

Security Council Open Debate on Rule of Law
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Statement by Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes

First of all, allow me to express my sincere appreciation to you, Madam President, and the Government of Nigeria for convening this high-level open debate.

I will reflect not only on some recent developments, but also briefly on those of my almost three and a half years as Emergency Relief Coordinator. I will also cover five specific issues: engaging non-State actors, humanitarian access, the harmful effect of explosive weapons, protection in peacekeeping missions, and accountability.

The decade since the Security Council first focused on the protection of civilians has seen significant development of the normative framework. The Security Council has played an important role in expanding the weight of international jurisprudence on the conduct of hostilities; on the regulation of small arms, light weapons, mines and explosive remnants of war; on the displacement of civilian populations; on assistance to conflict-affected populations, including humanitarian access and the safety and security of humanitarian workers; on accountability for violations of the law; and on the protection of especially vulnerable groups, such as **women** and children.

But, as I have asked before, the key question is whether these positive developments have actually improved the condition of civilians in armed conflict, or have normative advances merely widened the gap between international rules and reality on the ground, or created a new gap and called further into question the relevance of the law and the credibility of Security Council pronouncements?

Since I last briefed the Council (see S/PV.6216), there have been two important institutional developments that should bear fruit. Following the adoption of **resolution 1888 (2009)**, the first ever **Special Representative of the Secretary-General on Sexual Violence in Conflict, Margot Wallström**, was appointed. Should anyone doubt the need for urgent attention to the problem, according to the United Nations Population Fund, **15,275 rapes** — the vast majority by armed men — were reported in eastern Democratic Republic of the Congo in 2009. And we know how few of the real number of **rapes** are reported. The director of the Panzi Hospital of Bukavu, Dr. Mukwege, told me recently that the problem of **violent rape** was worse than ever. The Council needs to continue to insist on comprehensive strategies to help put an end to **sexual violence** in armed conflict.

More recently, in May, the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, briefed a United Nations sanctions committee for the first time on the unlawful recruitment of children into armed groups in the Democratic Republic of the Congo. The Security Council has not often launched targeted measures against identified perpetrators responsible for grave violations against children. Doing so in the case of the Democratic Republic of the Congo would be an important signal in a region where impunity is so prevalent.

Other mechanisms have helped to improve the quality of information available to the Security Council. For example, the Security Council's informal expert group on the protection of civilians has been briefed 14 times since its inception in 2009. Nevertheless, I fear that all too little has changed for the better on the ground in recent years. Civilians account for the vast majority of casualties in armed conflicts, especially in the internal conflicts that are now the norm, and they are increasingly targeted by combatants and armed elements.

In 2009 alone, there were thousands of civilian conflict deaths, from Gaza to Sri Lanka to the Democratic Republic of the Congo to Pakistan, Afghanistan and Somalia, and elsewhere too; and untold numbers of other casualties, including physical and psychological injury to men, **women** and children, as well as the destruction of their social, economic and cultural ties and institutions.

This year does not look, so far, much better. According to official reports, 275 people were killed by the violence that broke out on 10 June in southern Kyrgyzstan, although the real death toll may be much higher, and the ethnic element involved is very worrying. In Somalia, in the past three months, just two of the main hospitals in Mogadishu have admitted over 1,384 war casualties, of whom 328 were children under 15.

Displacement through conflict is also getting worse. In 2009, 6.8 million people were displaced within their own country by conflict, more than at any point since the mid-1990s. Some 1.8 million alone were in Pakistan, although many have since returned, but the Democratic Republic of the Congo, the Sudan, Somalia, the Philippines and Colombia also experienced large-scale new displacements. In Colombia, the number of internally displaced persons (IDPs) is estimated by the Government to have increased in 2009 by 146,000. An alarming total of 27.1 million — the highest ever — were internally displaced globally at the end of last year as a result of conflict.¹ Again, this year so far is also depressing. An upsurge in violence in Darfur has displaced 116,000 more people in the first half of the year. Another 90,000 people fled their homes in the southern Sudan over the same period as insecurity mounted in the runup to the referendum in early 2011.

In Kyrgyzstan, 375,000 people were forced to flee their homes. Equally worrying, new displacements continue to far outnumber returns and the reintegration of IDPs. Durable solutions are woefully missing for millions in protracted displacement situations, increasing both despair and reliance on humanitarian assistance. In this context, the Kampala Convention adopted by the African Union last October was a significant milestone. IDP hosting states must now apply the Convention on the ground to protect and assist IDPs. I also urge that, as part of the search for durable solutions and in the wider context of peace negotiations in places like Darfur, issues of land and property be given higher priority. The High Commissioner for Refugees also reported recently that there remained 15.2 million refugees around the world in 2009, many of them in protracted situations, and that 2009 was the worst year for voluntary repatriations in two decades.

In my last briefing (see S/PV.6216), I noted that every armed conflict in the world today involves the participation of one or more non-State armed groups. So it is clear that enhancing the protection of civilians and reducing human suffering must, in part, be achieved by engaging with them over access and aid delivery and also by trying to influence their conduct and improve their compliance with humanitarian and human rights law.

This is not just theory. Special Representative of the Secretary-General for Children and Armed Conflict has engaged with armed groups to address their recruitment and use of children and has used action plans signed by such groups to bring the practice to an end. UNICEF and the World Health Organization have been able to immunize millions of children by obtaining support for “days of tranquility” from parties to conflict, including, notably, the Taliban in Afghanistan. In Gaza, engaging the de facto authorities is indispensable in order to provide assistance to the people in need, address growing human rights and protection concerns, and guarantee the security of aid workers. These contacts do not in any way legitimize either the goals or the conduct of armed groups, but they do show that engagement by humanitarian actors with such groups can genuinely improve the treatment of civilian.

I call once again on the Council and on Member States more widely to respect and promote this engagement and not to discourage it through, for example, donor practices which, however well intentioned, in reality criminalize contacts or the unintended provision of goods in ways which limit humanitarian assistance.

Constraints on humanitarian access remain a major problem. For example, the World Food Programme has been driven out of large parts of South Central Somalia by Al-Shabaab violence and threats; in North-East Democratic Republic of the Congo and southern Central African Republic, lack of infrastructure and violent attacks by parties to conflict and criminal groups prevent humanitarians from reaching many victims of atrocities perpetrated by the Lord's Resistance Army (LRA). In many parts of Afghanistan and Pakistan, humanitarian actors cannot operate because of hostilities and insecurity.

Violent attacks on humanitarian personnel and assets — whether politically or economically motivated — are the biggest threat. Over 100 humanitarian workers were killed in 2008 and 2009; at least 30 have been killed while carrying out their work so far this year. Over 200 have been kidnapped and injured in the past four years.

Criminally-motivated attacks on humanitarian actors as soft targets, and in the context of wider lawlessness, remain a particular challenge in places such as Darfur, Chad and the Democratic Republic of the Congo. On other fronts, the mechanisms to streamline bureaucratic requirements in Darfur and enhance access, jointly agreed with the Government of the Sudan, urgently need to be reinvigorated. In Gaza, a year and half after operation Cast Lead and three years after it was first instituted, the blockade is still in place, despite recent welcome steps to ease it.

States legitimately demand that international humanitarian action be fully coordinated with the appropriate domestic authorities. But I urge all affected States to use close cooperation with humanitarian actors to facilitate and expedite humanitarian aid to all who need it, and not slow it down or block it, or try to make artificial distinctions between the provision of goods and services and equally essential protection work designed to prevent abuses and save lives.

Explosive weapons are of particular concern in the protection of civilians where their use is inherently indiscriminate. A landmine does not know whether the person who steps on it is a combatant or civilian. For example, in Colombia at least 50 per cent of the territory has been declared affected by mines, and the country has one of the highest rates of landmine victims in the world. Like unexploded cluster munitions, landmines remain active long after the conflict has ended or moved on, creating deadly risks to civilians.

But the use of “ordinary” explosive weapons in populated areas also repeatedly causes unacceptably high levels of harm to civilians. From air strikes and artillery attacks in Afghanistan, Somalia, Yemen and Gaza to rockets launched at Israeli civilian areas by Palestinian militants and car bombs and suicide attacks in Pakistan or Iraq, the use of explosive weapons and explosives has resulted in severe civilian suffering. The threefold increase in drone attacks in Afghanistan and Pakistan over the past year is of concern, given the inevitable risk of unintended civilian casualties.

In Afghanistan, suicide and improvised explosive device attacks by armed groups now cause more civilian casualties than any other tactic, representing 44 per cent of the total civilian casualties in 2009, or 1,054 people killed. Aerial attacks from international military operations also caused 359 civilian deaths. Suicide bombings elsewhere are also increasing and of increasing concern since the victims are so often civilians, with the attack on the Sufi temple in Lahore only one recent, horrific example. I worry that we have become so inured to such horrors that the international community now scarcely notices these events.

More research is needed on the harm caused by explosive weapons in areas where civilians are present. However, there is already enough tragic experience to encourage serious reflection on the military use of such weapons in such circumstances when measured against the enormous human suffering they cause. I urge the Council to begin a dialogue on ways to tackle this emerging issue.

The planned withdrawal of thousands of United Nations peacekeepers from Chad and potentially from the Democratic Republic of the Congo has brought the issue of the protection of civilians in peacekeeping operations into the forefront of Security Council deliberations. This part of my statement includes input from the Department of Peacekeeping Operations (DPKO).

In Chad, it is critical that the Government fully assume its protection of civilian responsibilities and benchmarks outlined in resolution 1923 (2010). We wait to see whether the withdrawal of the United Nations Mission in the Central African Republic and Chad in the East of the country will expose refugees, IDPs and the local population, as well as humanitarian actors, to new security threats. We are meanwhile working with the Government to help turn its promises into reality.

In the Democratic Republic of the Congo, the humanitarian situation in the Kivu provinces remains alarming. In Orientale province, between December 2009 and April this year, close to 500 people were killed by the LRA and 400

abducted, of whom 168 were children. The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) plays a vital role in providing security and logistical support for humanitarians, and any drawdown can only heighten concerns both for humanitarians and for the populations they seek to serve.

While it is welcome that countries are determined to shoulder their sovereign responsibilities, including protecting civilians, I would strongly encourage the drawdown of United Nations peacekeeping missions to be made contingent on the attainment of clear protection benchmarks endorsed by the Security Council.

The publication in January 2010 of an independent study commissioned by the Office for the Coordination of Humanitarian Affairs and DPKO outlined in detail the steps needed to translate Security Council peacekeeping mandates into effective action on the ground to protect civilians. We are making steady progress in addressing a number of the gaps identified. DPKO and the Department of Field Support (DFS) have developed an operational concept, in consultation with troop- and police-contributing countries and other stakeholders, to bring conceptual clarity to the protection of civilians in the United Nations peacekeeping context.

Comprehensive protection strategies have been developed for MONUSCO, the United Nations Mission in the Sudan, and the African Union-United Nations Hybrid Operation in Darfur, while the United Nations Operation in Côte d'Ivoire, the United Nations Stabilization Mission in Haiti and hopefully other peacekeeping missions are not far behind. DPKO and DFS have also begun to develop protection of civilians training standards for United Nations peacekeepers, and are outlining the resource and capability requirements for implementing protection of civilians mandates. We count on the support of the Member States throughout these processes.

There can, of course, be tensions between military operations supported by peacekeeping missions and the protection of civilians. Military operations in the Democratic Republic of the Congo against the Forces démocratiques de libération du Rwanda and the LRA have often sadly been accompanied by serious humanitarian consequences.

The MONUSCO conditionality policy has drawn attention to the challenges to a United Nations peacekeeping operation when it is mandated to protect civilians while supporting a party to an armed conflict that is prone to abusive conduct. Measures to prevent the United Nations from being tainted by such abuses must also fully take into account the need for effective protection of civilians by influencing the forces concerned. This is a difficult balance to strike.

And, while I am extremely worried by reports from Somalia about the number of civilians being killed and injured by both Government forces and armed groups like Al-Shabaab, I am also concerned that in its response to attacks on it, the African Union Mission in Somalia (AMISOM) — whose mandate is authorized by the Council and whose operations are financially supported by the United Nations — is not taking sufficient notice of the basic principles of distinction between combatants and civilians and proportionality in the use of force. The challenges to AMISOM are immense and its role commendable. However, more needs to be done to prevent harm to civilians and to ensure the proper investigation of alleged violations.

The final theme I would like to address is once again that of accountability. Prevention is always better than cure, and I believe in the power of deterrence. The conduct of parties to conflict is inevitably affected by their sense of susceptibility to punishment and accountability to their victims, and by clear signals that impunity will not be tolerated. The danger here is that the normative framework has outpaced the enforcement will and capacity of the international community, so I urge the Council to take a robust approach to accountability. National justice systems must remain the first line of defence, but when they prove unable or unwilling to bring perpetrators to justice and provide remedies to victims, the international community must explore alternative means.

I welcome the commission of inquiry launched by the Secretary-General for crimes committed during violence in Guinea last September. And I welcome the panel set up by the Secretary-General to advise him on accountability for violations of humanitarian and human rights law in Sri Lanka, especially in the last stages of the conflict in that country, and the mechanism recently set up by the Government of Sri Lanka itself.

Meanwhile, the calls for an inquiry into recent events in southern Kyrgyzstan are also hard to ignore. The point is that this scrutiny needs to become the norm. Actual and would-be violators need to understand that they have nowhere to hide. Politics must not always win out where powerful States or vocal States with powerful protection are involved. The Security Council has important powers in this regard. It can include accountability and remedies within benchmarks for the protection of civilians in peacekeeping mission mandates. It can impose sanctions. It can establish international tribunals, and it has choices concerning the nature of its cooperation with the International Criminal Court. It needs to show that it is serious, and not selective, about this power.

One idea is for a permanent mechanism to be established somewhere in the United Nations system to conduct inquiries on serious allegations more or less automatically, which would prevent calls for investigations from being politicized from the start. The world has changed in the 10 years since the Security Council first focused on the protection of civilians in a thematic manner, and even in my three and a half years as Emergency Relief Coordinator. Positive normative developments contrast with a deteriorating reality on the ground and call into question the efficacy of the law and the credibility of the institutions that struggle to uphold it. So I urge the Security Council to work with Member States to craft new solutions to the changing nature of protection of civilian concerns. These new solutions must embrace an expansive vision of protection that extends beyond the immediate concerns of the battlefield. They must look to prevention as well as to mitigation. Only by focusing on consistency, credibility and a long-term approach can we hope to reduce the current gap between norms and reality.