



CONCEPT NOTE

Expert consultation: The protection of the human rights of civilians in armed conflict

Geneva – Switzerland, 15 April 2009

Introduction

1. On 21 September 2008, the Human Rights Council adopted resolution A/HRC/9/9 entitled “Protection of the human rights of civilians in armed conflict”. Paragraph 8 of the Resolution invites “*the Office of the High Commissioner for Human Rights to convene, within existing resources, an expert consultation, open to the participation of Governments, regional organizations, relevant United Nations bodies and civil society organizations, and in consultation with the International Committee of the Red Cross, on the issue of protecting the human rights of civilians in armed conflict, and requests the Office of the High Commissioner for Human Rights to report on the outcome of this consultation, in the form of a summary of discussions on the above-mentioned issue, to the Council at its eleventh session*”.
2. Resolution A/HRC/9/9 the Human Rights Council “[*acknowledged*] that human rights law and international humanitarian law are complementary and mutually reinforcing”. The Council further “[*considered*] that all human rights require protection equally and that the protection provided by human rights law continues in armed conflict situations, taking into account when international humanitarian law applies as a *lex specialis*”. It also “[*recalled*] that in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights are recognized as non-derogable in all circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with its article 4 in all cases.” The Council “[*underlined*] the exceptional and temporary nature of any such derogations”. The Council also “[*reiterated*] that effective measures to guarantee and monitor the implementation of human rights should be taken in respect of civilian populations in situations of armed conflict, including people under foreign occupation, and that effective protection against violations of their human rights should be provided, in accordance with international human rights law and applicable international humanitarian law (...)”.

Background

3. The history of the United Nations role in the development of the protection of human rights of civilians in situations of armed conflict is discussed in OHCHR’s Factsheet No. 13. The maintenance of peace and the prevention of armed conflict are the vital concerns

of the United Nations. Respect for human rights at all times and in all places is a fundamental principle of the Organization.

4. As Factsheet No. 13 indicates, in 1949, the International Law Commission decided not to put the law of armed conflict on its agenda as attention to this branch of international law might be seen as a lack of trust in the capacity of the United Nations to maintain peace and security.
5. The International Conference on Human Rights in Teheran in 1968 (the International Year for Human Rights) declared that humanitarian principles must prevail during periods of armed conflict. In the same year, the United Nations General Assembly, in resolution 2444 (XXIII) endorsed the conference's recommendation that the Secretary-General of the United Nations, after consulting with the ICRC, should bring the attention of all States members of the United Nations to the existing rules of international humanitarian law, and urge them, pending the adoption of new rules, to ensure that civilians and combatants are protected in accordance with "*the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience.*" Consequently, several reports by the UN Secretary-General were submitted to the General Assembly.
6. Furthermore, in 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1989/24 on "Human rights in times of armed conflict", deploring the frequent lack of respect during such conflicts of relevant provisions in international humanitarian law and the law of human rights. At the forty-third session of the Sub-Commission the Secretary-General submitted a report on education regarding respect for human rights in armed conflicts. The Commission on Human Rights adopted resolution No. 1990/60 calling upon States "*to give particular attention to the education of all members of security and other armed forces, and of all law enforcement agencies, in the international law of human rights and international humanitarian law applicable in armed conflicts.*"
7. More recently the Commission on Human Rights acknowledged in resolution 2005/63, inter alia, that "*human rights law and international humanitarian law are mutually reinforcing*" and considered that "*the protection provided by human rights law continues in armed conflict situations, taking into account when international humanitarian law applies as lex specialis.*" The Sub-Commission on the Promotion and Protection of Human Rights took up the issue during its fifty-sixth session. A working paper on the relationship between human rights law and international humanitarian law was submitted at the fifty-seventh session dealing with the relationship between human rights law and IHL, particularly from the perspective of their dual or simultaneous application in the light of the case-law of human rights treaty bodies and special procedures.
8. The Human Rights Committee, in General Comments 29 (2001) and 31 (2004), dealt with the questions of the applicability of the ICCPR in situations of armed conflict and recalled that ICCPR human rights obligations apply in situations of armed conflict to which the rules of international humanitarian law are also applicable. In General Comment 31 the Committee indicated that "*the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable*" and that "*while, in respect of certain Covenant rights, more specific rules of international humanitarian law*

may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

9. The International Court of Justice, in its advisory opinions on the *Legality of the Threat or Use of Nuclear Weapons* and on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, as well as in the *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)* also dealt with the question of the complementary application of international human rights law and international humanitarian law in situations of armed conflict.

The Expert Consultation

10. Pursuant to the Human Rights Council resolution A/HRC/9/9, the Office of the High Commissioner for Human Rights (OHCHR) intends to organize an expert consultation on the protection of the human rights of civilians in armed conflict. The seminar will take place in Geneva on 15 April 2009.
11. A total of 10-12 experts, mainly Geneva-based, will be invited to share their views and experiences on the subject-matter of the consultation. The consultation will be structured as a round table expert discussion. It will be open to Governments, regional organizations, relevant United Nations bodies and civil society organizations.
12. The expert consultation will be divided in an opening session and substantive sessions as required. The substantive sessions will be structured around three thematic issues, namely:
 - (a) Legal framework, namely the continued application of international human rights law in situations of armed conflict.
 - (b) Relationship between international human rights law and international humanitarian law, including the complementary and mutually reinforcing application of human rights law and international humanitarian law, the question of *lex specialis*, issues arising from the application of article 4 of the International Covenant on Civil and Political Rights, and other rights of particular relevance.
 - (c) Ensuring compliance: implementation and monitoring of human rights obligations in situations of armed conflict and accountability for violations, in particular appropriate mechanisms to monitor the implementation of human right in situations of armed conflict, as well as mechanisms to ensure accountability for violations of human rights.

Outcome

13. As requested by the Human Rights Council, OHCHR will prepare a report on the outcome of the consultation, in the form of a summary of discussions, to be submitted to the Council at its 11th session.