-mentioned MTF 448, under EUROMARFOR leadership;
- combat support and logistics units, including two Role-2 Hospitals (one per each sector).

I think it is clear that although several Nations are providing an important support, the operational framework is significantly based on the Forces of Italy, France, Spain and Germany.

Nevertheless, it is not only a matter of troops, numbers and / or contingents. This intervention should be comprehensive.

Considering the ongoing situation, it is maybe soon to talk about "lessons learned", but we still can draw some interesting considerations.

First of all, let me start with UNIFIL's main concerns.

In this respect, my personal considerations are related to the following points:

- it is obvious that in Beirut there is, at the moment, an institutional stalemate. The Lebanese State is rather weak and it is difficult to figure out a stable political future without considering the options of a political involvement of Hizbollah as well as a recruitment of its militias within the Lebanese Armed Forces (LAF). Furthermore the Government, because of its weakness, is perceived not as fully legitimate by part of the populace, especially the Shiite Community, while the Parliament is literally immobilized by internal disputes. This paralysis creates a political vacuum putting a burden over LAF that are already in bad conditions regarding equipment and training. Moreover, the loyalty of the Security Forces appears to be at least questionable;
- there is a poor coordination within the International Community regarding the security sector reform;
- Hizbollah considers itself a "Liberation Force" and, thus, it bases its legitimacy upon Israeli Forces presence in some parts of Lebanon, creating a sort of stalemate;
- there are some rooted problems that are still waiting for a solution (Shab'a Farms, Gajar Village and the Israeli kidnapped soldiers);
- Israeli overflights over Lebanon are undermining the credibility of the Central Government, as well as UNIFIL as an Interposition Force.

But we cannot deal with the Lebanese scenario without taking into account the international context. More in detail, I believe that the following indispensable conditions should be fulfilled:

- an active involvement of Syria and Iran in the political discussion regarding Lebanon;
- a sustainable solution to the problem of Palestinian refugee camps within Lebanon;
- a greater and univocal involvement of the International Community in the entire political process of the Middle East.

In conclusion, if the International Community wants to play a significant role in the global arena, there must be a general political cohesion as to the aims of every intervention. This cohesion needs to be supported by the strong will of all Nations and, last but not least, this determination should be expressed through a military effective, credible and coherent Force.

Let me now turn your attention towards the Italian contribution within the Afghan theatre of operations. As I said before, I will provide you just some hints, hoping to be clear enough and to give a significant picture of the situation.

First of all, the overall Italian effort in Afghanistan is about 2.100 troops with an average of more than 2.000. More in detail, in the District of Kabul, we are deploying about 1.100 soldiers while in the western part of the country, in the Heart Region, we are running the Regional Command West, which includes the Provincial Reconstruction Team and the Forward Support Base. In this case the overall figure of troops deployed is around 1.000 soldiers.

It is important to understand that one of the main task of Regional Commands is to coordinate all regional civil-military activities conducted by the military elements of the Provincial Reconstruction Teams (PRTs) in their Area of Responsibility under Operational Control of ISAF. And this is why NATO defines Provincial Reconstruction Team as a mixed organization composed of military units and civilian specialists with the assigned task of supporting all the activities carried out by GOs / NGOs in the Region.

Each PRT is tailored on a risk evaluation basis and taking into account the local geographical situations and the socio-economical conditions of the environment.

In August 2006, in line with the ISAF structure in place in the rest of Afghanistan, the former Kabul Multinational Brigade switched to the Regional Command Capital (RC(C)) even though, due to the special local conditions, RC(C) does not include any PRT[5].

Within Regional Command West there are four PRTs under RCC (W)'s Command, one for each Province. Beside the leadership of RCC (W) HQ (the Commander is Major General Fausto Macor), Italy is manning the Herat PRT, the

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[5] Commanding Officer is, at present, Brigadier General Federico Bonato, and Italy is also providing two other important Flag Positions: the HQ ISAF DCOS SUPT, and the Deputy Commander of the Regional Command Capital.

Joint Special Operation Task Group (JSOTG) and the Maneuver Units of the Combined Spanish-Italian Battle Group.

Another relevant task of the Italian Army in the Western Region of the Country is the contribution to Operational Mentoring Liaison Teams (OMLTs). According to the enhanced NATO commitment in supporting the development of the Afghan Army, Italy is providing those teams that are working closely to Afghan National Authorities (ANA) MENTORING IT at four different levels (Army, Corps, Brigade, Battalion and Combat Support).

OMLTs are providing training instruction to the units, as well as mentoring activities to the local staff. It is relevant to underline that in case of combat operations, they have the status of Military Counselors and consequently they do not havet any command responsibility on ANA's Units that are under the Command and Control of the Afghan National Authorities.

The current Italian manning, inside different OMLTs, is a considerable effort indeed. To summarize, I can proudly affirm that within the Italian AORs we are putting our best effort to achieve a regional approach, in line with NATO's view and this is also what we are trying to achieve in the Capital Region during our period of leadership.

But also in this case, as for the Lebanese theatre, it is not just a matter of troops, funding and contributing Countries.

I do believe that the intervention should be comprehensive and the contributing Nations should have a more flexible approach from typically full spectrum military operations, to dialogue, where appropriate and possible, not forgetting the importance (and the difficulty) to distinguish who is a real terrorist and who is not.

Such a strategy would probably let us comprehend the insurgents' strategies and, consequently, identify the proper lines of action and plan the adequate military options for our counterinsurgency operations.

In other words, an effective counterinsurgency requires strong, capable, national intelligence. Therefore, while training our soldiers and leaders, we must focus also on the study of language, history and culture of the areas in which we are likely to operate.

In Afghanistan the context is obviously complex because of the several enemy actors and factions involved - the already mentioned Al Qaeda, Taliban, tribal militias, criminals - but sometimes, on the opposite side, is also complex because many contributing Nations take part in the operations, each with different political perspectives, purposes and caveats imposed on its Contingent.

Maybe, we should try to apply the well known principle: win the hearts respecting the minds. This means neutralizing the opposing forces while having a more flexible approach based on security operations and dialogue. We must not forget that the Taliban, together with all their actions against human values and dignity of women and girls and their religious fundamentalism, were quite effective in controlling the territory. For the criminals we should leave the job to the Afghan Army and Police, doing much better of what we are doing for the growing of an

effective police force in terms of financial resources, better distribution of forces, training, monitoring and providing the necessary equipment.

Since operations take place amongst the people, if unity of command is not possible, at least we need on the civilian side a comprehensive approach that sets the context for the operation as a whole and that is source of guidance and sustainment for all the actions. United Nations should be involved in this process as well as civilian Governmental and non Governmental Organizations.

We are providing training, and we are mentoring the young Afghan Democratic Institution, but security within the Country is still a big problem. The bad security conditions are affecting the progress of the Coalition Forces in many areas and therefore we need more enablers (Special Forces, CIMIC Unit, Information Operations and more "Actionable" Intelligence).

I cannot stress strongly enough the importance of such a conceptual transformation, therefore military, political, International Community, must be all parts of the same *continuum*.

With this remark I conclude my presentation and I thank you for your kind attention.

I will be glad to answer any question that you might have.

FIRST SESSION

THE IMPLEMENTATION AND THE RESPECT OF INTERNATIONAL HUMANITARIAN RULES IN CURRENT INTERNATIONAL PEACE OPERATIONS

INTRODUCTORY REMARKS

Lt. Gen. (rtd) Carlo CABIGIOSU*

The theme of this morning's session is "Implementation and Respect of the International Human Rights in Peace Keeping Operations".

This is another demonstration of the engagement of a number of Institutions, of our old Europe, namely the International Institute of Humanitarian Law, the Centre of High Military Studies and the Italian Society for International Organization, in favour of the progress of existing rules in the conduct of military operations for the accomplishment of peace keeping missions established by the United Nations.

Europe is often considered to be a weak regional Organization because it is not capable of having an adequate level of political and military influence in world affairs, but, for sure, Europe has a lot to say in the area of law and rights. Most countries still refer, for their institutions, to Roman, Anglosaxon or Napoleonic law. The Seminar of today is well within this framework, in the attempt to clarify the compatibility of International Human Rights and International Humanitarian Law with the use of force that is an essential part of a peace keeping mission.

It is still an open issue which until now has been solved with a considerable amount of good will and practical solutions, but not always in full compliance of existing codes.

There is a number of situations and concepts which require attention, in order to achieve a common understanding by all those involved, of words like Rules of Engagement, interrogation, self defence, hostile act and hostile intent, proportionality, safe areas, etc…

We will listen to our speakers in preparation of the Autumn Round Table of the International Institute of Humanitarian Law, when some conclusions will be drawn for the benefit of this topic.

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KEY-NOTE SPEAKER

Col. (rtd) Charles GARRAWAY*

It has been said "*peacekeeping is not a job for soldiers - but only soldiers can do it*". It is this dichotomy that lies at the root of modern peace operations. Soldiers are associated with war fighting and yet are being called upon to restore or create peace.

This requires different skill sets from those traditionally imparted to the military. How has this come about?

First, the nature of conflict has changed. In the ninteenth century, life was much simpler. There was war and there was peace. War was the ultimate conclusion of political dialogue. The end of war was peace and each had its own separate legal regime.

It was not without reason that Oppenheim's great treatise on international law was divided into two parts, the law of war and the law of peace. War of course consisted of conflicts between States. Internal conflicts were off the radar of international law, being matters solely within the jurisdiction of domestic law.

Now the whole nature of conflict has changed. Whilst armed conflict still exists, the focus now is on internal conflicts, often ethnically driven. It is in into the middle of these violent and irregular conflicts, that regular armed forces find themselves trying desperately to hold a line to enable political authorities to find solutions to underlying problems that have often lasted for centuries. Furthermore, it has became increasingly difficult to distinguish between the various stratas of what I call "*the spectrum of violence*". Despite the best efforts of the International Court of Justice to provide guidance, it is often not clear whether a particular conflict is international or non-international - or even whether it is an armed conflict at all.

But amidst this new conflict anarchy, the legal regime has also become just as complicated. International law has expanded exponentially. The law of war, now more often referred to as the law of armed conflict or international humanitarian law, has gradually moved into the law of peace with attempts to regulate non-international armed conflicts. This began of course with Common Article 3 to the Geneva Conventions of 1949, continued with Additional Protocol II to those Conventions and Article 1(4) of Additional Protocol I and has expanded further with the growing influence of custumary international law as expounded by various international

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criminal tribunals. The extent of this expansion has been illustrated by the recent publication of the International Committee of the Red Cross Study into Custumary International Humanitarian Law in which 149 out of 161 Rules were considered applicable in both international and non-international armed conflict.

At the same time, the law of peace has expanded into areas traditionally reserved to the law of war. After 1945, the United Nations, in conjunction with its Charter objective to stop war as a means of dispute settlement, developed human rights law. Whilst this was indeed originally seen as part of the law of peace, it is now almost universally accepted that human rights do not cease to operate in time of war or other public emergency.

There may be derogations from some rights and in others the rights must be interpreted through the prism of the *lex specialis*, international humanitarian law, but human rights law continues to be applicable.

However, this too creates difficulty. International humanitarian law starts with the reality of armed conflict. In accepts armed conflict as the norm and takes the need for military operations to be conducted as a baseline for its provisions. Human rights law starts from the opposite end. Armed conflict is an exceptional circumstance and any restriction of rights to reflect such conflict must be minimum necessary. Put another way, whilst international humanitarian law seeks to create a balance between humanity and military necessity within its own precepts, human rights law allows for no such balance with every move towards military necessity requiring full justification on the particular facts.

Into all this are thrown those involved in peace support operations. What law applies to them? In cases where it is necessary to engage in conflict such as in the 1990 / 1 Persian Gulf War, there can be little doubt that international humanitarian law should apply.

Similary, in cases where their role is monitoring or observing - the current operations conducted by UNFICYP in Cyprus might be an example - it seems ridiculous to hold that they are bound by international humanitarian law. After all, they are not parties to any conflict. But what of the areas in between? These can range from operations where forces are simply trying to impose themselves between two antagonistic parties - and perhaps - to cases where multinational forces are deployed under UN mandate to support an existing authority. In such cases, their role is far from impartial. The forces currently deployed in Iraq and Afghanistan are example here.

In 1999, on the fiftieth anniversary of the Geneva Conventions, the then Secretary-General of the United Nations sought to resolve some of these difficulties with the publication of the Secretary-General's Bulletin on Observance by United Nations Forces of International Humanitarian Law. In some ways, this confused matters still further by the wording of the scope provision.

"*The fundamental principles and rules of international 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 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."

This was unfortunately phrased. The governing provision was supposed to be the fact that the forces had became combatants. However, the final sentence muddied the waters by indicating that any operation in which the use of force is permitted in self defence is subject to international humanitarian law. This is clearly incorrect as this would apply to even observer and monitoring missions and has inevitably damaged the effect of the Bulletin.

The subject of this morning's section is "*the implementation and respect of international humanitarian law rules*". However, before one can implement or respect rules, it is necessary to identify the rules themselves. It is when the rules are unclear and confused that implementation and respect is difficult. Examples are the Canadian experience in Somalia where soldiers did not seem to know exactly what rules were applicable and, in the United Kingdom, the infamous Camp Breadbasket case where soldiers were told in respect of captured looters to "work them hard". Soldiers operate well when given clear instructions - not so well when those instructions are unclear or they sense that their superiors are themselves unsure.

It follows that the greatest challenge that we face today in my view is identifying clear sets of rules that can be applied as far as possible across the spectrum. In part, this can be done by Rules of Engagement but, as has been drilled into us from the earliest days, Rules of Engagement are not the law but also contain policy and military factors. However, they may not be but they cannot exceed the law. Just as superior orders are no defence to war crimes, neither are Rules of Engagement.

Let me give just one area, the use of force. In International armed conflict, the rules under international humanitarian law are clear. All combatants are legitimate targets not because of what they are doing but because of who they are. Targeting is based on status not conduct. On the other hand, under human rights law, the entitlement to use force is directly linked to the threat posed. It must be necessary and proportionate, the minimum necessary to counter the threat - almost an *ad bellum* standard. How do these two fit together? For example, in Iraq in 2003, many argued that, even during the conflict phase, human rights standards operated behind the front line. But where is the front line? What are the rules that apply to a checkpoint on a supply route in those circumstances? This is even more marked in cases where forces are supporting a Government as in Iraq today and Afghanistan. Even if the Security Council Resolution authorizes "all necessary means", does that override international law? Are forces in Helmand or Fallujah governed by human rights based standards, essentially limited to responding to the threat, or international humanitarian law standards, status based? In some cases, it may not matter but there will inevitably come a case where the difference is vital and soldiers are called to account.

We expect a lot of our service personnel and the growing influence of international criminal law has increased the pressure under which they operate. However, if we require them to abide by the law - and threaten them with sanction if they do not - then at least they are entitled to know what the laws that apply are. That is the challenge that we face today and on that will implementation and respect depend.

PEACE OPERATIONS. THE HUMANITARIAN DIMENSION. THE ITALIAN COMMITMENT

Ambassador Giulio TERZI DI SANT'AGATA*

Still to this day civilians are the main victims of conflicts, despite the growing commitment of the United Nations and its Member States to ensure their protection, both within political bodies and at the operational level in the field. UN Secretary General Ban Ki-moon has drawn attention to what he has termed the *"protection agenda"*, indicating as critical elements: the distinction between combatants and civilians; the criterion of proportionality in military actions; the difficulty of access of humanitarian organizations; sexual violence; the use of certain types of weapons such as cluster munitions, which will hopefully be regulated by a legally binding international instrument.

The increase in number as well as the growing complexity of peace operations point to the need to better protect civilian populations; after the setbacks suffered in the nineties in the Former Yugoslavia, in Rwanda, in Somalia, this need has become an absolute priority and has underlined the essence of the "Italian way of peacekeeping". In the decision the Italian Government has taken over the last few years to participate, or often even to lead peace operations, the humanitarian aspect has not only been one reason but I would say the reason for our involvement. If humanitarian reasons are a key factor in launching these missions, the logic corollary is to pay special attention to the way these missions are conducted so that they fulfil effectively their goals, such as protection of minorities and respect of human rights. Italian peacekeepers are in Lebanon, Afghanistan, Kosovo not only to keep the peace but also - and equally importantly - to build it and secure it to the advantage of the living conditions of the populations. Beyond their security tasks, these forces help rebuild bridges, reactivate hospitals and essential services, and more broadly, ensure humanitarian assistance.

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A stronger commitment on the part of the international community in the humanitarian field should be sought, in particular at the United Nations. As non permanent member of the Security Council, Italy has been supporting a stronger civilian dimension for the stabilisation of Afghanistan; we insist so that every country in the region can be part of these efforts. In our view, the Security Council must acknowledge that the protection and safety of civilians should be an essential and priority element in the Council's decision-making process. In other words, true stability cannot be achieved without improving the civilians' living conditions. Every time the use of force is required, we face a difficult balance. Whenever the risk of excessive force exists, we should carefully consider the very reasons and the fundamental principles on the basis of which a peace operations is launched. Innocent victims and unneeded destruction could easily be seen as a contradiction of the original intent to "stabilise", to "defend minorities", to "protect", which are inherent in peacekeeping. Being fully aware of this aspect, we have supported the institution of a Security Council working group entrusted with examining this highly topical issue.

UN peacekeeping has gone from 20,000 peacekeepers in 2000 to the current figure of over 100,000. Former Secretary General Kofi Annan has recently underlined that UN capability is now overstretched; lack of resources may negatively affect the way these operations are carried out and their humanitarian dimension. Also with this in mind, we are constantly engaged - in our work - in incorporating in the mandate of peace operations "humanitarian tasks", assistance and specific provisions for the protection of civilians and the return of refugees and internally displaced persons.

Today's debate is, in my view, an opportunity not only to examine the most relevant aspects of humanitarian law but also, I believe, to reflect upon what could be defined as the humanitarian "policy" of the international community: that is to say, the "protection agenda" I was referring to earlier. Important developments have occurred over the past few years in this field and I believe it is worthwhile to recall these developments in our discussions. In the "protection agenda", the principle of the responsibility to protect and its humanitarian scope feature prominently. This principle adopts and better defines the concept of traditional humanitarian intervention: a right to intervene in state sovereignty. Formulated for the first time in 2001 by the International Commission on Intervention and State Sovereignty chaired by former Australian Foreign Minister Gareth Evans, this principle was taken up in the Outcome Document of the 2005 World Summit: paragraph 138 reads thus: "*Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes (…) We accept this responsibility and will act in accordance with it.*"

We accept this responsibility: a solemn affirmation of 192 Heads of State and Government. The following paragraph 139 goes beyond: "*The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means (…) to help to protect populations (…) In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in*

cooperation with relevant organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations (…)"

This definition, it has been noted, seems to weaken the innovative impact of the concept inasmuch as it emphasises the primary responsibility of national authorities and the use of peaceful means. Humanitarian intervention in a coercive form rests on a decision by the Security Council which - as many observe from past experience - has not been able to make timely decisions (suffice it to think of Kosovo in 1999) on account of the permanent members' veto power.

It seems to me, however, that this criticism does not take reality fully into account. The responsibility to protect, let us say it frankly, can only be the combination of two opposing principles and aspirations: the concept of sovereignty, on the one hand, steadfastly defended by emerging countries and, in the Security Council, by Russia and China; and on the other hand, the imperative of preventing and contracting in every possible way serious large-scale violations of human rights - the imperative of not remaining idle before massacres of civilians.

In any case, the responsibility to protect should not be automatically equated to armed intervention. To protect populations and prevent genocide has a meaning above all in the political-diplomatic sphere: preventive diplomacy, early-warning mechanisms, involvement of regional organisations are some of the best options available to the international community. Only when a country continues to fail to live up to its responsibilities is recourse to direct intervention advisable, if need be within the purview of Chapter VII of the UN Charter, following authorisation by the Security Council. There are those who maintain that making intervention dependent on the Security Council's authorisation does not in any way innovate; they underestimate, I believe, the evolving path that the Outcome Document has traced.

In this respect, there are two important considerations to make: first of all, the multilateral system and its main decision-making body, the Security Council, take on more direct responsibility to protect populations from genocide or very serious and large-scale human rights violations that can be perpetrated not only in inter-state conflicts but also in crises within States.

Italy supports this approach, having made multilateralism and the strengthening of the United Nations one of the pillars of its foreign policy. But another, equally meaningful aspect is that the responsibility to protect authorises the Security Council to take a stand even when there is no direct threat, as such, to international peace and security. It is true that recent experience shows how large-scale violations of human rights and humanitarian law go hand in hand with threats to international security or are at their origin; but it is possible to have situations in which this casual link is less clear or debatable. We are, therefore, facing a trend towards an expansion of the responsibility that the international community takes on, with humanitarian interventions that are not exclusively based on the need to preserve international stability, but rather on the legal and political legitimacy that the Security Council can confer upon an intervention within the scope of the responsibility to protect.

It is true that there is some difficulty in putting the principle of the responsibility to protect into practice. Limited progress has been made at the United Nations since

2005 in the development of the concept, which the World Summit entrusted mainly to the General Assembly. It is no accident that in 2007 the Secretary General felt the need to appoint, firstly, a Special Adviser on the prevention of genocide and then one on the responsibility to protect, charged with providing new impetus to the conceptual development of this principle and building consensus around it.

The basis of the responsibility to protect remains, however, in the initial study coordinated by Gareth Evans which identified the essential conditions for the Security Council to authorise the use of force: I find it remarkable that these conditions are exactly the same as those underpinning ordinary peace operations, that they appear to be entirely coherent with the objectives of humanitarian law. Among those conditions, we have the "just cause" one, that is, large scale loss of life, actual or apprehended: a "just cause" which rules out ulterior motives or other less transparent ends such as regime change; the possibility of limiting, to the maximum possible extent, suffering for the civilian populations and to be the last available option, as the last resort, after all political means have been exhausted. Other conditions include the use of proportional means, reasonable prospects of success, and the authorisation from the right authority, i.e. the Security Council.

I have meant to comment on the responsibility to protect to demonstrate the logical and even ethical link between humanitarian protection and the decision-making process that is to implement it concretely. The process of erosion of the shield of state sovereignty - of which the responsibility to protect is a manifestation like the development of the international jurisdiction (suffice it to think of the various *ad hoc* tribunals or of the International Criminal Court) - is a recent phenomenon that has gained momentum over the past ten-fifteen years. The road to follow in future is that of defining criteria and thresholds of tolerability - when, in other words, the violation, whether current or anticipated, is such as to warrant the intervention of the international community - being fully aware, however, that a decision to that effect is eminently political.

UN-OCHA PERSPECTIVE

Ms Emanuela-Chiara GILLARD*

Ladies and Gentlemen,

it is an honour to address you today. It is also a pleasure to be back among friends and former colleagues in this beautiful setting.

In my presentation I intend to address the topic of the present session, *the Implementation and Respect of International Humanitarian Rules in Current International Peace Operations*, from a slightly different angle than the other speakers. Rather than addressing the application of international humanitarian law and other relevant bodies of law, such as human rights law, to multinational forces themselves, I will focus on the role of such forces in promoting respect for international humanitarian law, in particular, in relation to the protection of civilians in armed conflict.

I would like to outline some of the activities that the Section of OCHA that I head has recently carried out or had as an objective for 2008 and in relation to which we already have or plan to engage with many of the organizations represented here today.

Reflecting the fact that, for the purposes of my presentation, what matters is the nature of the activities carried out by peace operations rather than the label assigned to the mission (peace-enforcement, peace-building peace-keeping, peace-support or other) I will use the intentionally vague term "multi-national forces" to cover all such operations.

1. The role of multinational forces in the protection of civilians in armed conflict

In the past decade, the Security Council has increasingly directed its attention to the plight of civilians in situations of armed conflict, recognising that this is an important dimension of its responsibility to maintain international peace and security. One of the ways in which it has done so is by the inclusion of activities aimed at enhancing the protection of civilians in the mandates of missions.

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The United Nations Mission in Sierra Leone, established by Security Council resolution 1270 in 1999, was the first peacekeeping mission with an express reference to protection of civilians in its mandate: *"within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence"*.

Since then, thanks to the efforts made in entrenching the protection of civilians in the work of the Security Council, the mandates of most peacekeeping missions include activities for the protection of civilians.

In 2006 the Security Council adopted a third thematic resolution on the protection of civilians in armed conflict, resolution 1674 of 28 April 2006, which set out the following non-exhaustive list of the types of activities for the protection of civilians with which multinational forces could be tasked:

- Protecting civilians in imminent threat of physical danger;
- Taking all feasible measures to ensure the security in and around camps of refugees and internally displaced persons and that of their inhabitants;
- Facilitating the provision of humanitarian assistance; and
- Creating conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons.

Obviously, the precise nature of necessary and appropriate activities will vary to take into account the realities of each particular context - *inter alia* in terms of:

- the protection challenges faced by the civilian population;
- the capacity of the force; and
- the situation on ground, including most notably the perception of the peacekeeping mission by the parties to the conflict and whether or not the mission has been drawn into the hostilities.

In this regard, by way of example, mention could be made of the mandate of the African Union Mission in Somalia (AMISOM) pursuant to Security Council resolution 1772 which, in view of the fact AMISOM has, to some extent been drawn into hostilities, only contains a minimal protection of civilians dimension. AMISOM is mandated to *"contribute as may be requested [by humanitarian actors] and within its capabilities to the creation of the necessary security conditions for the provision of humanitarian assistance"*.

The acceptance of the key role of multinational forces in promoting the protection of civilians is an important achievement. However, nearly ten years on from the first resolution granting an explicit protection of civilians mandate, it is time to take a closer look at steps that have been taken to integrate such mandates into the operations of the missions and their impact on the ground to determine whether this is in fact an effective tool or whether other approaches should be adopted for enhancing protection at the field level.

A request for guidance has also come from the peacekeeping missions

themselves. In November 2005 and May 2006 OCHA convened two roundtables to discuss the implementation of the protection of civilians activities in the mandates of the peacekeeping missions in the Democratic Republic of Congo and Cote d'Ivoire respectively. On both occasions participants highlighted *inter alia* the lack of guidance on how to interpret and implement these dimensions of the mandates, as well as the absence of clear definitions of "imminent threat of physical violence" or standard operating procedures to operationalise protection of civilians responsibilities in mandates.

In response OCHA and DPKO have launched a joint study on the implementation of such mandates. Recognising that the actual impact of protection of civilians language in Security Council resolutions in enhancing protection on the ground has been mixed, the study will examine the steps taken by all relevant actors to transform the protection of civilians from one of the objectives of the mission into actual protection activities on the ground.

The focus of the analysis will be twofold: first, and most obviously, the activities of uniformed personnel peacekeeping forces and police; and, secondly, the political dimension of the mission and the steps it has taken to promote the protection of civilians.

Every stage in the continuum from the decision to establish a mission with a protection of civilians mandate, to the actual implementation of such mandates is likely to have an impact on its effectiveness; from the negotiation of the language in the resolution, the decisions taken on the size, composition and structure of the peacekeeping mission, to the concept of operations and rules of engagement elaborated, the coordination structures established, to the strategies agreed and the mechanisms established to support them, and their actual implementation on the ground.

The objective of the study is to make recommendations for all relevant actors involved in the various stages from the elaboration of the protection of civilians mandate to its implementation on the ground (Security Council States, troop and police contributing countries, DPKO, OCHA, SRSGs) to improve all steps of the process so as to enhance the ability of the UN to protect civilians.

Work on the study will commence in April. It is expected to last one year and we hope to have the results in the spring of 2009.

2. Systematic dialogue with Security Council

A second key activity for OCHA's protection of civilians section ties in with the first step in the continuum of activities I have just mentioned: the Security Council's elaboration of peacekeeping operations' mandates. While well-established arrangements exist for the Departments of Political Affairs and Peacekeeping Operations to engage with the Security Council when the latter is establishing a new operation or renewing an existing one, to date OCHA's engagement has been on an *ad hoc*, bilateral manner, usually with the State responsible for drafting the resolution or a State sympathetic to protection of civilians concerns.

In order to systematise and render this dialogue more transparent and comprehensive, in his Sixth Report on the Protection of Civilians in Armed Conflict of

November 2007, the Secretary-General recommended the establishment of a Security Council Expert Group on the protection of civilians. Although reservations were expressed by some States, principally of a procedural nature, progress has been made in its establishment and I am very happy to be able to say that this initiative has received important support from Italy.

This forum will offer a key opportunity for the UN humanitarian community to brief all Security Council members on key protection of civilians concerns in a particular context, which presently are only outlined in a very general manner, if that, in the Secretary-General's reports to the Security Council, and to suggest possible activities that the mission could undertake to address them. Possible mandate language could also be suggested.

Additionally, this forum would be an opportunity for suggesting other language that could be included in Security Council resolutions to promote respect for international humanitarian law by parties to a conflict, including multinational forces, if they are participating in hostilities in the context under review, as was the case for example in the recent UNAMA renewal in resolution 1806.

At present the practice of the Security Council in calling upon parties to an armed conflict to respect the relevant rules of international humanitarian law has been less than consistent and not necessarily always legally accurate.

In 2002, OCHA produced an *Aide Memoire* to assist Security Council Member States to include protection of civilians elements in resolutions. We are currently in the process of updating it, to ensure it includes key protection of civilian concerns today; but also of upgrading it, by including template language that could guide the Security Council in the drafting of resolution and which reflects existing obligations under international humanitarian law.

It is expected that the updated *Aide Memoire* will be finalised by this summer and will hopefully be a useful tool in the work of the Expert Group.

3. Engagement with regional organisations

Finally, and very briefly, while the focus of my presentation so far has been the United Nations and in particular the Security Council, OCHA is also engaging with regional organisations to promote the protection of civilians in armed conflict and, in particular those organisations that have deployed multinational forces - most notably NATO, the European Union and the African Union.

To date we have engaged with NATO at field level in Afghanistan, at a protection of civilians workshop we convened last August, that brought together representatives of the Afghan Government, national security forces, senior commanders of the International Security Assistance Force and 'Operation Enduring Freedom', United Nations actors, non-governmental organisations, donors and regional civil society representatives to openly discuss protection concerns and make recommendations and develop strategies to address them.

NATO participated at high level and in an extremely constructive manner. We aim to replicate the exercise at provincial level and to have a similarly open discussion on the conduct of hostilities and other protection of civilians concerns.

We also intend to establish a dialogue on the protection of civilians with NATO at headquarter-to-headquarter level to discuss protection of civilians concerns - including, of course, compliance with international humanitarian law - and policy more generally.

With the EU our engagement to date has principally been in relation to the discussions of the Political Commission of the Parliamentary Assembly of EU and ACP Countries on protection of civilians during peace-keeping operations by the UN and regional organizations. We aim to expand this dialogue, to address protection of civilians concerns in arising in the context of EU deployments of forces, such as that to eastern Chad and north-eastern Central African Republic, as well as on protection policy.

Finally, a similar dialogue has also been established with the African Union - at present focusing on the activities of AMISOM. The intention is to expand this cooperation to the policy level, with one of the objectives being the facilitation of the development of an AU policy on protection of civilians in armed conflict - including by means of peace operations it may deploy.

4. Conclusion

By way of conclusion, I wish to thank the Institute for convening this very timely meeting and for giving OCHA the opportunity to outline its position and activities relevant to the role of peace operations in promoting respect for international humanitarian law. We would be happy to provide an update on progress made in the coming months or to discuss other related issues of common concern on which we are working, such as civil military relations, or the impact of integrated missions on humanitarian operations.

AN ICRC PERSPECTIVE

Dr. Tristan FERRARO *

Thank you Mr. Chairman, and thank you to the organizers for IHL and international peace operations.

Ladies and Gentlemen,

It is a pleasure and honour for me to address you today and to be part of this very eminent panel.

The topic of the present session is of particular relevance for the ICRC because it relates to activities carried out in countries plagued by armed conflicts or emerging therefrom, where my organization is often active. Moreover, it is directly connected to matters forming the bedrock of the ICRC mandate, that is to say the respect for IHL by the belligerents, including those acting on behalf of the international community.

In my short presentation, I would like to address some legal issues actually faced by the ICRC when interacting with multinational forces involved in peace operations. These considerations are therefore directly inspired by the ICRC operational experience in various contexts.

As a preliminary remark, I would like to underscore the vagueness of the concept of peace operations which seems to have recently replaced the classical dichotomy between peacekeeping and peace-enforcement operations. Obviously, the lines between such operations tend to be blurred, in particular with the advent of the concept of "integrated missions" as reflected in a recent internal document issued by the UN DPKO. In this respect, the use of the term "peace operations" - albeit very general -

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seems to embrace more adequately the variety of the tasks conducted within the framework of such operations, ranging for instance from maintenance of law and order to the direct administration of a whole territory. Nonetheless, in light of the tendency to label as "peace operations" any multinational intervention, a real necessity to clarify the terminology in particular by proposing a clear-cut definition of the concept of peace operations has arisen. Insistence on clarifying the nature of meaning of peace operations is not merely a lawyer's obsession with clarity and legal definitions; it is necessary because the legal character and nature of the operation may have a direct impact on the legal issues arising thereof, in particular a precise identification of the legal obligations and rights incumbent upon the forces deployed in such peace operations.

Whatever the content of such definition would be, it seems - without challenges - that it encompasses operations carried out under United Nations command and control, in particular peacekeeping operations. I will therefore address some of the legal challenges faced by such operations when implementing and respecting IHL. In this respect, many of my comments are also applicable - with the necessary adjustments - to multinational forces authorized by the Security Council or mandated by other inter-governmental organisations such as NATO, the European Union or the African Union.

My first comments relate to the issue of the legal qualification of the situation and the acceptance that IHL would apply when the conditions for its applicability are met. In this respect, it has always been the ICRC's view that IHL could be applicable to UN peace operations. The ICRC has also consistently underlined that IHL applicability depends upon circumstances as well as on the fulfilment of certain conditions. The nature of the situation and the correlative assessment of IHL applicability will be consequently determined on the basis of the facts on the grounds, irrespective of the formal mandate given to the UN peace operations by the Security Council and irrespective of the label given to the parties potentially opposed to UN peace forces. Therefore, IHL would govern the activities of a UN peace operation only if the UN forces participate in military action that reach the threshold of an armed conflict, be it international or non-international. In this respect, I would argue that the criteria necessary for determining the threshold of an armed conflict involving UN peace forces should not differ from those applicable to more "classical" forms of armed conflicts.

Yet, IHL obligations and protections are limited to times of armed conflict. Should the situation in which UN peace forces operate fall short of armed conflict, IHL will not be the legal framework of reference. Moreover, the ICRC would like to highlight that resort to force in self-defence does not necessarily entail IHL applicability when UN forces are not yet party to a conflict and when the use of force does not reach the threshold of an armed conflict. As we all know, self-defence is a notion of law enforcement and, with a different meaning, *jus ad bellum*, which has no bearing on IHL applicability.

The IHL material scope of application is also at stake when UN peace forces are drawn into hostilities. What would be the legal framework of reference? IHL applicable to international armed conflicts or IHL applicable to non-international armed conflicts? In this respect, it is the ICRC's position that if the UN peace force are fighting a State's force, the rules governing international armed conflict will apply. If they are opposed to a non-state organized armed group, the rules of non-international armed conflict will be applicable. While with regard to the rules regulating conduct of hostilities this probably does not make an important difference in practice, as many of the conventional rules regulating international armed conflicts are generally accepted as also applying in non international armed conflict as a matter of customary law, the issue is of importance when it comes to the status of the persons deprived of freedom. Concerning the status and fate of detainees in the hands of international peace forces, one has noticed with great attention the development of an initiative carried out by Denmark on handling detainees in peace support operations as well as the on-going drafting of a DPKO directive on the same subject matter. Needless to specify that an organisation such as the ICRC will follow this up with the view to ensuring that IHL standards will not be undermined during these processes.

In addition, I would like to draw some attention to the potential applicability of occupation law to UN peace operations. While such applicability may appear to be a kind of a taboo for the international organisation as well as for some troops contributing countries, one should ensure that this branch of IHL be not discarded outright and that the rights and obligations derived thereof will be applied when conditions for the applicability are met. In this respect, this body of law would provide some practical guidance in particular to situation in which the UN are using extensive administrative and/or legislative powers. Even if an analysis of the UN practise evidences that occupation law has not yet been used neither *de jure* nor *de facto*, the potential applicability of occupation law to peace operations should not be set aside and could be considered in future operations.

In its activities, the ICRC has been sometimes confronted to very restrictive interpretation of the IHL geographical and temporal scope of application, limiting the applicability of this *corpus juris* only to the precise time and place of actual hostilities. One should reject such an interpretation and uphold that the temporal and geographical scope of both internal and international armed conflicts extend beyond the exact time and place of hostilities. Although the Geneva Conventions are silent as to the geographical scope of an armed conflict, numerous IHL provisions suggest that they apply to the entire territory of the parties to the conflict and not just to the vicinity of actual hostilities. This interpretation is also well reflected in the jurisprudence developed by the ICTY in particular.

To conclude, I would like to draw some attention to the notion of accountability for violation of IHL obligations during peace operations. It is well accepted that the

individual criminal responsibility for violations of IHL committed during UN peace operations lies with the troops contributing States as indicated in the section 4 of 1999 Secretary General Bulletin on the observance by UN forces of IHL, this without prejudice to the relevant provisions set forth in the Rome Statute. On another plane, the responsibility of international organization and/or the troops contributing States needs further clarification, especially after the recent decisions rendered by the European Court on Human Rights in the *Behrami* and *Saramati* cases. In this respect, one can only be concerned with the potential consequences of these decisions, in particular the fact to identify the UN Security Council as the ultimate and only bearer of responsibility for possible violations of IHL obligations. As Prof. Luigi Conderelli already underscored in its writings, questions might be raised as to whether these decisions always conform to the reality of the exercise of command and control within the framework of a UN peace operations.

I thank you for your attention.

A NATO PERSPECTIVE

Mr Baldwin De Vidts*

Ladies and Gentlemen,

it is an honour to address this Seminar, organised by the International Institute of Humanitarian Law, in cooperation with the Centro Alti Studi per la Difesa, and the Società Italiana per l'Organizzazione Internazionale, with the support of the Italian Ministry of Foreign Affairs. The aim of the present seminar is to contribute to the preparation of the Sanremo Round Table in September this year, dealing with current problems of international humanitarian law and human rights in Peace Operations.

Within the short timeframe available, I would like to address some issues related to the handling and processing of persons detained during the conduct of Peace Support Operations.

Each NATO-led Operation requires a mandate from the North Atlantic Council, NATO's highest decision making body, which is composed of a representative of each of the 26 NATO member States. While the North Atlantic Council can decide on a NATO-led operation within its own authority, in practice such decisions refer either to relevant UN Security Council Resolution(s) or to a specific request for assistance emanating from a State(s).

Over the last years, NATO forces have become increasingly involved in out-of-area operations to maintain peace in different areas. These operations commonly defined as Peace Support Operations include missions such as humanitarian relief operations, peace-keeping and peace enforcement. Peace Support Operations have their own unique characteristics which might create some specific issues for NATO forces involved and conducting them.

Following a decision by the North Atlantic Council to initiate a NATO-led operation, the NATO military authorities have to prepare an Operational Plan, subject to the approval of the North Atlantic Council. Such Operational Plan will address all

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different aspects regarding such operation and will include detailed provisions, inter alia on the use of force, specific Rules of Engagement, provisions on jurisdiction and the settlement of claims as well as topics related to detention.

As a general principle, both the mandate established by the North Atlantic Council and the Operational Plan are based on the willingness of the member States of the Alliance to implement such operation, in full respect of applicable international law, including international humanitarian law, as well as relevant principles and norms of human rights law.

If there is no functioning local system of law enforcement, the NATO force may be responsible for maintaining basic law and order within the area of responsibility. In such cases, obviously, guidance will be provided and established on the procedures to be followed regarding detention of civilians and/or hostile forces or belligerents. Such guidance may be expressed in the Rules of Engagement, the operational order and other directives.

NATO forces and Nations participating in Peace Support Operations, under all circumstances, adhere to the provisions of international law, the Geneva Conventions and relevant national legislation proper to the State concerned that participates in the operation. It is the responsibility of the NATO command, in charge of the operation, and the States whose forces are participating in a particular operation, to include, in the Operational Plan, specific Rules of Engagement to be followed and also to include specific directions for the handling of captured personnel, including detainees suspected of crimes against humanity and war crimes.

In order to properly execute the mandate, it is required that NATO forces have the possibility to detain individuals. The aim is not only to protect NATO personnel and materiel, eventually in the context of the execution of the right of individual and collective self-defence; but also to safeguard and guarantee the success of the mission and the mandate as accorded by the North Atlantic Council, considering the UN Security Council Resolution(s) concerned. Indeed, it cannot be excluded that there are circumstances requiring detention, albeit temporary, of certain individuals.

Rules governing detention will take account of the specificity of each operation and will determine to what extent and in which context the detention of individuals is required. The possibility exists, that apart from the principal authorisation to detain, as spelt out in the Operational Plan as approved by the North Atlantic Council, proper implementing guidelines as well as the setting up of detention facilities are needed.

Those implementing detention rules will address, inter alia, the following issues:

- The basic principle, regarding any detention, is the need thereto, as a last resort, to avoid that the NATO operation is endangered. In a Peace Support Operation where the area of responsibility is under the sovereignty of a national Government that has functioning police and court structures, the Government of the Host Nation has to determine its own status and responsibilities under international law with regard to possible persons captured by its forces on its territory.

- Grounds for detention and standards to assess the circumstances leading up to detention have to be determined.
- Procedures and rules for detention, outlining all steps to be taken before a specific detention is made, have to be defined.
- Rules for the treatment of detainees and their rights and obligations.
- Reporting requirements within the chain of command, but also vis-à-vis third parties, in casu international humanitarian agencies.

While different types of detention exist and most will be only temporary, in any event, in principle, in case of detention by a NATO-led force, all efforts will be made to transfer as speedily as possible any detainee to the lawful authorities present in the area of operations.

Over time, some sensitive areas emerged and within the present framework I would like to refer briefly to the following: the level of treatment, visits and potential transfer.

Level of treatment could be a continuous bone of contention to determine the precise level of treatment. However, all persons regardless the detention circumstances have to be treated in a humane manner. Thereto, rules of behaviour towards detainees are established. In this context, it is reminded that NATO has no military personnel of its own, it will call upon military personnel belonging to the armed forces of a NATO member State or non-NATO Troop Contributing State. NATO rules on command and control make that, in principle, at first instance, it is the nationality of the force involved in detention that determines initially the procedures and rules by which an individual will be detained. National military personnel have to respect and implement the rules and standards imposed by their national command, i.e. all relevant provisions of international humanitarian law and human rights law imposed by the national law of the detaining State. NATO rules will complement national rules and thus create a uniform structure, under the responsibility of the operational Commander.

Regarding visits, regular visits are provided for and even if Troop Contributing Nations would establish independent inspection mechanisms, the International Red Cross as well as other human rights groups may have the right to schedule detainee visits. The only possible limitation on such visits would be the military operational requirements, that, either safety and security cannot be guaranteed, or that such visits may interfere with operations. In such cases, planned visits have to be rescheduled.

Transfer: as a general rule, in the case of the presence of competent local civilian authorities in the area of operation, any detainee will be transferred within a certain time period to such local authorities. Only under special circumstances, a detention could be extended by the Theatre Commander, in principle.

From these short observations, it has to be concluded that NATO detention authorities will strictly comply with the procedures defined by the NATO command, with the Rules of Engagement as approved by the North Atlantic Council, the UN

Security Council mandate(s) and applicable agreements that might be concluded with the Host Nation. Persons detained will be treated with respect and dignity and in compliance with applicable humanitarian law and human rights law standards.

Unfortunately, due to time restrictions, this presentation offers only a glance of the efforts made by the North Atlantic Treaty Organisation and Troop Contributing States to offer a coherent legal framework with regard to detention.

Thank you.

AN EU PERSPECTIVE

Mr Frederik NAERT*

Thank you Mr. Chairman, and thank you to the organizers for inviting the EU, as a relatively new crisis management actor, to express its views on the topic of this session.

Ladies and Gentlemen, in the time allotted to me, I would like to address four points: first, the scope of the EU's crisis management operations; second, the relevance of international humanitarian law to these operations; third, the relevance of human rights to these operations; and fourth, the respective responsibilities of the EU and of the participating States.

1. The scope of EU crisis management operations.

On the basis of article 17 of the Treaty on European Union, the EU has developed a European Security and Defence Policy (ESDP) which comprises a full array of civilian and military crisis management operations. Hereinafter, I will refer to these operations as 'ESDP operations'. These operations can be tailored to the specific situation and can vary greatly, ranging from consensual rule of law, border assistance or monitoring missions to peacekeeping and even "tasks of combat forces in crisis management, including peacemaking". The latter means peace enforcement and this is relevant to the question of the applicability of international humanitarian law. Therefore, contrary to a view that seems to be widely held, under its constituent treaty, the EU may undertake high intensity operations. Moreover, ideally the EU successively deploys different missions and instruments in the same conflict area as the situation develops. For example, in FYROM, a military operation was followed by a police mission with executive powers, a police advisory mission and subsequently

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by enhanced European Community assistance programmes. This wide range of missions and operations has an impact on the applicable law, as I will demonstrate in the next two points.

2. The relevance of international humanitarian law to ESDP operations.

The EU and its Member States accept that if EU-led forces are a party to an armed conflict, e.g. in a peace enforcement operation, international humanitarian law will fully apply to them, i.e. not only its principles. However, given the wide range of ESDP operations that I have just described and the fact that most of them have not been war fighting in nature, the law of armed conflict is not likely to be applicable in many ESDP operations. On this basis, EU policy is that international humanitarian law does not necessarily apply in all ESDP operations, although - obviously - it may be relevant to the relations between the parties to the conflict. Despite its likely non-applicability, the EU and its Member States remain fully aware of their potential obligations under international humanitarian law.

3. The relevance of human rights to ESDP operations.

When international humanitarian law does not apply, the EU primarily looks towards human rights law as the appropriate standard for the conduct of ESDP operations. Admittedly, the applicability of human rights *de iure* remains controversial in some respects, such as the extraterritorial application of the European Convention on Human Rights, the question of derogation in times of emergencies and its applicability to peace operations, the relationship between human rights and international humanitarian law and the impact of UN Security Council mandates on human rights. Nevertheless, as a matter of *policy* human rights provide significant guidance in ESDP operations. In practice, therefore, our operational planning and rules of engagement take into account internationally recognised standards of human rights law.

4. The respective responsibilities of the EU and of the participating States.

When it comes to international humanitarian law, the obligations in EU-led operations have so far been primarily conceived as resting on the participating States. Thus the Presidency Conclusions of the 19-20 June 2003 Thessaloniki European Council stated that "*The European Council stresses the importance of national armed forces observing applicable humanitarian law*" (emphasis added). The 2002 Salamanca Presidency Declaration similarly stressed participating state obligations[1]. This may perhaps be linked in part to the continuing controversy over the EU's legal status. As you may know, in contrast to the European *Communities*, the European *Union* has not yet been explicitly accorded international legal personality. While especially the EU's treaty practice, including in the area of the ESDP, has led most commentators to consider that the EU has implicitly acquired such personality, this is still denied by

[1] The outcome of the international humanitarian law European seminar of 22-24 April 2002 in Salamanca, Doc. DIH/Rev.01.Corr1, on file with the author.

some. Nevertheless, articles 6 and 11 of the EU Treaty clearly entail international law obligations for the EU and its institutions, including with regard to human rights and arguably also international humanitarian law. Also, it may be noted that the EU's legal status would be resolved if the Lisbon Treaty entered into force. In that case, the question of the EU's own international humanitarian law obligations will certainly need to be looked into in more detail. Obviously, the division of the responsibility of international organizations and that of their Member States remains a difficult issue that is being examined by the International Law Commission and cannot be settled by the EU alone.

This brings me to the end of my presentation. Ladies and Gentlemen, I realize I have gone somewhat beyond the confines of the topic, but given the specific nature of the EU's crisis management operations, I believe that was necessary. Thank you very much for your attention.

Further reading:

M. Trybus & N. White (eds.), *European Security Law*, Oxford, Oxford University Press, 2007 and especially the chapter by F. Naert on 'ESDP in Practice: Increasingly Varied and Ambitious EU Security and Defence Operations', at pp. 61-101;

Frederik Naert, International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights, thesis submitted with a view to obtaining the degree of Doctor in Laws at the Faculty of Law of the Catholic University of Leuven, 2008;

The conference reader of the 37th Asser Colloquium on European Law on 'The European Union and International Crisis Management: Legal and Policy Aspects' (The Hague, 11-12 October 2007) and the forthcoming proceedings of this conference, edited by S. Blockmans and to be published by TMC Asser Press in 2008, and especially the contributions by M. Zwanenburg on the ESDP and international humanitarian law and by F. Naert on human rights and the ESDP;

N. Ronzitti, 'L'applicabilità del diritto internazionale umanitario', in N. Ronzitti (ed.), *Le forze di pace dell'Unione Europea*, Roma, Rubbettino, 2005, pp. 165-194 (English summary at pp. 19-20);

G.-J. Van Hegelsom, 'Relevance of IHL in the Conduct of Petersberg Tasks', in College of Europe & ICRC (eds.), *Proceedings of the Bruges Colloquium. The Impact of International Humanitarian Law on Current Security Policy Trends. 26th – 27th October 2001 / Actes du colloque de Bruges. L'impact du droit international humanitaire sur l'évolution des politiques de sécurité. 26-27 octobre 2001*, Bruges, College of Europe (*collegium* No. 25, available online at:
http://www.coleurop.be/template.asp?pagename=pub_collegium), 2002, pp. 109-120.

AN OSCE PERSPECTIVE

Ms Sonya BRANDER*

Thank you Ambassador, Mr. Chairman. Ladies and Gentlemen, distinguished guests, I appreciate very much the opportunity to attend this seminar, to share some OSCE experiences and learn more from your experiences about the implementation of humanitarian law in a wider context.

Conflict Prevention is one of the main tasks of the OSCE which assists in a variety of "peace support" activities. Working in areas of unresolved conflicts and post-conflict situations, we engage in activities which facilitate the implementation of humanitarian law and the resolution of conflict, for example the protection of minorities (through the work of our High Commissioner on National Minorities), the monitoring of elections, addressing concerns regarding the freedom of the media and the return of refugees and IDPs, re-establishment and re-allocation of housing, monitoring of war crimes trials, taking witness accounts of atrocities (which are then maintained in our archives and made available to national and international war crimes tribunals) and lastly activities related to economic development crucial for the re-establishment of normal life in a post-conflict region. Many of our field operations are present in conflict or post-conflict zones.

The OSCE governing bodies implement peace support activities through decisions which require consensus: all participating States must agree on the mandate for such activities. While the possibility exists to do so, the OSCE has not yet carried out full-scale peacekeeping operations. Rules for the establishment of OSCE operations were agreed upon in 1992, in Helsinki, and include two important requirements that:

"(22) [OSCE] peacekeeping operations will not entail enforcement action and

(23) Peacekeeping operations require the consent of the parties directly concerned."

Following a review of OSCE activities in this area in 2003, participating States saw no need for a revision of these requirements in the Helsinki document. Instead

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the OSCE has focussed on activities which provide support for "early warning, conflict prevention and crisis management".

What is peace-keeping in the OSCE context?

In line with Chapter III of the Helsinki document, a peacekeeping operation will be based upon a mandate, will involve civilian and/or military personnel, may range from small-scale to large-scale, assume a variety of forms including observer and monitor missions and larger deployments of forces. Peacekeeping activities could be used, *inter alia*, to supervise and help maintain cease-fires, to monitor troop withdrawals, to support the maintenance of law and order, to provide humanitarian and medical aid and to assist refugees and will be undertaken with due regard to the responsibilities of the United Nations, in conformity with the Purposes and Principles of the Charter of the United Nations and within the framework of Chapter VIII of the Charter of the United Nations.

So, although the OSCE does not engage in peacekeeping in the traditional sense of the term it does assist in the monitoring of conflicts and peace support. I would like to give you an overview of two different activities currently being carried out by the OSCE in some key conflict zones in relation to peace operations.

These are the zones of the Georgian-Ossetian and Nagorno-Karabakh conflicts, both located in the South Caucasus. The OSCE provides assistance through the monitoring of the military situation, support for the process of political settlement of these conflicts, and, in the case of South Ossetia, implementation of project activities.

Nagorno-Karabakh Conflict

A High Level Planning Group was established in 1994, to develop plans for a multinational peacekeeping force to be deployed in the zone of the Nagorno-Karabakh (NK) conflict and asked to make recommendations to our governing bodies on developing a plan for the establishment, force structure requirements and operation of such an OSCE operation. The current head of this group is Finnish Navy Captain Erkki Platan. The group works out of Vienna and is composed of six military staff seconded by OSCE participating States, and one fixed-term contracted staff member. It has produced various options for a possible peacekeeping operation in NK. Its work complements other OSCE activities in this area, in particular, the work of the Personal Representative of the OSCE Chairman-in-Office, currently Amb. Andrzej Kasprzyk of Poland, who interacts with the Co-chairmen of the Minsk Group, the main vehicle for political negotiations on the settlement of the conflict.

Amb. Kasprzyk's mandate is, in brief, to assist the Chair of the OSCE in achieving an agreement on the cessation of the armed conflict and to assist the parties in implementing the cease-fire and encourage direct contacts between the parties.

Amb. Kasprzyk has been the Personal Representative (PR) since 1997. Implementation of the mandate of the Personal Representative depends to a great extent on progress in the negotiations relating to that conflict. With a team of field assistants who are unarmed, he monitors the line of contact and the border between Armenia and Azerbaijan gathering information regarding incidents in the area.

Monitoring usually takes place on a twice monthly basis. When monitoring is carried out, meetings with representatives of the local authorities can be organized in an effort to solve some of the acute problems faced by the local population because of the close proximity of the front lines. Monitoring has helped to increase stability along the line of contact and the border, provided valuable information about the situation on the ground, and permitted direct contact at the local level.

The office also maintains contact with UNHCR, the EU, the COE, the ICRC and other international organizations and NGOs. Since the beginning of the conflict, owing to incursions along the line of contact and the Armenian-Azerbaijani border and to various other incidents, a number of people were taken prisoner of war. In 1998, upon the suggestion of Amb. Kasprzyk and the OSCE Chair, discussions were initiated as to a more structured format for the release of prisoners of war. As a result, in co-operation with the ICRC a Mixed Commission on Missing Persons and Prisoners of War was established and has been very successful in arranging the release of prisoners of war. All releases are carried out under the aegis of the ICRC, in accordance with the rules governing such matters.

The office of the Personal Representative has functioned as a messenger between the parties and co-ordinated events at all levels. The office is seen as an important factor in the promotion of the peace process on the ground.

In addition, the PR organized, together with the Co-chairmen of the Minsk Group, two fact-finding missions to the area of conflict. The first visited the occupied territories around Nagorno-Karabakh to determine whether new settlements existed in this area. The second one examined and assessed fire affected areas along both sides of the line of contact. I should also mention that the office offered its assistance in a project to establish water sharing and facilitated cross border consultations involving de-mining specialists.

Amb. Kasprzyk's reports, both those which are shared with all the participating States and special reports sent only to members of the Minsk Group, the Secretariat and the High Level Planning Group, assist the Co-chairmen of the Minsk Group in assessing an on-going situation and in formulating plans for their activities.

Lt. Gen. Fabrizio Castagnetti, Hon. Lorenzo Forcieri, Maj. Gen. Sergio Sorbino

Ambassador Maurizio Moreno (IIHL), Maj. Gen. Sergio Sorbino (CASD),
Ambassador Umberto La Rocca (SIOI)

Welcome address - Ambassador Maurizio Moreno,
President of the International Institute of Humanitarian Law

Speakers and participants of the Seminar

Opening Statement - Hon. Lorenzo Forcieri, Secretary of State for Defence

Keynote speaker - Lt. Gen. Fabrizio Castagnetti, Chief of the Italian Army General Staff

SECOND SESSION

NEW CHALLENGES OF INTERNATIONAL HUMANITARIAN LAW. PERSPECTIVES OF DEVELOPMENT: ITS FURTHER EVOLUTION

INTRODUCTORY REMARKS

Prof. Michel VEUTHEY*

Merci mon général, merci Monsieur le Président.

Excellences, chers amis,

Merci au CASD de nous accueillir aujourd'hui dans cette magnifique maison. Nous avons cet après-midi une série d'intervenants distingués: le professeur Emmanuel Decaux, de Paris, le professeur Edoardo Greppi, le général Arto Räty de Finlande, Monsieur Stephen Pomper du Département d'Etat des Etats-Unis d'Amérique, le ministre Stefano Lazzarotto de l'ambassade de Suisse à Rome, Monsieur Denis Caillaux qui est ancien secrétaire général de CARE International et *last but not least*, Monsieur Daniel Nord qui est directeur adjoint du SIPRI à Stockholm.

Avant de donner la parole à notre key-note speaker, le professeur Decaux, permettez-moi de poser quelques questions qui resteront peut-être sans réponse mais qui peut-être donneront des idées. En tout cas, je pense qu'il y a quelques réflexions qui seront faites cette après-midi. De toute façon, comme nous le savons, c'est une réflexion continue que nous avons sur ce sujet si important.

Nous avons donc plusieurs questions, des questions que nous avons déjà en partie abordées ce matin: l'applicabilité du droit humanitaire, une applicabilité d'abord pour des personnes détenues, pour des prisonniers mais aussi une applicabilité aux civils, que ce soient les règles de protection contre les hostilités ou l'occupation; la question de la responsabilité; la question, également, de la mise en œuvre, qui est à la fois de la prévention des violations du droit humanitaire, la question du rôle des opérations de maintien de la paix dans la prévention de ces violations et puis aussi du rôle des opérations de maintien de la paix dans la constatation des violations, ainsi que dans la recherche des personnes prévenues pour des crimes de guerre. Puis il y a un problème plus particulier, mais qui se pose dans certains conflits, comme par exemple au Darfour: la collaboration avec la Cour Pénale Internationale et avec d'autres tribunaux pénaux nationaux ou internationaux. Enfin, un sujet qui

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évidemment intéresse tout particulièrement l'Institut de Sanremo est l'enseignement et la formation en droit humanitaire des forces de maintien de la paix. Finalement, une question que nous avons souvent soulevée ce matin est celle des règles d'engagement (ROE).

Premièrement, pour les prisonniers, il existe des solutions juridiques toutes faites dans certaines situations: l'application de la troisième Convention aux prisonniers de guerre, dans la mesure où justement on arrive à déterminer le statut de prisonnier de guerre; l'application de la quatrième Convention pour les dispositions relatives aux internés civils et puis l'application de dispositions fondamentales qui sont très proches de celles des droits de l'homme que nous trouvons dans le Protocole I de 1977, article 75, ou les articles 4 à 6 du Protocole II applicables dans les conflits armés non internationaux. Enfin l'article 3 commun qui, même s'il est très court, définit des choses fondamentales comme l'interdiction de la torture, les garanties judiciaires et les facilités accordées au CICR.

Deuxièmement, les règles applicables aux populations civiles comprennent la protection contre les hostilités, le droit de l'occupation, en particulier dans la quatrième Convention de 1949, mais aussi les règles coutumières, à commencer par celles de La Haye de 1907, et, à nouveau, l'article 3 commun.

Il y a également la question de la responsabilité. Qui est responsable? Est-ce que ce sont les Nations Unies en tant que telles? Est-ce que ce sont les opérations de maintien de la paix? Est-ce que la MONUC, par exemple, pourrait être tenue responsable? Ou est-ce que ce sont les contingents nationaux, c'est-à-dire les Etats qui envoient des contingents nationaux?

Troisième et dernier élément que je voulais vous donner brièvement cet après-midi: la mise en œuvre du droit humanitaire dans et par des opérations de maintien de la paix; d'abord sa mise en œuvre dans la prévention et la constatation des violations, la recherche des personnes prévenues, on l'a mentionné, la collaboration avec la Cour Pénale Internationale et la formation des règles d'engagement. Je pense surtout aussi qu'une question qu'on devrait se poser au début de toute discussion est celle de savoir si le droit international humanitaire est mentionné dans le mandat qui est donné aux forces de maintien de la paix.

Je vais maintenant donner la parole au professeur Emmanuel Decaux qui est le key-note speaker de cet après-midi. Le professeur Decaux enseigne à Paris et est un spécialiste des droits de l'homme. Il est membre de la Commission française des droits de l'homme et il aussi est l'auteur de nombreuses publications. Je suis très heureux de lui donner la parole maintenant.

KEY-NOTE SPEAKER

Prof. Emmanuel DECAUX*

There are a lot of challenges for International Humanitarian Law, old ones inherited from the unresolved regional crisis of the XX century, and new ones related to the global crisis of international order since September Eleven. But crisis is perhaps the normal situation of International Humanitarian Law.

I – The challenges of development of International Humanitarian Law.

1. The strengthening of international instruments.

The corpus of International Humanitarian Law is very impressive. On one hand, there is a strong network of international conventions : the Geneva conventions of 1949 are among the most ratified instruments - with 194 States Parties - but we must stress than the two Protocols of 1977 are still far away of an universal ratification, with 167 States Parties for Protocole I and 163 States Parties for Protocole II. And we have to add that the International Fact-Finding Commission of article 90 (Protocole I) is still a "sleeping beauty", when it would be very useful in a lot of critical situations, in need of impartial assessment, from Chad to Tibet … Unfortunalety, also, the non-Parties to the two Protocols are more often the hot spots of international crisis.

Furthermore, the current development of criminal international law is slowed by the will of major States actors, inside the Security Council, hampering the actual efficiency of the ICC. The 1948 Convention against genocide has only 130 States Parties, sixty years after its adoption and the Status of Roma of 1998, 106 States Parties, since the ratification of Madagascar, on the 14th of March 2008.

The incorporation of international crimes of the Rome Statute in domestic law is a still a challenge in a lot of country as France, with a draft still waiting to be voted by the Parliament. In the same way the French Court of Cassation considered that the Geneva Conventions are not self-executing, limiting the scope of the

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obligation "*to respect and to ensure respect*" for those Conventions. "In the absence of any direct effect of the four Geneva Conventions in regard to search and prosecution of the perpetrators of grave breaches, Article 689 of the Code of Criminal Procedure cannot be applied" in relation to the perpetrators of graves breaches of those Conventions on French territory [1].

But hopefully the new International Convention for the Protection of All Persons from Enforced Disappearance, open to signature in Paris, on the 6 of February 2007, is an important step to reinforce the "core" international instruments.

There is also room for progress with the Hague Convention of 1954 for the protection of cultural propriety in the event of armed conflict, with 118 States Parties, since the ratification of Japan in 2007. The first Protocol of 1954 has 97 Parties, but the second Protocol of 1999, entered in force in 2004, is still in backward with only 48 Parties. For example, French government seems to consider that the concept of "military necessity" is defined in too narrow terms by this Protocol. It will be useful to have a common position of members of the European Union and of the Atlantic Alliance to deal with this topic of great cultural relevance, as our countries know too well from the past

2. The codification of customary law.

On the other hand, there is an universal recognition of the status of International Humanitarian Law as customary law, with an unambiguous *opinio juris* of the dual nature of the main international obligations, as stressed by the doctrine[2], but the private codification of customary law and practice is a difficult enterprise. The seminal repertory of "Rules" and "Practice" of Customary International Humanitarian Law, just published under the auspices of the International Committee of the Red Cross[3], received mixted reviews from some scholars and political circles.

In itself this ambitious academic exercise of thousand pages is ambiguous, as an attempt of private codification under the auspices of the CICR but without the element of political commitment and ownership from the "stakeholders". It can also be seen as inadequate to focus the attention on priorities. Between the definition of "mimima humanitarian rules" and the stockpile of all the legal niceties of customary practice, isn't impossible to find a middle way to clarify and consolidate the content of International Humanitarian Law? Perhaps we can put the emphasis on very simple "rules of ethics", as the French "*code du soldat*", in order to stress the basic rules for the

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[1] Cour de cassation, chambre criminelle, 26 mars 1996, n° 132, *Savor.*

[2] Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law*, Clarendon University Press, Oxford, 1989.

[3] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol.I, *Rules*, vol.II, *Practice* (part I and II) ICRC, Cambridge University Press, 2005. There is only a French translation of the first volume, *Droit international humanitaire coutumier*, vol.I, *Règles*, CICR, Bruylant, 2006.

privates and for the officers [4]. So moral rules and legal regulations will reinforce themselves.

But the corpus of International Humanitarian Law is also directly challenged since September 11, with criticisms about its relevance in the new international context. United States of America tried to explore the ways of derogatory rules set in a new instrument in order to deal more conveniently with asymmetric wars, as the "war against terrorism"[5]. Not only the Bush administration argued of the need to up-date universal instruments with a new protocol, but it violates the basic rules of public international law, as with its own definition of torture, for example, creating a very dangerous precedent of the safety of American POW, in the future.

One indirect challenge to the very nature of International Humanitarian Law is also the onus of regional crisis, with the adoption of a third protocol on a new emblem, which can look as a good compromise to find a way out of a too long diplomatic impasse, but is in its nature a very discriminatory solution, with an abstract logo, in place of the "bouclier de David", on par with the Red Cross and the Red Crescent.

II – The challenges of implementation of International Humanitarian Law

Whatever, the more serious challenges are related to the implementation of the international norms. The basic assumptions of the IHL, since more than a century and an half, are questioned by the new trends of international conflicts. The interstate wars kept, by their very nature, an element of symmetry reciprocity and equilibrium, which favour the respect of international standards, as stressed for the "international armed conflicts". We are now confronted with a dual asymmetry.

1. The grey area of domestic crisis.

First, there are "non-international armed conflicts" with an international dimension, a spill over effect related to intervention in or by neighbouring States - like in Rwanda and in the DR of the Congo, in Sudan and Chad with the Darfur crisis, or more recently in Colombia for example. There are also a lot of international interventions, either on an unilateral basis or under an international umbrella, with triggering effect on the internal stability of a so-called failed State, like in Afghanistan or in Iraq. In the whole range of these situations it is very difficult to qualify the nature of the armed conflicts, with a mixt of international and non-international conflicts, regular armies and irregular forces on the turf.

There are also some very difficult situations in a "grey area" of domestic violence, as the Protocol II "shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar

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[4] General Jean-René Bachelet, *Pour une éthique du métier des armes, Vaincre la violence*, Vuibert, 2006.

[5] Cf. our article on « The International Laws of War and the Fight against Terrorism », in Samy Cohen (ed), *Democracies at War against Terrorism*, Palgrave Macmillan, (to be published), 2008.

nature, as not being armed conflict" (art.1 § 2). When an authoritarian regime answer with savage repression to the freedom of speech and to the right of "peaceful association", what are the relevant international standards? One can mention the general observation n° 29 of the Human Rights Committee and the principles on states of emergency established by Nicole Questiaux and Leandro Despouy for the Sub-Commission on Human Rights, but they are guidelines of "soft law"[6]. The recent crisis in Myanmar, in Pakistan, or nowadays in Tibet, underline the gap in the corpus of International Humanitarian Law, with a very paradoxical situation as peaceful demonstrators are unprotected when armed movements or even terrorists can enjoy full guarantees of international law, according to Article 1 § 4 of Protocole I.

It will be very useful to have a new set of universal standards, as with the Moscow document of the Human Dimension Conference of CSCE in 1991 - professor Giovanni Barberini was there, of course - and to have monitoring mechanisms for early warning. The UN Secretary General created in 2004 a mandate of personal counsellor against genocide and ethnic cleansing, but there are a lot of preventive steps before such qualification. The Human Rights Council ought to stress a clear mandate for protection, specially within its special session, without discrepancy and double standards. Perhaps the new HRC Consultative Committee can set guidelines, on the basis of the study of Nicole Questiaux and of Leandro Despouy.

2. The intervention of international organisations.

But there is another asymmetry with the presence of 'international forces", as peace-keepers form the UN or peace-makers authorized by a resolution of the Security Council. The juxtaposition of international forces with different legal standings, as OTAN forces or European forces with a UN mandate, but also national forces, with there own commanding chain, is an element of complexity, accentuated by the diversity of national contingents inside the international forces, with as much national regulations. The absence of common rules for the UN contingents, in regard of disciplinary or criminal measures - about rapes or other crimes of war - is a serious gap in the implementation of IHR, with the risk of double standards [7]. There is an urgent need of a set of basic principles about the implementation of international humanitarian law in the framework of UN peacekeeping, in order to put an end at the culture of impunity [8].

We have also to underline that international forces involved in peace-building

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[6] E/CN.4/Sub.2/1997/19.

[7] Cf. the report by Prince Zeid Al-Hussein to the Secretary General on a *Comprehensive strategy to eliminate future sexual exploitation and abuse in UN peacekeeping operations,* 25 March 2004, A/59/710, and for current developments, the report of the 6th Committee of the General Assembly, 2 November 2007, A/62/448.

[8] *Les Nations Unies et le droit international humanitaire - The United Nations and International Humanitarian Law*, Luigi Condorelli, Anne-Marie La Rosa and Sylvie Scherrer (ed), Pedone, Paris, 1996.

missions have also a large range of military, civil and political responsibilities, dealing with "law and order", in very tense situations as with mob riots in Kosovo. There as a need for a wide range of adapted means, from armed forces to military police, "gendarmerie" and police, in order to deal with proportionality and efficiently with any crisis.The onus of liability for violations of the right to life, by commission or by omission, is on the United Nations as such and not on Member States contributing to the mission, according to the Behrami and Saramati cases of the ECHR [9].

But in these political matters, the ECHR case-law is still very ambiguous. In the Bankovic case, the Court dismissed its jurisdiction *ratione loci*, stressing the narrow territorial range of the Convention as a regional instrument. In the Behrami and Saramati cases, the Court put forward both the issue of jurisdiction *ratione loci* and the issue of jurisdiction *ratione personae*, speaking in depth with the unique role and nature of the Security Council, is a sort of sacralisation of the United Nations' mandate for international peace and security. The pity is that with the unilateral declaration of independence from the Kosovo and the recognition of these independent by the major NATO States, the MINUK and the KFOR are now dealing with a challenging situation, "à contre-emploi", outside the express provisions of resolution 1244. The umbrella of the Security Council is still enough to dismiss the jurisdiction of the European Court against Members States ? The *ratione loci* argument is also very weak, as the European Court has to admit in the Issa case, stressing that it is impossible for a State to commit outside of its territory acts which are forbidden inside of the territory. So the core issues are related to the jurisdiction *ratione materiae*.

There is still a lot of uncertainty on these topic, but it is amazing to see a former French military judge write that the ECHR is not applicable "in time of war"[10]. It is sufficient to read article 15 al. 1 "In time of war or other public emergency threatening the life of the nation", or article 2 of the Protocol n° 6 : "in time of war or of imminent threat of war"...There is a strong case-law on armed conflicts from Cyprus to Federation of Russia. The issue is not to know if the Convention is applicable "in time of war", but the relevance of article 15 for peacemaking operations, with a mandate of the Security Council or without a clear mandate. The "emergency" regime ought to be extended to extra-territorial operations of NATO. Obviously it is impossible to comply strictly with the whole range of obligations of the ECHR, in a situation of crisis like in Kosovo or in Afghanistan, but articles 2 and 3 must be paramount, with the concept of "effective control".

A new trend of IHR is the accent put on the idea of justice. It was evident within the recent CICR consultations on the role of sanctions in ensuring greater respect for International Humanitarian Law. It concerned the appropriate forms of

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[9] ECHR, Decision *Behrami c. France* et *Saramati c. France, Germany and Norway*, 2 May 2007. Cf. Decision *Issa c. Turkey*, 16 November 2004.

[10]Pierre Bricard, « Recodification et modernisation de la justice militaire française », *Humanitas et Militaris*, Associaçao internacional das justices militares, n° 3, outubro 2007, p. 72.

reparation from victims of serious violations of IHR. It concerned also accountability for the perpetrators, individuals, groups or States. But with the overlapping of International Humanitarian Law and Human Rights Law, new difficulties arises, as stressed by the International Court of Justice case-law, RDC c. Uganda and RDC c. Rwanda[11]. The ICJ speaks for the first time of "*jus cogens*", in a very important legal development, but the implications on the law of State responsibility are still unclear. The judge ad hoc Joe Verhoven stressed in an individual statement, the "declaratory nature" of the case. The constatation of systematic violations was founded not on specific evidence but on credible reports, without precise imputation of international responsibility and with no legal consequence for the Sates as for the victims.

As the genocide case demonstrated it, we need to find a new coherence between the two Hague Courts, the old ICJ and the new ICC, in order to prevent the challenge of universal jurisdiction by domestic courts. The preventive nature of international criminal law is still to be demonstrated.

[11] ICJ, Judgment *Armed Activities on the Territory of the Congo*, RDC c. Uganda, 19 December 2005, and Judgment *Armed Activities on the Territory of the Congo*, RDC c. Rwanda, 6 February 2006.

SOME REFLECTIONS ON THE CHALLENGES WHICH INTERNATIONAL HUMANITARIAN LAW HAS TO FACE IN CONTEMPORARY ARMED CONFLICTS

Prof. Edoardo GREPPI*

In international humanitarian law some instruments have become old in their general conception. They basically take into account States as subjects of international relations. State sovereignty still plays an essential role.

Today, the international community is much more complex than the one which came out of the Westphalia Treaties of 1648 or the Vienna Congress of 1815 or even the San Francisco Charter of 1945. International Law has frequently to deal with actors lacking the requirements for legal personality. On the other hand, international rules are binding upon States having signed and ratified multilateral conventions and having accepted a growing amount of customary international law.

Armed conflicts reflect this situation rather clearly. Most contemporary wars are of an internal character. Many conflicts arise as the consequence of the failing of States.

The contemporary "Code of international humanitarian law", based on the Geneva Conventions of 1949, is still a milestone, but it is the result of a treaty-making process based on the paramount role of States. But it may not be always effective when the State has to face organisations other than States. A Westphalian response to a non-Westphalian challenge might not always be effective.

One of the main elements adding confusion to an already rather confused framework lies with the use of force requirements and its legitimacy.

Once upon a time there was "war". War traditionally implied an exclusive role played by States.

Today war, as such, has been banished by international law, both conventional (mainly the UN Charter, under Article 2, § 4) and customary international law (according to the International Court of Justice). Today we have "conflicts", "armed conflicts" of different nature. State and non-State actors are on the field together,

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sometimes in very complicated situations. International conflicts, internal conflicts, conflicts of a mixed nature: this is the prevailing contemporary picture. Moreover, once upon a time war was a possible and legitimate option in international relations. Today, the UN Charter and customary international law have a set of basic principles as far as the use of force is concerned.

But international law is essentially a set of rules made by States to be applied by States.

What about those conflicts which are in a kind of grey zone, between the two branches of international law - law of peace, law of war, to follow Oppenheim's classic treatise?

All this has a relevant impact on peace-keeping and peace-enforcing operations.

Boutros Boutros-Ghali made a clear and still valid assessment in his *Agenda for Peace*, published in 1995. According to the Secretary General, "many of today's conflicts are within States rather than between States (…), and there is a "*rash of wars within newly independent States, often of a religious or ethnic character and often involving unusual violence and cruelty. (…) Inter-State wars, by contrast, have become infrequent*".

The main features are that "*they are usually fought not only by regular armies but also by militias and armed civilians with little discipline and with ill-defined chains of command. They are often guerrilla wars without clear front lines. Civilians are the main victims and often the main targets. Humanitarian emergencies are commonplace, and the combatant authorities, insofar as they can be called authorities, lack the capacity to cope with them*". In too many situations, is the conclusion, the international community is called to face "the collapse of State institutions" (*An Agenda for Peace*, New York 1995, pages 7-9).

This is the paradox. International humanitarian law rules are supposed to be implemented by State institutions. But in many situations these institutions are too weak or they do not exist any more.

It is true that also non-State entities are supposed to be bound By international customary law rules, but the practice shows that respect is very difficult to be granted.

In the field of the evolution of the existing rules (which are still mostly adequate), international humanitarian law should find the way to address the issue of non-State entities as new actors in armed conflicts. This is particularly relevant as far as the third and fourth Geneva Conventions are concerned, namely in the fields of prisoners of war, civilians, military occupation. In these cases, the international community has to face situations in which international humanitarian law is closely linked to (and interlocked with) human rights law.

Going back to the issue of legitimacy, one of the key factors is the nature of the conflict, and then - as a consequence - the status of those who are expected to act on the field.

We have peacekeeping operations under UN authority: these do not pose major problems. No doubt about their legitimacy.

Other operations are outside the UN framework. Here States are placed under international law rules, because they are bound by existing norms, both treaty law

and customary international law.

In both situations, States and their organs are fully accountable. International humanitarian law and human rights law are applicable.

Problems mainly arise on the side of the other actors. Who is accountable? And to which extent?

A couple of examples may help to understand what I mean. Afghanistan and Iraq. There we have regular armed forces, under the authority of international organisations.

Then we have contractors, private entities not always of a clear legal nature. If we add local armed forces and the police (under the formal authority of governments which do not control the territory), and then fighting tribes, "war lords", terrorists, we have quite a complicated picture.

We should also add the most recent cases of a new kind of protectorate in some Balkans situations.

I also wanted to mention the "responsibility to protect", but this issue has already been dealt with by Ambassador Giulio Terzi, this morning. It is quite a relevant issue, as it touches upon the relationship between international humanitarian law and human rights law, involving the discussion on the so-called "humanitarian intervention".

Several UN documents referred to the principle of the responsibility to protect as an "emerging norm" in international law. The practice of Sates is still insufficient to allow us to conclude that such a norm already exists. But it seems an interesting trend towards the accomplishment of a true "human security" based on the effective protection of human beings.

Then I would like to draw your attention to the necessary link between international humanitarian law and international criminal justice.

To promote the respect of international humanitarian law we need broadly accepted international criminal justice institutions and mechanisms. This first of all means ratification of the Rome Statute of the International Criminal Court (ICC) by those States still reluctant to accept the jurisdiction of the Court.

And this furthermore implies cooperation between States and international criminal jurisdictions such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the ICC.

One example is sufficient to clarify the importance of this issue: Radovan Karadzic and Ratko Mladic. Both States and international organisations failed to effectively cooperate with the ICTY, and two top criminals are still free and - what is even worse - protected.

A short final remark to underline the paramount importance of training.

The armed forces are generally active in this field, and there is a high degree of consciousness among top levels of the chains of command in most States.

But contemporary armed conflicts, with their disturbing amount of non-State actors, call for the spreading of training in the population at large, in compliance with Article 83, Geneva Protocol I of June 8, 1977.

International humanitarian law should be brought to the attention of civilians and not only to that of the military. The 1949 Geneva Conventions should be extensively disseminated in schools and universities.

Let us look at some recent trials of war crimes and crimes against humanity perpetrators. From Dusko Tadic (a former café owner) to Erich Priebke (waiter in London and Sanremo before the second world war) or Michael Seifert (waiter in Canada after the second world war), we know that they were not officers in regular army units, trained in military academies: all of them worked in cafes or hotels.

This probably means - and it is not a joke - that international humanitarian law training should be more widely disseminated, and included in hotel and restaurant personnel training programmes as well.

INTERNATIONAL HUMANITARIAN LAW CHALLENGED BY TODAY'S MILITARY OPERATIONS

Maj. Gen. Arto RÄTY*

1. State action against terrorism

State action against international terrorism, in particular in the context of what is called "a global war against terror", raises questions that go to the very core of international humanitarian law and human rights law. The focus of this seminar, very rightly in my view, has been put on international humanitarian law which can be seen as being directly challenged by the very concept of a global war waged against an unidentified and geographically dispersed enemy.

The main challenges relate to the treatment of detainees in contravention with international standards. Irregular renditions, indefinite internment, inhumane treatment and denial of legal remedies are parts of a problem we have to deal with in substantive terms, not only as a problem of public relations.

2. International criminal tribunals

The past decade has seen an intensive normative and institutional development in the area of international humanitarian law. The increasingly active role of the UN Security Council in this area includes the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda but also the extension of the concept of threat to international peace and security to large-scale violations of human rights and international humanitarian law. The case law of the two ad hoc Tribunals has contributed in an important way to clarifying the existing law, and the establishment of the permanent International Criminal Court provides a means for its effective enforcement. Finland has been a strong supporter of the ICC from the very beginning. The universalisation of the ICC's jurisdiction remains a key challenge, while the ratification of the Rome Statute by Japan in 2007 was a major advancement towards this goal.

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3. The clarification of the content of IHL

Detailed knowledge of international humanitarian law tends to be limited to the closed circles of military and international lawyers. One reason for this may be related to the complicated nature of humanitarian treaty law, with different thresholds of applicability for different rules. One of the challenges to IHL today is precisely the need to be able to counter the recurrent argument that IHL is unclear, that there are no rules, and that the existing rules do not meet the reality of today's conflicts.

In this respect, the publication of the ICRC study on customary international humanitarian law was a landmark event. The study shows that state practice in the past decades has in fact gone beyond existing treaty law and extended the application of the fundamental rules to different types of conflicts.

4. Dissemination of IHL

Lack of knowledge may lead to lack of sensitivity to the violations of IHL, and to insecurity as to whether one should speak out when the Geneva Conventions are ignored. This may be an impediment to reacting against violations of IHL in a consistent manner.

The European Union has addressed this problem by adopting the EU Guidelines on International Humanitarian Law in 2005. These Guidelines are meant to enhance the coherence and consistency of EU policies and actions by mainstreaming IHL considerations in its Common Foreign and Security Policy. The EU also actively promotes dissemination and training of IHL, in particular to military and civilian personnel involved in EU crisis management operations.

5. Neutral and independent humanitarian action

Humanitarian aid organizations have voiced increasing concern over the impact of the blurring of the distinction of humanitarian action on the one hand, and of action motivated by military or political considerations on the other. Aid workers fear their security and freedom of action within conflict areas are threatened if their independence and impartiality are no longer recognized.

In 2003, the *Good Humanitarian Donorship* initiative was launched in Stockholm by 16 donor governments, the European Commission, the OECD, the ICRC, as well as group of NGOs and academics. The GHD principles underline the importance of the independence, impartiality and equality of humanitarian aid and provide a framework for tackling the concerns raised by aid organizations in this respect.

The programme of this seminar highlights the challenges and complications of the issue and I am confident it will give rise to a fruitful debate.

6. Challenges to military leaders following the principles of IHL in Crisis Management Operations

Crisis Management Operations of today are multidimensional and complex. The tasks may vary from war fighting scenario to humanitarian aid, especially in the early stages of the mission. You may witness cases ranging from domestic violence to genocide. It is usually expected that the military component is

offering a safe and secure environment and freedom of movement not only to itself but also for a variety of actors participating in the operation in an environment where the parties of the conflict or the opposing militant forces are neither following international nor humanitarian law.

Military leaders face high expectations from the population as well as from their superiors tasking the mission. The operation may be run in an environment where you can not identify the parties of the conflict. The insurgents may take refuge among general population or refugees. One question is how to handle resistance or armed action conducted by minors. You may also be missing reliable counterparts or they are non-existent.

The tasks of the military component are regulated by the mandate, Rules of Engagement, OP-orders and SOPs all of which should have been written having principles of IHL included. Also national caveats exist. Military has in most cases also to follow their national laws. The military leader may face a situation where he has to take actions against corruption and severe crime or abuses of humanitarian law which are definitely not usual military tasks. Sometimes the ROE, Op-orders and regulations clearly state what the force is authorized to do and what not to. In some cases law enforcement, maintenance of public order or safeguarding the human rights of local population are ruled out of authorization. The case may be that the mandate or permissive approach by the local rulers is dependant on their sovereignty to control their areas. In these cases the foreign military force is left with no authority or justification to interfere in offences carried out by the local rulers. This is in contradiction with the training of and common sense. Examples of this dilemma can be seen in many past conflicts.

REMARKS ON THE FUTURE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

Mr Stephen POMPER*

It is a great pleasure to be able to participate in this seminar, and I want to thank our hosts, for all of the work that they have put into organizing this event. I also want to acknowledge the thoughtful remarks of the other presenters here today. For my part, the organizers have asked me to offer some thoughts on the future evolution of International Humanitarian Law (IHL) from the perspective of the U.S. Department of State. This of course is no small topic to cover in 10 minutes, but it is a topic on which the U.S. Legal Adviser, John Bellinger, has been actively engaged, and I am delighted to have the chance to offer you these few observations. I should note that while my objective is to present an accurate picture of the U.S. government's perspective, I am here in my personal capacity and my remarks accordingly do not reflect the official position of the U.S. government.

1. New Challenges Confront an Older Framework

While of course I don't have a good enough crystal ball to predict specifically how IHL will develop in the years ahead, I can identify for you a number of areas where we think the existing framework leaves us with questions that need better answers. In saying this I want to emphasize in the strongest possible terms that the United States is committed to the fulfillment of its obligations under the existing Conventions. But the bulk of those Conventions were framed decades ago, with a view toward regulating traditional international armed conflicts between states - not cross-border conflicts between States and often clandestine terrorist groups that may be operating half a world away.

Indeed only one provision in the 1949 Conventions speaks to conflicts of a non-international character. And while that provision - Common Article 3 - affords baseline humane treatment guarantees and procedural safeguards for non-international armed conflicts, it does not answer some of the important and challenging questions that arise in the conflicts that we find ourselves facing.

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These questions include:

- Who at the individual level should be treated as belligerents in this conflict?
- What specific procedural protections should these individuals receive if detained?
- When can a conflict of this nature be said to end?
- And what are a State's options and obligations for dealing with individuals who are eligible to be released from detention but who face an unacceptable risk of mistreatment if sent back to their home countries?

The U.S. legal adviser, John Bellinger, explored these questions recently in a speech at Oxford, and at the risk of repeating what some of you may have already heard if in attendance there, I'm going to revisit a few of the points he made as they bear directly on the question that I've been asked to address.

2. Looking for Answers in Existing Law

Before I get into the four questions themselves, there is one preliminary issue I want to address, and that is the issue of whether or not the four questions might reasonably be answered by looking outside the 1949 Conventions - either in other IHL treaty provisions, or in customary law, or in other areas of law altogether. The U.S. believes the better view is that they cannot satisfactorily be addressed in this way, and I want to explain how we get to this conclusion.

First, we must look at other IHL treaty provisions to see if they provide assistance. Assuming that the conflicts we are discussing are non-international in character (an assumption that tracks our Supreme Court's decision in the Hamdan case) then aside from Common Article 3 there is very little else that provides any guidance. Additional Protocol II, to which the U.S. is not a Party, does flesh out Common Article 3 a bit - particularly in Articles 4 through 6 - but it does not reach the issues I have mentioned. Many States take the view that Article 75 of Additional Protocol I memorializes safeguards that apply to any armed conflict detainee in enemy hands, but even these somewhat more detailed provisions for the most part leave our questions unanswered.

So could we look instead to customary law for answers to these questions? Perhaps, but the determination of customary norms is a challenging enterprise. It requires searching inquiry into the density of State practice and *opinio juris*, and in the area of IHL this process is particularly complicated because many rules that might be considered to be customary in fact overlap with the provisions of the Geneva Conventions and Protocols, and it can be difficult to tease out whether State practice arises out of a sense of treaty law obligation, or out of a separate *opinio juris*. The U.S. noted some of the methodological challenges that arise when seeking to establish the existence of a customary rule in a letter to the ICRC following the publication of its customary IHL study, and I believe that commentators from other countries such as the United Kingdom have also noted some of these challenges.

What about looking at other bodies of law, such as human rights law for guidance? I think that the most that can be said here is that the applicability of these rules can be significantly constrained, depending on the nature of a State's treaty obligations, and that they need to be examined on a case-by-case basis. Some human rights rules may be territorially limited, as are the U.S. government's under the International Covenant on Civil and Political Rights. In other instances, IHL as *lex specialis* displaces human rights rules that might apply in peacetime - e.g., rules protecting the "right to life" or procedural protections that cannot be realistically implemented in a battlefield setting. And in other instances, they may be to some extent displaced by UN Security Council resolutions - as was the case with Article 5 of the European Convention on Human Rights in the recent Al Jedda case in the UK.

UN Security Council resolutions are of course another possible source of law and guidance on the questions that I have mentioned, although to date they have largely been tailored to the specifics of particular UN-mandated operations, and have not sought to promulgate rules of general application.

3. Open Questions

Having explained why current law outside the Geneva Conventions really doesn't answer the four questions I've identified, I'd like to turn back to those questions.

The first question concerns "who" specifically should be treated as a belligerent in a conflict with a non-State actor. As we have seen, States may be drawn into conflicts with non-State groups as a matter of their inherent right of self-defense. But what does being in a conflict with a non-State group mean at the individual level? There is language in Article 13 of Additional Protocol II and its commentaries suggesting that in a conflict with an armed group, either individuals belonging to the armed group, or individuals who are at the time directly participating in hostilities may be attacked. But who specifically can be said to "belong" to an armed group for these purposes, and what does it mean to "directly participate in hostilities"? Does the senior command structure alone "belong" to the group? What about foot soldiers who regularly appear on the battlefield? Or individuals who run and recruit for training camps? Do major financiers who make the armed group's engagement possible directly participate in hostilities?

In an effort to, among other things, answer questions of this nature the ICRC and Asser Institute have over the past five years prepared a major work on the issue of Direct Participant of Hostilities (DPH). According to previews, the over sixty pages study creates a functional test for what it means to "belong" to an armed group and a complex three-part test for what it means to participate directly in hostilities. The study represents an enormous amount of work and will be a useful reference point, but I have to emphasize that it is the product of expert consultations; it is not a source of law, and States are going to need some time to study the recommendations before we have a sense of its likely impact. It is also worth noting that the ICRC/Asser study deals strictly with the question of "who can be attacked" and not the question of who can be detained in armed conflict. These questions are distinct, since as we know the Fourth Geneva Convention makes clear that civilians can be detained for imperative

reasons of security even when immune from attack. The bottom line, then, is that while the ICRC/Asser guidance document will no doubt be illuminating, it is unlikely by itself to provide the kind of supplementary legal scaffolding that States may be looking for on this first question.

The second question relates to the review of detention in conflicts with transnational terrorist groups. Unlike in international armed conflicts, where Article 5 of the Third Geneva Convention creates minimum procedures for determining Prisoners of War (POW) status in cases of doubt, there is no similar provision for determining whether someone is a belligerent who merits detention in either Common Article 3 or Additional Protocol II. Particularly because the individuals detained in these conflicts often do not hold themselves out as combatants, the question presents itself: How can a State be certain it is holding the right people?

This is a question that all branches of the US government have wrestled with, and that the Supreme Court is looking at now in the Boumédienne *habeas corpus* case that will be decided later this spring (well before the experts reconvene in September's Round Table). Where we are right now is that all of our major military detention operations provide some form of initial administrative review of detention, sometimes supplemented by judicial review as well. This is true in Afghanistan, Iraq, and at Guantanamo. In a sense, these procedures almost look like what one would design if applying Article 43 of the Fourth Geneva Convention, which requires that protected persons placed in internment or assigned residence "*shall be entitled to have such action reconsidered as soon as possible by an appropriate court of administrative board.*" But in fact these procedures derive from a combination of prudential considerations combined with cues afforded by domestic courts applying largely domestic law.

The third question is somewhat related, and it is: How do we know when the conflict is over and the individuals we have detained can be released? Traditional armed conflicts ended with ceremonial treaty signings, but it's hard to imagine a conflict with a group like Al Qaeda ending in the same way. And if we start from the standard IHL premise that belligerents are detained for the duration of an armed conflict because we don't want them returning to the fight, then we need to have a bit more clarity on what the end state for one of these contemporary armed conflicts would look like. One way to achieve this may be to think about these conflicts in a more individualized way: For example, two U.S. international law scholars - Curt Bradley and Jack Goldsmith - have suggested that administrative reviews could be used to determine whether the fight has ended with respect to a particular detainee. In a sense, this is very much like what the US has been doing, in performing annual Administrative Review Board assessments of Guantanamo detainees to determine whether they can be transferred or released in a manner consistent with the security needs of the US and its allies. While this system has not permitted us to move toward closure of the Guantanamo facility as quickly as some would like (and has also involved security risks - the Defense Department reports that at least 30 released detainees have subsequently returned to the fight) it at least offers the USG some options for truncating the detention of individuals in the absence of a formal end of conflict.

Finally there is the question of what standards and procedures govern releases and transfers of detainees who are approved to go home. This is another tough area. If the individuals in question were POWs, Article 118 of the Third Geneva Convention would simply provide for them to be repatriated as soon as possible at the end of the conflict. But Article 118 says nothing about what to do when individual faces a risk of mistreatment upon return, and in any case, Article 118 does not apply.

In practice the USG has not been comfortable turning a blind eye to treatment concerns, and we have accordingly established a firm policy that we will not move eligible individuals to countries where we have determined they are more likely than not to be tortured. As a practical matter this policy raises very significant challenges. Many detainees come from countries with generally poor human rights records that are even poorer when it comes to the history of how they treat individuals suspected of terrorism. In some cases the USG has been able to overcome concerns by getting assurances from the receiving government and coupling those with an appropriate follow-up/monitoring regime. In other cases - such as with the Uighur population at Guantanamo - we were not able to overcome those concerns and have been forced to seek third country resettlements. Identifying humane and pragmatic alternatives for resettling individuals in this category will remain a significant challenge for us and the international community.

4. What Next?

The last question of course is how the international community will go about answering the four questions I've just posed. On this last question I can only speculate. I can say that the idea of negotiating a new instrument is daunting, and that senior USG officials have noted on more than one occasion it seems premature to discuss such an exercise. A more immediate goal might be to strive for a deeper level of engagement and debate on the questions I've noted today. For the present the answers to these questions are being provided through a patchwork of different sources in both domestic and international law and policy. One of our principle challenges, as we contemplate the future evolution of IHL, is how to draw from this patchwork the threads of a common approach that will lend greater certainty, cohesion, and legitimacy to international efforts to meet the common threats that the international community will need to face together.

CURRENT CHALLENGES OF INTERNATIONAL HUMANITARIAN LAW

Minister Stefano LAZZAROTTO*

Mr. the Vice-President,
Dear Members of the International Institute of Humanitarian Law,
Distinguished Professors and Experts,
Ladies and Gentlemen,
Dear Colleagues,

It is a great honour and a real pleasure for me to take part in this seminar and to have been given the opportunity to address this audience. I would like to thank the International Institute of Humanitarian Law, il Centro Alti Studi per la Difesa, la Società Italiana per l'Organizzazione Internazionale as well as the Italian Foreign Affairs Ministry for organizing or supporting such an event.

As you all know, International humanitarian law (IHL) is currently going through a very difficult period. Firstly, IHL faces numerous challenges in particular due to the nature of recent conflicts, to the multiplication of non-state actors taking a direct part in armed conflict, and also to new means or methods of warfare, such as "cyber war". Another challenge lies in defining and clarifying the interrelationship between IHL and human rights law in concrete situations. Secondly, IHL is under criticism regarding its adequacy and relevance in contemporary conflicts. Some States call into question the existing rules of IHL, arguing that it is no longer able to deal with the wars of the 21st century.

I do not intend to minimize the challenges IHL is facing and the efforts that we need to undertake to disseminate and clarify the existing rules and to fight against impunity in order to enhance the implementation of IHL. However, I am truly convinced that the still too high number of violations in armed conflict is not due to a lack of rules or their inadequacy, but to a failure by the parties to a conflict to respect their

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obligations under international law.

I would like now to comment on some of the criticisms that IHL still faces and will then address some of the above mentioned challenges and the possible ways forward.

During the last years, criticism regarding the adequacy of IHL has emerged after the tragic events of 11 September 2001 and the so-called "War on Terror".

This political concept has led to much confusion and numerous misunderstandings. Indeed, the expression "war on terror" covers many situations of violence that do not amount to armed conflicts. Therefore, we can only notice that IHL has been called into question regarding situations in which it was, in the absence of an armed conflict, not even applicable.

However, it is not because IHL is not always applicable to terrorists and to those who fight against terrorism that they operate in a legal vacuum. Indeed, in situations such as the 2004 Madrid attacks and the 2005 London attacks, international law, especially human rights law, remains applicable along with domestic law. In this regard, I limit myself to recall that it is fundamental that States comply with all their obligations under the relevant legal framework be it human rights law or IHL.

Having said that, I would like now to address what I consider as one of the main current challenges: The issue of so-called asymmetric warfare.

The term of asymmetric warfare is not defined legally. It is used to describe a growing phenomenon whereby armed conflicts are not fought among States and traditional armies anymore but between a variety of actors involving State and non-State alike. The asymmetry can also occur in the choice of means and methods of warfare. Today's conflict environment is increasingly characterized by such asymmetric warfare. Asymmetry generally calls for more brutality and less respect for the rule of law. On the one side, the more powerful party is tempted to disregard IHL, especially the fundamental principles of distinction and proportionality, arguing that different rules or standards should apply in order to deter for instance urban warfare. On the other side, the technologically disadvantaged party to the conflict is also tempted to resort to practices prohibited by IHL, such as perfidy or the use of human shields, thus also violating the fundamental principle of distinction and making the civilian population as a whole more vulnerable to the effects of hostilities. As experience shows that military imbalance carry incentives for the weaker party to level out its inferiority by disregarding the rules of the conduct of hostilities, we must work and collaborate in order to find means to break this vicious circle and be very clear on the fact that the principle of reciprocity is not applying to IHL.

To this end, I would like to recall the importance of fighting against impunity. Indeed all States should make sure that violations of IHL are addressed in an appropriate manner and enforced through criminal law. But they should also examine ways to create more incentives to comply with its rules in order to enhance their implementation in armed conflicts. Moreover the existing rules should be reaffirmed and sometimes clarified in order to contribute to a better understanding of IHL by the different parties to a conflict.

In this regard, we truly welcome the initiative of the ICRC to clarify the precise meaning of the notion of "direct participation in hostilities" and to provide guidance for its interpretation in both international and non-international armed conflicts. The publication of the "Interpretative guidance" in the course of 2008 will finalise this process of research and expert reflection.

Such clarifications are all the more important since the continuous shift of military operations away from remote battlefields into population centres and the increasing involvement of civilians in activities closely related to the actual conduct of hostilities are blurring the distinction between civilian and military functions. The introduction of private contractors, intelligence personnel and other civilian government employees into the reality of modern armed conflicts is further exacerbating this trend, as does the increasing assignment of tasks traditionally performed by official State security or military forces to private military and security companies. In order to promote the compliance with international law and especially IHL by those companies operating in conflict areas, Switzerland has launched, in collaboration with the ICRC, an initiative aiming to reaffirm existing legal obligations of States with regard to the use of Private Military and Security Companies in conflict situations and develop a set of non-binding good practices with a view to implementing those rules.

Another key challenge arising in asymmetrical conflicts or more generally in non-international armed conflicts is the lack of respect of IHL by non-state actors. This crucial issue should not be underestimated. Even if non-state actors cannot become party to treaties, they are nevertheless bound by customary international law. However, there is a lack of incentive for non-state actors to respect and ensure respect for IHL. Indeed, armed groups are often unwilling to consider themselves bound to international obligations agreed to by the government against which they are fighting. To improve these situations, special agreements under common article 3 of the Geneva Conventions and unilateral declarations should be promoted. Such agreements or declarations could help clarifying and identifying the obligations of the different parties and therefore enhance the protection of IHL. The difference of treatment between state and non-state actors such as armed groups is another obstacle to their compliance to IHL. Indeed, there is no such a thing as combatant's privilege or prisoner of war status for members of armed groups not being party of an army. This means that they can be charged and condemned under national law for the mere participation in hostilities, even if they have acted in conformity with the rules of IHL. A further incentive to comply with IHL could therefore be seen in the granting of amnesty or immunity from prosecution for acts of mere participation in hostilities, as provided for in Article 6 §5 of the Second Additional Protocol.

Once again, I would like to recall that the fight against impunity deserves more attention. Indeed, according to Article 1 common the Geneva Conventions and the First Additional Protocol, States must "respect and ensure respect" for IHL and are therefore under a general obligation to put an end to any violation of international humanitarian law. This obligation holds for all the High Contracting Powers even if they are not involved in a particular conflict.

Moreover, in order to further reinforce the respect for IHL by all parties, we must promote the existing mechanisms and develop means by which they can be strengthened. In this regard, we should also call on States that haven't done so to recognise the automatic competence of the International Fact-Finding Commission. In addition, resort to this Commission should always be proposed to the different parties to a given conflict as it may effectively contribute, through its enquiry and good offices competence, to restore the respect for IHL.

Another challenge I would like to briefly mention is the apparition of new methods and means of warfare in the conduct of hostilities, such as "cyber war". This is a rather complex issue both from a technical as from a legal point of view. Since time does not allow me to dwell on it I limit myself to mention the process launched in Stockholm in order to clarify the rules of IHL applicable to Computer Network Attacks. This year, Switzerland will convene an expert meeting on the issue.

To conclude, a normative development of IHL is neither desirable, nor necessary since IHL offers an appropriate framework to contemporary conflicts and their new challenges. Such a development could even reveal dangerous as it could weaken existing law. Rather than working on any kind of new convention, which would only bind States, providing they are willing to, we should rather concentrate our efforts in order to clarify and enhance the respect of existing rules of IHL. In this respect we welcome the fact that the 3rd Resolution of the 30th International Conference of the Red Cross and the Red Crescent on the reaffirmation and implementation of IHL states that "international humanitarian law governs only situations of armed conflict, and should not be extended to other situations" and recalls further "that the obligation to respect international humanitarian law cannot be fulfilled without domestic implementation of international obligations", reiterating "the need for States to adopt all the legislative, regulatory and practical measures that are necessary to incorporate international humanitarian law into domestic law and practice".

As we have seen, much work remains to be done and we should seize the opportunity of the upcoming 60th anniversary of the Geneva Conventions to further promote and ensure the respect for IHL. Indeed, States have not only the obligation to incorporate IHL in their own legal system, but also to disseminate it.

I thank you for your attention.

CIVIL-MILITARY COOPERATION: COMMON SENSE OR PANDORA'S BOX?

Mr Denis Caillaux*

Humanitarian actors do not form a homogenous entity. Some have a mandate, others have just a mission. The UN and its operational Agencies such as OCHA; UNHCR WFP;UNICEF etc. have been mandated by the international community to offer relief during humanitarian crisis. The NGOs have not, and are only driven by their Vision and Mission. This difference matters : the humanitarian actors entrusted with a formal mandate are bound by a much larger set of rules articulated over the years by nation states. The NGOs on the other hand only submit themselves to broad humanitarian principles like those articulated in the Code of Conduct between the Red Cross/Red Crescent Movement and the NGO community.

Some of these principles, in particular Independence, Impartiality and Neutrality are challenged by any form of civil-military cooperation. But while the first two have been quite reasonably respected over the past few years, the principle of Neutrality has evolved and led to a profound divergence of views in the humanitarian community.

There is a vast literature about the evolution of humanitarian response since the end of the cold war. In the past, things were simple : the military and civilian sides were evolving in their separate realms. This parallel universe was guaranteeing the sanctity of the humanitarian space. Neutrality was scrupulously observed by all humanitarian actors, and to ensure the promotion of justice in war, no judgments were passed on the justice of war.

Sadly, today's humanitarian environment has radically deteriorated. The destructive logic of asymmetric warfare is such that civilians are now specifically

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targeted; rape has become a weapon of war, and even children are forced to become full-fledged combatants.

Humanitarian workers are no exception. They too have become targets. Abductions, kidnappings and murders have replaced road accidents as the primary safety and security issue. Far too many humanitarian workers have experienced first hand the ordeal of captivity and even death, and their families and colleagues the long anxious hours of waiting and not knowing.

This has marked the end of innocence for many NGOs, and put to the test their common vision of Neutrality. How neutral can they be, when the very fact that they uphold Humanitarian Principles is viewed as an act of aggression by some parties to the conflict, and when their workers become easy targets for abduction and murder ? For some, Security has redefined Neutrality and the difficult link between these two concepts has created a rift within the Humanitarian Community.

Each side is basically right, but perhaps only partially. The Traditionalists have argued that Neutrality was more relevant than ever, precisely because of the Security issue. Humanitarian workers should be seen as even more neutral because of the poisonous belief that they could be at the service of an occupying force. In that respect, the whole rhetoric developed a few years ago about NGOs as force multiplier did not help. The entire humanitarian enterprise rests on the informed consent and support of the affected population. This consent will only be provided if humanitarian actors are - and are perceived to be - truly impartial, independent and neutral. In the final analysis, it is the local population who should guarantee the security of humanitarian workers and not an occupying force.

The Pragmatists on the other hand, recognized the tectonic shift that had occurred in the humanitarian environment and the impact of Security concerns on the traditional notion of Neutrality. This approach was best illustrated in Afghanistan where some NGOs called for a full fledged Security Sector Reform and a direct involvement of ISAF outside of Kabul alone. There was a realization that without improved security there would be no effective humanitarian response and ultimately no Development. The issue was not so much the Security of humanitarian workers, but rather the security of the average Afghan. It was considered a sine-qua-non for the entire humanitarian enterprise.

In this context, the Civil and the Military were not anymore two parallel universes. An overlap was inevitable. The concept of Civil-Military Cooperation was born.

It has produced quite an abundant literature and a lot of work has gone into the articulation of operational rules and procedures for coordination in the field. UN-OCHA still has a resident adviser at NATO Headquarters in Brussels. One thing is clear, however : the coordination works best when each party remains in its role. The

danger lies in a blurred borderline between the civil and the military. The Provincial Reconstruction Teams - or PRTs - operating in Afghanistan are a clear example. If such a Team comes one day to build the local school and returns the next to pursue the Talibans; if humanitarian workers come the third day to distribute the school supplies, no villagers will understand who they are. They will inevitably be associated with a military force. It is essential to keep in mind that the primary purpose of the PRTs should be security. In the final analysis, NATO's success in Afghanistan will not be judged by the number of primary school it has re-roofed, but rather by the degree of enhanced security it has managed to bring to the average Afghan…

It is critical therefore for the civil and the military to continue to dialogue. The two cultures have to know each other in greater depth to be able to define a mode of co-ordination that truly respect the fundamental principles, humanitarian or military, under which each side operates. The IIHL would be uniquely positioned to articulate such a dialogue and build it into its regular curriculum.

NEW TYPES OF CONFLICT: NEED FOR NEW TYPE OF LEGAL SOLUTIONS?

Mr Daniel NORD*

I would like to express my gratefulness to Ambassador Moreno and the organizers and the hosts of this conference, the CASD.

Its striking that given the impressive amount of distinguished speakers during this conference, as well as the broad theme of the conference "Challenges to IHL and Peace Operations", many have reflected on the fact that what they intend to say has already to some extent, or fully, been stated by a previous speaker. This I believe reflects if not consensus, then at least broad common understanding on what the key topics are. Whereas I am certainly in the same position with regard to not having anything real new to bring to the debate this day, I will still refrain from deploring the fact that there will be some repetition on my speech since I was taught in the Army that "repetition is how you build knowledge". So by the time you leave this session, you will be quite acquainted to the concepts of applicability, responsibility, definition of an armed conflict and so forth and you will certainly remember that IHL faces some real challenges.

I will start by bringing a little SIPRI perspective on this. One of the things we do at the institute is to study armed conflicts. If we look at the development of armed conflicts in the world today, it is no surprise that international armed conflicts, the conflicts which IHL has been designed for, are extremely rare. The most common ones are internal armed conflicts and, as Colonel Garraway mentioned earlier, the trend is that they are becoming sectarian. In this type of conflict, the main targets will be the civilian population. As a response to this type of conflict strategy, we also see a sort of State controlled, or at least State affiliated, strategy where non State actors acts in a similar fashion and targets the civilian population affiliated with the insurgents. We talked previously about asymmetric or symmetric conflicts, and in an odd way, this is actually a type of symmetric warfare. I heard an estimate that about 99 per cent of the

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civilian casualties due to direct attacks or direct targeting are killed or injured in this type of conflict. This sounds like an extremely high figure but it is certainly true that the main part of civilian casualties in conflicts stem from this type of situation. This type of situation is not new in character because it has happened before; there were the death squads in South and Latin America in the 1970's and 1980's where State affiliated, non State actors went after the opponents, and to some extent, this also happened in Northern Ireland where loyalists had connections with the local police who provided them with information on who were the suspected IRA terrorists. But the level of violence in this type of conflict is still something new. It is a type of conflict which by its nature will violate international humanitarian law.

Another type of conflict which we also see is one where one party is much more technologically advanced than the other one. Logically, if the weaker part tries to fight the stronger part on the same conditions in a, what we would call, a symmetric war, they will lose the conflict. We saw it in Iraq, in 1991 for instance, but we also see this in counter-insurgency operations today, where it is more or less impossible to fight a symmetric war. So the answer for the weaker party will then be asymmetric warfare. This may be carried out in ways that international humanitarian law is less violated or not at all, an example being the use by Yugoslavia of decoys and fake targets during the NATO bombings in 1999 to avoid defeat while hoping that the international coalition would crumble or at least the political sustainability of the operation. This of course did not happen. However, more than often the asymmetric warfare will equal violations of the laws of armed conflict. Now this does not mean that IHL has lost its role. That certainly is not the case; but the fact that modern conflicts, through their character, will entail violations of international humanitarian law is a problem and a challenge. We can of course argue that we do have the instrument of individual criminal responsibility, the International Criminal Court of Justice, national courts, and that war crimes are under universal jurisdiction. That argument is valid, but it is valid in one way, it is like a stick. What is missing with regard to non State actors is the carrot. We need to have more incentives for non State actors to involve themselves in IHL and respect the norms. A simple example of the current situation is that in an internal armed conflict, once the conflict is over, the opponent side or the rebel side can be tried under national law for participating in the armed conflict. It may be recommended that in an eventual peace treaty some sort of amnesty is established, but that is not a legal obligation. This is of course may serve as a disincentive for non State actors withy regard to abiding by IHL.

A second thing I would like to raise concerns when there is an armed conflict and when there is not. As already been mentioned, the case law of the International Criminal Tribunal for ex-Yugoslavia, and for those who are not familiar with the names, it is normally the Tadic case which is the one mentioned. This is about the level of violence. There has to be a certain level of violence in order to be an armed conflict and, while a State conducting armed operations against another State may be less difficult to recognise as an armed conflict, that may not necessary be the case with regard to an internal armed conflict. In the latter case there has to be a sustained level of violence, one eruption of violence is not sufficient. How do we identify this?

When is it an armed conflict and when is it "merely" eruptions of violence in a post conflict phase? How do we distinguish between banditry and insurgents when often they are the same actors? We also have the question of the territory where the armed conflict is going on. This, the Tadic case argues, occurs in the whole territory of the state. There are some problems with this. We can look at Afghanistan for instance. Afghanistan has been mentioned a number of times today and I think it reflects that fact that it is very clear with regard to existing problems and challenges of IHL. In 2006 ISAF launched operations in the South, especially in the Helmand province, which at the time was described by the ISAF commander at that time as the hardest fighting that British forces had been engaged in since the Korean war. I also remember a headline from a newspaper saying "ISAF forces ambushes Taliban: 80 dead". Now this is not what I would associate with the kind of peace keeping or peace enforcing operations which were carried out in the Balkans during the 1990's and the early 2000's. This is something very different. It is an armed conflict, and defining this in any other way would be absurd, at least in that region. So what is the legal situation with regard to Afghanistan? One could argue that it started out as an international armed conflict in 2001 between USA and the Afghan Government (Taleban) and that this situation is still continuing, although the Afghan Government of that time has now taken the role of insurgent. But, as I see it, a more valid argument would be that it is an internal armed conflict between the current Afghan government, meaning Hamid Karzai, versus the Taliban and possible others on the other side; where the role of the ISAF is to support the Afghan government in this conflict (with a UN mandate as well). So it is quite clear that, in that context, ISAF is a party to the conflict. In Helmand, therefore IHL is the logical solution to look at how you should act. But if you consider other parts of Afghanistan, such as the northern regions, IHL may not be the best solution for the situation on the ground or the activities carried out by ISAF forces. Yet the Tadic case means that the IHL is applicable in the whole territory, meaning the whole of Afghanistan, even though other norms may be much better suited for the international forces. Thus there are problems with the current case law and it needs to be revisited and clarified.

The military wants a clearer situation and lawyers should also strive towards more clarity. On the other hand, I am not so certain that all politicians would like to have a clear situation with regard to whether or not it is an armed conflict in Afghanistan. It is much easier to send armed forces to places where they go to guard the peace, to build roads and be nice with children, than to send them to fight a hostile enemy.

Another issue which has been raised during the day is that there is a need to develop a type of law on how to use force and operate in peace support operations, especially in the kind of grey zone between peace and an armed conflict. If we have a situation where an international operation goes from peace work to more military force type of operations under IHL and then back again, then from a legal point of view, we can argue and say that depending on the situation, we will draw upon the human rights norms or upon the IHL norms to guide us. Then there are of course the respective national legal norms of the international forces to take into account as

well. However, for the military this solution is confusing and it does not make the work of the legal adviser at the Staff HQ any easier. So there is a need to develop a set of rules that are defined for this situation, rules that can be used both in an armed conflict down to peace keeping type of operations. This does not necessarily mean a need for a new treaty or convention, but there is a need for research on this question and why not at the Institute for International humanitarian Law in San Remo. I bit like the San Remo Manual on warfare at sea. As an example of this thinking, an interesting case was presented by the Israeli Supreme Court about a year ago. It is called the Targeted Killings case and the name speaks for itself. Basically, the Court first went through the conditions for establishing that there is an armed conflict. They then decided that: yes, it was an armed conflict and that targeted killings are acceptable if certain conditions are met. They gave four conditions: the first one is there is need for well based, thoroughly verified information on identity and activity of the target. Second, civilians who are directly attacking the Israeli forces can't be attacked if there is a less harmful way to stop their attack. Third, after the attack, there must be a thorough and independent investigation made regarding the precision of the targeting of the attack and compensation might have to be paid afterwards. And then fourth, there must be a proportional evaluation of the risk for civilians versus the military value of disposing of that target. Out of these four conditions, three stem from human rights norms and are more related to police work than international humanitarian law. Hopefully this can be seen as a first step of a process where we merged the different strands and develop a operative law on how to use military force in the new type of situations which we are facing.

Thank you.

CLOSING REMARKS

Prof. Dr. Giovanni BARBERINI*

Dato che la giornata è stata lunga e la ricchezza di contenuto di tutti gli interventi ci hanno obbligati ad una attenzione particolare, cercherò di contenere in un breve tempo alcune riflessioni conclusive.

Anzitutto vorrei ringraziare tutti i partecipanti e tutti coloro che sono intervenuti e che hanno contribuito in modo determinante al raggiungimento dell'obiettivo di questo seminario che non voleva essere un esame astratto e asettico del diritto internazionale umanitario, ma un incontro per porre problemi e interrogativi; questo volevamo e questo mi pare che sia stato ottenuto. L'incontro è stato quindi una degna preparazione del Seminario di Sanremo del prossimo Settembre.

L'autorevolezza degli interventi ha consentito anche di evidenziare l'utilità della diversa provenienza culturale e professionale. Si è cercato di organizzare fra militari, giuristi e diplomatici, provenienti da diversi Paesi, un confronto molto utile che ha permesso di mettere in evidenza come sia avvertita questa problematica a diversi livelli e dappertutto.

Questo mio breve intervento non è un sommario di quello che abbiamo sentito oggi; è soltanto, se me lo permettete, un insieme di brevi considerazioni e riflessioni che ho avuto modo di segnare ascoltando gli interventi.

Per una rivisitazione del diritto internazionale umanitario, come ci suggeriscono e ci impongono i profondi mutamenti intervenuti nella vita della

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Comunità internazionale, direi che bisogna tenere presenti alcuni elementi. In primo luogo, la rilevanza che nelle relazioni internazionali ha assunto la protezione dei diritti umani anche da parte della Comunità Internazionale; e questo è molto interessante e molto importante. In secondo luogo, l'esigenza di dare più compiuta considerazione al fatto che la persona umana deve essere posta al centro del sistema, di ogni sistema giuridico e politico; questa è la base della nostra cultura europea. E' una base etica che dà forza al quadro normativo europeo in tema di diritto internazionale umanitario.

Dobbiamo anche tener conto della natura sofisticata degli armamenti che sono posti a disposizione delle forze armate; non c'è bisogno di approfondire questa riflessione in questa sede considerata l'alta professionalità e la riconosciuta sensibilità che distinguono oggi le forze armate. Infine, è sotto gli occhi di tutti la complessità delle situazioni politiche, sociali, etniche nelle quali si svolgono le operazioni di pace. Ritengo che la considerazione di questi – e anche di altri – elementi possa essere d'aiuto per quella che ho chiamato una "rivisitazione del diritto internazionale umanitario" e gli esempi certo non mancano.

Per la nostra riflessione noi possiamo contare su due elementi che ritengo molto importanti. Anzitutto, un'attitudine particolare che nell'epoca contemporanea caratterizza le forze armate e che chiamerei un'attitudine essenzialmente pacifica che ci fa coscientemente definire i militari come operatori di pace; è un dato peraltro ormai acquisito in larga parte dell'opinione pubblica internazionale; è una capacità di operare per gli obiettivi politici come richiesti dalla società civile che le forze armate impegnate nelle diverse regioni del mondo sanno manifestare. Gli esempi sono numerosissimi. E poi, la capacità dei militari, impegnati nelle operazioni di pace, di calarsi nelle realtà; se, da un lato, questo mette sulle spalle delle forze armate una grande responsabilità è anche vero che questo comporta una convincente immagine di affidabilità nella missione di pace.

Garraway ha anche accennato al tema del diritto della guerra e del diritto della pace, un po' una sorta di dicotomia; io direi che forse, sempre nell'ottica di questo lavoro di rivisitazione, si dovrebbe concepire il diritto internazionale umanitario nell'epoca contemporanea piuttosto come una sintesi tra questo così detto diritto della guerra e diritto della pace. È certamente difficile coniugare insieme i due diritti soprattutto se mancano regole precise. Anche questo è stato evidenziato - e mi pare uno spunto molto importante – necessità di regole intese come norme giuridiche. Dicendo questo è normale un riferimento alle regole d'ingaggio per le quali mi è sembrato molto opportuno anche il riferimento alla esigenza di un loro stretto legame con il rispetto del diritto internazionale umanitario. Credo che questo sia un problema sentito da tutti coloro che si siano trovati ed abbiano vissuto una esperienza in operazioni di pace. Tutti sappiamo la complessità del problema delle regole d'ingaggio, conosciamo tutte le problematiche che sorgono, forse, anche per una oggettiva imprecisione di queste

regole che però devono essere in collegamento stretto e strettamente coordinate con il diritto umanitario.

Non possiamo presumere di fare completa chiarezza su questa questione, però, è importante avvicinarsi il più possibile alla chiarezza.

Un altro spunto che ho colto è la necessità del coordinamento prima concettuale e poi anche a livello operativo specialmente delle organizzazioni internazionali fra diritto bellico, diritto penale internazionale e diritto internazionale umanitario. In questo quadro è necessario procedere ad un completamento o un adeguamento del diritto umanitario tradizionale impegnandosi a contrastare più facilmente possibili fenomeni attuali quali per esempio la tortura, il traffico di esseri umani, l'uso mascherato di armi batteriologice e quant'altro.

Quali sono gli ambiti di esigenza umanitaria che nell'epoca contemporanea devono essere considerate poiché non comprese nelle Convenzioni e nei Protocolli di Ginevra? Rispondere a questi interrogativi è fondamentale, non possiamo eluderlo e questo rappresenta una sfida.

A lungo gli Stati Europei sono vissuti su regole che essi stessi avevano scritto e c'era quindi la possibilità di far rientrare tutti i fenomeni (controversie fra gli Stati, contrasti e rivendicazioni territoriali, etc.) in queste regole. Oggi non è più così. Voglio ricordare che il fenomeno del terrorismo, come è stato detto, ha cambiato le carte in tavola. Sotto tanti profili, il terrorismo nelle sue varie forme, le contrapposizioni tribali, le contrapposizioni etniche, le forme più varie di violenza, le guerre asimmetriche hanno cambiato lo scenario; e, allora, dinanzi a questa nuova realtà è entrata in gioco la Comunità Internazionale. Ma questo ha posto nuovi problemi.

A proposito del ruolo delle Organizzazioni regionali, la Signora Brander ha parlato di una Organizzazione della quale mi interesso da oltre vent'anni, l'OSCE. Io penso che le Organizzazioni regionali sotto il profilo dell'adeguamento, della rivisitazione del diritto internazionale umanitario possano giocare un ruolo particolare, forse, talvolta, più di quanto possa fare l'ONU. La signora Brander ha accennato a tutta l'attività che svolge l'OSCE soprattutto attraverso l'ODIHR, dando attuazione ai precetti di diritto umanitario anche in assenza di conflitti. Le Organizzazioni regionali possono più efficacemente prevenire conflitti che si sarebbero probabilmente potuti trasformare anche in guerre guerreggiate, ricordiamo per esempio, l'attività dell'Alto Commissario per le Minoranze Nazionali che ha per l'appunto contribuito al raggiungimento di tale obiettivo. Io credo che le Organizzazioni regionali possano esercitare una forma di controllo e quindi di prevenzione maggiormente adeguata ed immediata; l'OSCE si sta occupando, in particolare, ma non soltanto, su questioni molto attuali e molto gravi, come il problema del traffico degli esseri umani, l'applicazione della Convenzione sui diritti del bambino, le violenze sulla donna.

Da ultimo mi è sembrato molto interessante anche lo spunto offerto dal Prof. Decaux a proposito del rapporto tra la Corte di Strasburgo, il Consiglio d'Europa, la Convenzione Europea dei diritti dell'uomo, la giurisprudenza della Corte di Strasburgo e il diritto internazionale umanitario. Dico solo, senza potermi soffermare su un tema così affascinante, che questo costituisce una prospettiva molto importante.

Vorrei terminare con un interrogativo ed un auspicio. Noi abbiamo uno *ius conditum* in materia di diritto internazionale umanitario abbastanza consistente, ma ci potremmo porre la questione: è più lo *jus conditum* ovvero, sulla base di tutte le riflessioni che stiamo facendo in questo momento, lo *jus condendum*? È difficile rispondere perché non è un problema di rapporti quantitativi, è eminentemente un rapporto qualitativo e di risposte efficaci alle nuove esigenze. Quindi più che un interrogativo consideriamolo come un auspicio che lo *jus condendum* dia soddisfazione a tutte queste nostre esigenze.

Con l'occasione, ringrazio ancora tutti voi dell'attenzione e, se mi permettete, ci diamo appuntamento a Sanremo.

Grazie.

ANNEXES

THE CHALLENGES OF DEVELOPING A LEGAL FRAMEWORK FOR DETAINING CIVILIANS DURING UN PEACE OPERATIONS

Ms Annika HILDING-NORBERG[*]
and
Mr Bruce OSWALD[**]

Given the changing nature of conflict and peace operations, there is a multitude of new or emerging challenges of international humanitarian law facing peacekeeping and peacekeepers around the world. In order for the international community to be able to act in an effective and responsible manner, one particularly pressing area that requires substantive development is that of the legal framework for detaining civilians during UN peace operations.

Military and international civilian police personnel serving with UN peace operations are often involved in temporarily detaining individuals accused of committing crimes or posing a security risk to the mission. In addition, on some UN peace operations military and international police are given interim law and order powers that require them to exercise powers of detention and arrest.

The legal framework which governs the exercise of the power to detain and the subsequent treatment of detainees during UN peace operations is founded on both international and domestic law. In relation to international law, depending on the type of peace operation, international humanitarian law (IHL), international human rights law (IHRL), and sometimes, international criminal law will govern the rights and obligations of peacekeepers in taking and dealing with detainees. Aspects

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of host nation law and troop contributing nation law, especially those dealing with accountability and criminal responsibility of peacekeepers concerning their treatment of detainees is also relevant.

The challenge however facing peacekeepers in understanding and applying this legal framework in the context of contemporary peace operations is that there is considerable disagreement as to which laws must be applied. Some of this agreement stems from the fragmented nature of international law where debates about the application of IHL and IHRL to peace operations continue to create uncertainty as to obligations and rights of both peacekeepers and detainees. Other disagreements stem from identifying when particular treaties might apply. The 2007 European Court of Human Rights decision in the joint case of *Behrami and Saramati* concerning the obligations of peacekeepers serving with the UN in Kosovo is an example of one aspect of this tension. One interpretation of that decision is that binding UN Security Council resolutions override obligations, including human rights obligations, arising from other treaties. The recent UK House of Lord decision of Al Jedda [2007] reinforce the point that in some cases UN Security Council resolutions will trump more specific obligations arising from IHL or IHRL. One consequence of these decisions is that in certain circumstances, States may not be held responsible for the actions of their officials and this may create a lacuna if the international organisation responsible for the peace operation also refuses to accept responsibility.

Another matter concerning the application of international law to the treatment of detainees lies in the fact that many of the norms that are relevant to the treatment of detainees on peace operations are not located in binding international instruments but in declarations or resolutions that are considered 'soft law'. This fact raises has raised considerable debate as which norms are binding on peacekeepers and the extent to which those norms should be applied by a peacekeeper.

PRINCIPAL ABBREVIATIONS

ACP	AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES
AMISOM	AFRICAN UNION MISSION IN SOMALIA
ANA	AFGHAN NATIONAL AUTHORITY
AOR	AREA OF RESPONSIBILITY
AU	AFRICAN UNION
CASD	CENTRO ALTI STUDI PER LA DIFESA
COE	COUNCIL OF EUROPE
COI	COMANDO OPERATIVO DI VERTICE INTERFORZE
CSCE	COMMISSION ON SECURITY AND CO-OPERATION IN EUROPE
CSLS	COMMAND OF THE SOUTH LITANI SECTOR
DPKO	(UN) DEPARTMENT OF PEACE KEEPING OPERATIONS
DSMC	(DPKO) DIRECTOR STRATEGIC MILITARY CELL
ECHR	EUROPEAN COURT OF HUMAN RIGHTS
EEF	EARLY ENTRY FORCE
ESDP	EUROPEAN SECURITY AND DEFENCE POLICY
EU	EUROPEAN UNION
EUROMARFOR	EUROPEAN MARITIME FORCE
FOF	FOLLOW-ON FORCES

FYROM	Former Yugoslavia Republic of Macedonia
GHD	Good Humanitarian Donorship
ICC	International Criminal Court
ICJ	International Court of Justice, in the hague
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP(s)	Internally Displaced Person(s)
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIHL	International Institute of Humanitarian Law
IILA	Istituto Italo-Latino Americano
ISAF	International Security Assistance Force
LAF(s)	Libanese Armed Force(s)
MIO	Maritime Interdiction Operations
MONUC	United Nations Mission in the Democratic Republic of Congo
MSU	Multinational Specialised Unit
MTF	Maritime Task Force
NATO	North Atlantic Treaty Organization
NGO(s)	Non Governmental Organisation(s)
OCHA	Office for the Coordination of Humanitarian Affairs
ODIHR	(OSCE) Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OIM	International Organisation for Migration
OSCE	Organization for Security and Co-operation in Europe

POW	Prisoners Of War
PRT(s)	Provincial Reconstruction Team(s)
ROE(s)	Rule(s) Of Engagement
SIOI	Società Italiana per l'Organizzazione Internazionale
SIPRI	Stockholm International Peace Research Institute
SMC	(DPKO) Strategic Military Cell
SOPs	Standing/Standard Operating Procedures
SRSGs	Special Representative of the Secretary General for children and armed conflict
TCCs	(UNIFIL) Troop Contributing Countries
TTW	TerriTorial Waters
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United NatIons ChildrEn's Found
UNICRI	United Nations Interregional Crime and justice Research Institute
UNIFIL	United Nations Interim Force In Lebanon
UXOs	UneXploded Ordnances
WFP	World Food Programme

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