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## Peace-keeping and Human Rights

JANUARY 1994

SUMMARY

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This paper examines the evolution of human rights protection and promotion in the context of United Nations (UN) peace-keeping operations. Based on its own observations and findings in respect of the human rights aspects of a number of recent peace-keeping and other monitoring operations, Amnesty International believes that the UN has so far failed to build essential measures for human rights promotion and protection consistently into its peace-keeping activities. It is time for the UN to develop a more coherent and comprehensive approach. It must ensure that human rights concerns are addressed in the planning and implementation of any peace-keeping operation and that mechanisms are established within the operation to secure the full protection of human rights both during the transitional settlement period and in the longer-term, when the main UN operation comes to an end.

The paper sets out Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations. This set of recommendations is aimed at the incorporation into all peace-keeping and other relevant UN field operations essential measures to ensure respect for human rights as well as monitoring, investigation and corrective action in respect of violations. The 15-Point Program is addressed to all those involved in the establishment of such operations - the parties to the conflict, observer governments involved in the process and other UN Member States as well as the UN secretariat and other UN bodies and specialized agencies.

The first part of the paper examines the role of the UN so far in the area of peace-keeping and human rights protection and demonstrates the need for consistent monitoring, investigation and reporting of human rights violations to be undertaken from the outset. It includes a number of case studies of recent peace-keeping operations and proposes a series of human rights measures which ought to be included in the UN's planning and implementation of future operations. The second part of the paper looks at

attacks on peace-keeping personnel as well as the indiscriminate use of force and other reports of abuses by peace-keepers themselves. These issues need to be addressed in a serious and transparent way as UN troops, and forces acting under UN authority, are deployed in increasingly violent contexts. In such situations, not only are measures required to ensure that those responsible for attacks on peace-keeping personnel are brought to justice but the UN itself and all its personnel must set an example and demonstrate their own adherence to international humanitarian and human rights standards at all times.

In the final section of the paper the recommendations contained in the 15-Point Program are elaborated in more detail. They include structural suggestions as to how UN officials and governments involved at the political level should address human rights issues at all stages of UN peace-keeping or peace-building in a country. These recommendations are designed for use in all types of operations: cease-fire monitoring, implementation of peace agreements, peace enforcement or the delivery of humanitarian assistance. Member States and the UN are urged to play greater attention to the importance of addressing human rights in a serious way in the planning and implementation of all peace-keeping operations. Amnesty International is convinced that human rights protection is essential to the success of any such operation and that, as long as the UN avoids tackling these issues effectively, it is seriously damaging its own credibility and thereby its capacity to undertake peace-keeping and peace-building operations in other contexts and countries in the future.

**KEYWORDS:** UN1 / ARMED CONFLICT1 / EL SALVADOR / CAMBODIA / NAMIBIA / MOROCCO / ANGOLA / MOZAMBIQUE / LIBERIA / RWANDA / HAITI / SOUTH AFRICA / SOMALIA / KUWAIT / MACEDONIA / LEBANON / IMPUNITY / REFUGEES / DISAPPEARANCES / REFERENDA / AMNESTIES FOR VIOLATORS / EXTRAJUDICIAL EXECUTION / CONSTITUTIONAL CHANGE / INDEPENDENCE OF JUDICIARY / ARBITRARY ARREST / WAR CRIMES / OAS / OAU / ICRC /

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## **Peace-keeping and human rights**

It is imperative that both parties respect their responsibilities under international humanitarian law applicable to civilians and other persons taking no active part in armed hostilities, including the obligation to respect the right to life and the prohibition of torture and other cruel, inhuman and degrading treatment. I should also, in this connection, stress my belief that respect for human rights constitutes a vital, indeed a critical component, among measures to resolve, on a long-term basis, conflicts of this nature, including efforts to promote enduring conditions of peace, national reconciliation and democracy.

*-United Nations Secretary-General  
Boutros Boutros-Ghali, report to  
the Security Council on Angola  
(S/25840, May 1993)*

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## ACRONYMS & ABBREVIATIONS

|                            |   |
|----------------------------|---|
| Arusha accords             | Peace agreement signed between the Government of Rwanda and the RPF, 4 August 1993  |
| CIVPOLs                    | UN civilian police monitoring components within peace-keeping operations  |
| Colombo agreement          | Agreement signed in July 1993 by warring parties in Liberia   |
| CSC                        | Supervisory and Monitoring Commission (Mozambique)  |
| ECOMOG                     | Cease-fire Monitoring Group (Liberia)   |
| FMLN                       | <i>Frente Farabundo Martí para la Liberación Nacional</i> (Farabundo Martí National Liberation Front—opposition party in El Salvador agreement)   |
| Governors Island agreement | Agreement signed by President Jean-Bertrand Aristide and Lieutenant-General Raoul on 3 July 1993  |
| Cedras                     |   |
| ICRC                       | International Committee of the Red Cross  |
| JCMC                       | Joint Cease-fire Monitoring Committee (Liberia)   |
| MICIVIH                    | International Civilian Mission in Haiti (Joint UN/OAS human rights monitors)  |
| MINURSO                    | UN Mission for the Referendum in Western Sahara   |
| NATO                       | North Atlantic Treaty Organization  |
| New York agreement         | Final peace agreement in the accords relating to El Salvador  |
| OAS                        | Organization of American States   |
| ONUMOZ                     | United Nations Operation in Mozambique  |
| UNOMUR                     | United Nations Observer Mission Uganda-Rwanda   |
| ONUSAL                     | United Nations Observer Mission in El Salvador  |
| Paris agreements           | Agreements on Comprehensive Political Settlement of the Cambodia Conflict, signed by all four warring parties, 23 October 1991  |
| POLISARIO                  | <i>Frente Popular para la Liberación de Saguia El Hamra y de Rio de Oro</i> (party to 1988 agreement with the Government of Morocco to a plan for a referendum in the disputed territory of Western Sahara) |
| RENAMO                     | Resistência Nacional Moçambicana  |
| RPF                        | Rwandese Patriotic Front  |
| Rome agreement             | Peace Agreement signed between the Government of Mozambique and RENAMO (October 1992)   |
| San José agreement         | San José agreement on human rights signed between the Government of El Salvador and the FMLN on 26 July 1990  |
| SMC                        | Supervisory and Monitoring Commission (Mozambique)  |
| SNA                        | Somali National Alliance (forces loyal to General Aidid)  |
| SPLA                       | Sudan People's Liberation Army (armed opposition group)   |
| SWAPO                      | South-West African People's Organization  |
| UNAMIR                     | United Nations Assistance Mission for Rwanda  |
| UNAVEM I/II                | United Nations Angola Verification Mission  |
| UNHCR                      | Office of the United Nations High Commissioner for Refugees   |
| UNIKOM                     | United Nations Iraq-Kuwait Observer Mission   |
| UNITA                      | União Nacional para a Independência Total de Angola (armed opposition party in Angola)  |
| UNMIH                      | United Nations Mission in Haiti   |
| UNOMIL                     | United Nations Observer Mission in Liberia  |
| UNOMSA                     | United Nations Observer Mission in South Africa   |
| UNOSOM I/II                | United Nations Operation in Somalia   |
| UNOVER                     | United Nations Operation to Verify the Referendum (Eritrea)   |
| UNPROFOR                   | United Nations Protection Force (Croatia, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia)  |
| UNTAC                      | United Nations Transitional Authority in Cambodia   |
| UNTAG                      | United Nations Transition Assistance Group (Namibia)  |

**Amnesty International's 15-Point Program  
for Implementing Human Rights  
in International Peace-keeping Operations**

**1. The political role of the international community.** The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

**2. No international 'silent witnesses'.** All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

**3. Human rights chapters in peace agreements.** Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

**4. Effective and independent human rights verification.** A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

**5. Ensuring peace with justice.** Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

**6. On-site human rights monitoring.** Human rights monitors should be mandated out to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

**7. Frequent and public reporting.** To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

**8. International civilian police monitors.** Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

**9. Long-term measures for human rights protection.** Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

**10. Human rights education and advisory assistance programs.** Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

**11. The protection of refugees, internally displaced persons and returnees.** Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of *non-refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

**12. The gender dimension.** Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

**13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.** The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

**14. Prosecution of war crimes and attacks on international peace-keeping personnel.** The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

**15. Continued promotion and protection of human rights in the post-settlement phase.** Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

# Peace-keeping and Human Rights

## Introduction

This paper looks at the evolution of human rights promotion and protection in the context of United Nations (UN) peace-keeping operations from two perspectives. First, it looks at what the United Nations is expected to do to effectively and consistently address human rights concerns as an essential part of its peace-keeping and peace-building work; and, second, it examines what the United Nations should do to prevent the abuse of human rights by its own peace-keeping personnel and to ensure that international peace-keepers abide by international human rights standards at all times and are held responsible for any abuses.

As UN peace-keeping activities around the world are dramatically expanding, the United Nations is now faced with new roles and opportunities in the realm of human rights. These new roles are developing at UN headquarters in New York and around the world in imaginative but somewhat haphazard ways. This paper looks at these developments and points to the need for a considered evaluation which might lead to a more coherent approach. In the 1990s the world expects a lot from the United Nations. A great deal can be achieved if the UN carries into the field its determination professed in its Charter in 1945 to 'save succeeding generations from the scourge of war' and 'reaffirm faith in fundamental human rights'. Amnesty International is firmly convinced that, if the United Nations is ready to prevent wars and human suffering, then tackling human rights violations early on is essential and the only way to confirm that the UN is taking human rights seriously. Amnesty International is equally concerned that the United Nations must exhibit the highest standards of behaviour and provide a model for dealing with training, investigations, disciplinary action and reparations when its own personnel are alleged to have committed human rights abuses.

Amnesty International's approach to peace-keeping and human rights is determined by its mandate. Amnesty International is a world-wide voluntary movement that works to prevent some of the gravest violations by governments of people's human rights. The main focus of its campaigning is: to seek the unconditional release of all prisoners of conscience; to ensure fair and prompt trials for all political prisoners; to abolish the death penalty and the torture and other cruel treatment of prisoners; and to end extrajudicial executions and 'disappearances'. In addition, Amnesty International opposes certain abuses by opposition groups including hostage-taking, torture and killings of prisoners and other arbitrary killings. The organization does not take a position on whether peace-keeping operations should be authorized for any particular situation to begin with, nor does it take a position on peace-keeping methods in general. This paper specifically analyzes the actual effects on human rights conditions which recent and existing United Nations peace-keeping operations have had. It presents Amnesty International's conclusions and recommendations regarding ways to maximize the protection and promotion of human rights in the context of peace-keeping operations.



## PART I

### Human rights in United Nations field operations

Peace-keeping mushroomed during 1992 and 1993. Over one-third of all United Nations peace-keeping operations were established during the last three years. 1992 saw a fivefold increase in the United Nations personnel involved in peace-keeping activities. By October 1993, over 75,000 military personnel and civilian police were deployed in 18 separate peace-keeping missions.<sup>1</sup> The troop strength of the UN operation in Somalia stood at 27,961 on 22 December 1993 representing one of the largest deployments ever. At the same time, the contours of what these operations are mandated to do have radically changed.

Amnesty International considers that attention to the promotion and protection of human rights has to be a central tenet of any type of peace-keeping operation. Important political statements supporting this position are reflected in, among other sources, the UN Secretary-General's June 1992 report, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, and the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in June 1993.<sup>2</sup> With the end of the Cold War and East-West paralysis of UN decision-making, the United Nations has been presented with new opportunities for more comprehensive approaches to peace-keeping, including in some cases the formulation of specific UN mandates to address human rights issues. Some recent peace-keeping operations and civilian observer missions established in wartorn countries have been able to address human rights problems on the spot with the potential for taking immediate corrective measures and establishing programs for longer-term institution building. The fact that these are field-based missions, working over a relatively long period in the country concerned, is what makes these activities potentially very effective.

As yet, however, the United Nations has not really come to terms with this new role. While there are a growing number of precedents for human rights work being officially conducted in the context of UN peace-keeping, these measures have been elaborated in haphazard ways, illustrating a conceptual and political gap which needs to be bridged before the UN can be said to be adequately addressing the human rights aspects of conflict and post-conflict situations. Much of the thinking as well as the existing organizational structures in this area remain mired in the history of traditional peace-keeping, rather than in the future of peace-building. This has meant that many of the newer operations—or the UN Member States which collectively decide the parameters of their activities—are sometimes making up or adapting the rules to new situations as they go along, with mixed results. Amnesty International hopes that the recommendations set out in this paper will contribute to the efficacy of human rights programs in peace-keeping operations. The observations and recommendations which

follow are intended to serve as some basic and consistent guidelines for the design and implementation of human rights programs in peace-keeping efforts.

In order to understand how the UN and its Member States see these operations—that is, how peace-keeping is debated, authorized and evaluated within the UN's own decision-making process—it is worth briefly examining the different functions which peace-keeping operations have been mandated to address and how these have evolved, particularly in the last few years.<sup>1</sup> It is important to stress at the outset that the cardinal rule of peace-keeping has traditionally been that operations are only deployed with the consent of all concerned parties. In recent years, the presumption of consent has started to become somewhat blurred as the UN has become more involved in conflicts of an internal nature. In these situations, the 'consent' of the parties—whether governmental, non-governmental opposition groups, or military or paramilitary bodies—may be impossible to seek, verify or maintain. Where the absence of consent actually approaches hostility, even if only from a small sector of the population, then the UN's role begins to approach that of an active combatant and its overall role risks being coloured by this factor.

## **A. Historical Overview**

### *1. Traditional peace-keeping adapts to new situations*

Within the traditional conceptualization of peace-keeping, there are two main types: military observer groups and infantry-based forces. Both of these serve primarily to control cease-fire arrangements, at the request of the parties. Military observer groups, which are usually unarmed, are intended to create the conditions for successful political negotiations to proceed. Essentially this means trying to maintain a cease-fire simply by virtue of the presence of an accepted impartial monitor. Examples include two very early but still existing operations in the Middle East and in Jammu and Kashmir<sup>2</sup>. Infantry-based forces, which carry arms, albeit usually light weapons, are generally mandated to establish and control demilitarized or buffer zones in order to physically separate parties to a conflict. This sometimes includes disengaging and supervising separation of forces. Examples include UN operations in: Cyprus; along the Israeli-Syrian border, in southern Lebanon; and in the three 'UN Protected Areas' in Croatia.<sup>3</sup> Some 'traditional' peace-keeping operations have had mandates which transcend merely supervising disengagement. The UN force in Lebanon is technically mandated to assist the Lebanese Government in restoring its effective authority in the southern part of the country,<sup>4</sup> while the Cyprus force is supposed to 'contribute to the maintenance and restoration of law and order and a return to normal conditions'.<sup>5</sup> UN civilian police monitors in Cyprus have conducted activities such as searching for persons reported missing on either side of the green line.<sup>6</sup>

In the current proliferation of peace-keeping operations and the variety of situations and tasks to which such missions are assigned, traditional peace-keeping

functions are now also being applied in more novel situations. In the Western Sahara and in Angola, 'traditional' peace-keeping is being used as a holding operation or fall-back option in view of the failure to implement more comprehensive programs. Political setbacks in the Western Sahara have meant that the activities of the UN Mission to Monitor the Referendum in Western Sahara (MINURSO), have been limited for nearly two years to verifying the cease-fire between Morocco and the POLISARIO Front (*Frente Popular para la Liberación de Saguia El Hamra y de Río de Oro*) in the territory.<sup>9</sup> In Angola a large-scale operation established under a comprehensive peace settlement was reversed at its culmination, after the electoral results were disputed and widespread combat resumed. In the face of this turn-around, the UN has reduced the strength of its operation in Angola to around 50 military observers and 18 civilian police monitors, while awaiting the outcome of the efforts of the Secretary-General's Special Representative in Angola to restore an effective cease-fire and implementation of the original peace settlement, the Bicesse Accords.<sup>10</sup>

The UN Observer Mission in Liberia (UNOMIL) represents a particularly interesting new development in the UN's 'traditional' military observer role. In this case, the UN's mandate is mainly to oversee the actions of the regional peace-keepers, rather than the Liberian parties themselves. In view of the inability of the Economic Community of West African States's peace-keeping force in Liberia (ECOMOG) to keep the peace in accordance with a 1991 peace plan, the warring parties signed a new peace agreement in Cotonou in July 1993. The Cotonou agreement stipulated that the UN should deploy military observers to monitor the cease-fire verification and demobilization activities of the new ECOMOG. While some degree of peace enforcement powers are conferred upon the regional organization<sup>11</sup>, the UN will be responsible for monitoring the prescribed actions of the regional peace-keeping force, including search, seizure and storage of weapons, demobilization of forces and the guarding of encampments. Among actions which, as defined in the Cotonou agreement, would constitute violations of the cease-fire are: obstruction, harassment and attacks on peace-keeping personnel. Although the United Nations is acting merely as an observer force in Liberia, the Cotonou agreement does provide for comprehensive transitional measures leading to elections. These aspects of the agreement and provisions for their verification are discussed further in section I.A.2 (case studies 3) of this paper concerning the implementation of comprehensive settlements.

The UN's operation along the Iraq/Kuwait border (UNIKOM), established after the Gulf War, also has a 'traditional' mandate to monitor the demilitarized zone on the border for incursions or other cease-fire violations. However, the context in which it was deployed was not a traditional one, but followed on from a 'peace enforcement' operation.<sup>12</sup> UNIKOM's mandate was expanded in February 1993, when its personnel were authorized to carry arms and to guard against violations of the demilitarized zone by using force if necessary.

A new form of peace-keeping which is also traditional in terms of its basic function, but which has only become a viable political option since the end of the Cold War, is now called 'preventive deployment'. Sometimes called a 'trip-wire' force, this

refers to an international force deployed in a country not yet experiencing or involved in conflict but where conflict could occur. UN Secretary-General Dr Boutros Boutros-Ghali has called for the increased use of preventive deployment in countries whose neighbours are at war and there is a fear of 'spill-over'. He has also suggested preventive deployment as an option for countries experiencing civil crises which could result in armed conflict.<sup>13</sup> The country where the UN troops are based would normally request their deployment at a point when there is no actual conflict taking place. This type of operation has been used so far only in the former Yugoslav Republic of Macedonia where about 1,000 peace-keepers have been guarding the border with Serbia since June 1993.<sup>14</sup>

## *2. The new wave: implementation of comprehensive settlements (peace-keeping meets peace-building)*

The comprehensive 1978 settlement plan for the independence of Namibia, which was finally enabled to go forward in 1988, initiated the new wave of peace-keeping operations, characterized by the implementation of comprehensive peace settlements.<sup>15</sup> Other UN operations implementing comprehensive peace settlements include the recently completed operation in Cambodia (UNTAC), the original plans for Angola and Western Sahara (UNAVEM II and MINURSO), and the ongoing ones in El Salvador and Mozambique (ONUSAL and ONUMOZ). The most recent operation of this type is in Rwanda (UNAMIR), which was approved by the Security Council in October 1993.<sup>16</sup> (It should be noted that Somalia does not fit in this category at present, since there is no agreed peace settlement, although the United Nations is now involved in substantial longer-term peace-building activities there, similar to some of the activities discussed in this section. The operation in Somalia is discussed in sections I.A.4. and I.B.4 below on peace enforcement activities.)

All of these operations have been based on broad peace agreements between parties to the conflict. In some cases the agreements have been brokered by the UN, such as that in El Salvador, while other agreements, such as that in Mozambique, had little UN involvement during initial negotiations. In all cases, however, the parties have agreed that the UN should play a key role in verifying the implementation of the agreement. (In the case of Liberia, while the Cotonou peace agreement is fairly comprehensive in scope, the verification arrangements called for in the agreement are nevertheless quite vague, particularly with regard to the respective roles of the UN and the regional peace-keeping body.) These peace agreements are called comprehensive settlements because they have involved significant internal restructuring processes in the country concerned in military and civilian sectors. They have generally aimed to culminate in national elections.<sup>17</sup>

In these operations UN personnel have been deployed in the country to oversee the restructuring process in accordance with an agreed timetable. This has involved a range of military and civilian tasks for the UN, including: monitoring cease-fires;

overseeing demobilization of troops and weapons destruction; monitoring the integration or formation of and training new armed forces and national police forces; investigating human rights violations; resettling refugees and demobilized soldiers; providing humanitarian assistance; observing and verifying elections; conducting public information campaigns or technical assistance programs with legislative, judicial and administrative tasks; and working with or supporting the development of national institutions as well as local non-governmental organizations ('NGOs').

In the new vocabulary of the UN, therefore, such operations have not served just as a passive barrier between fighting forces (peace-keeping), but they have also established and actively monitored longer-term institution-building processes (peace-building). Various peace-building tasks have generally been allocated to separate specialized components within the UN operation, for example: military observers, civilian police monitors, civilian human rights observers, refugee protection officers, electoral monitors, judicial or legislative advisers, technical development and demining experts, and political and administrative personnel. Often specialized agencies, such as the UN High Commissioner for Refugees, have a major role in the peace process, but they have usually remained structurally outside of the peace-keeping operation itself. Regrettably, however, most of these operations and any human rights components they have included have been worked out in New York at UN headquarters with a marked lack of involvement, consultation or cooperation with the UN's own human rights bodies and experts or its Centre for Human Rights, based in Geneva, and with hardly any reference to other UN programs such as the Vienna-based crime prevention and criminal justice program. Amnesty International considers that these other programs, which have specialist experience to contribute, need to be much more closely integrated into the planning, design, implementation and follow-up of the relevant aspects of these operations, particularly the human rights components.

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#### **CASE STUDIES 1: Human rights verification**

##### **El Salvador & Cambodia**

Of the comprehensive settlement operations established to date, only those in El Salvador and Cambodia have included specific civilian human rights components with verification mandates. In EL SALVADOR, the San José Agreement on Human Rights was among the first of the series of agreements comprising the peace settlement between the Government and the *Frente Farabundo Martí para la Liberación Nacional* (FMLN). ONUSAL began verification of the San José Agreement in July 1991, nearly six months before the finalization of the full peace settlement. The El Salvador experience has established a number of unique precedents in the area of UN human

rights monitoring. First, the San José Agreement was the first specific human rights agreement concluded in the context of a peace settlement, and it provides a clear framework for UN verification in this area. ONUSAL's human rights division was the first such component to be established in a peace-keeping context, and it is all the more unique for having been deployed before a cease-fire was in effect. There are still over 100 civilian monitors placed around the country carrying out the work of 'active verification'. According to the human rights division of ONUSAL:

*Active verification is a systematic investigatory procedure designed to gather objective evidence to corroborate the existence of human rights violations. It is carried out through a process comprising various phases: first, the receipt of complaints or the reporting of a violation on the Mission's own initiative; second, the investigation or inquiry proper, which comprises a detailed follow-up of the facts, police and judicial investigations and the exercise of the Mission's fact-finding powers; third, if the facts are corroborated and it is found that there was no violation of human rights, the case is closed, but if verification reveals the opposite, recommendations are made either for compensating the injury done or for rectifying the situation which gave rise to or facilitated the violation; fourth, throughout the process, active verification involves using the Mission's good offices to contribute to the transparency and efficiency of police investigations, due process, safety of witnesses, etc., and its power of initiative to assist in overcoming existing situations of human rights violations."*

Although the human rights division of ONUSAL has been able to make far-reaching recommendations, it does not have the extensive human rights powers which the UN had in CAMBODIA. As its name suggests, the UN Transitional Authority in Cambodia (UNTAC) was empowered to virtually administer the country during the transitional period leading up to the May 1993 elections, a role which included 'general human rights oversight'. One of the key goals of the peace agreements relating to Cambodia<sup>20</sup> was to guarantee 'the non-return to the policies and practices of the past'. The preamble to the agreements recognized 'that Cambodia's tragic recent history requires special measures to assure protection of human rights'. Under the agreements UNTAC officials were empowered to investigate human rights complaints and to take 'corrective action', which included requiring the reassignment or removal from office of Cambodian administrative personnel.<sup>21</sup> According to the peace agreements, UNTAC could issue binding directives to public security agencies, and was to be given 'unrestricted access to all administrative operations and information' under their purview. All civil police forces were to operate under UNTAC supervision and control 'in order to ensure that ... human rights and fundamental freedoms are fully protected'. In addition, UNTAC could 'supervise other law enforcement and judicial processes throughout Cambodia' and could order the release of prisoners. UNTAC officers could themselves arrest, detain and prosecute offenders. In January 1993 UNTAC took the initiative to 'prosecute cases involving serious human rights violations', through the appointment of a Special Prosecutor.<sup>22</sup> However, while several arrests were made, it proved impossible to bring suspects to trial. They were handed over to the Royal Government of Cambodia when the

UNTAC mandate expired. Despite the presence of UNTAC human rights officials throughout the whole country, human rights violations were widespread.

The peace agreements for EL SALVADOR also provided for dismantlement of existing security and police bodies and the formation of a new National Civil Police, to be 'strictly civilian in character, structure, management and doctrine'.<sup>22</sup> ONUSAL included a component of international civilian police monitors to observe the transitional phase of the new police force. Both UNTAC and ONUSAL have provided human rights training for military, police and judicial personnel. They have assisted judicial and legislative reform and other projects intended to strengthen national civilian institutions for promoting and protecting human rights. They have also given important support to existing or nascent local non-governmental human rights groups. In Cambodia, UNTAC carried out a relatively extensive human rights education program amongst the Cambodian population and authorities as well as UN staff, including training in human rights standards and the development of codes of conduct for those personnel most directly involved in human rights protection.

In addition to the monitoring by ONUSAL's human rights division of the human rights situation during the transition process, the El Salvador peace accords incorporated another singular and unprecedented human rights measure. The peace agreement established two separate bodies to address the phenomenon of impunity.<sup>23</sup> The first of these bodies was the Commission on the Truth, charged with investigating human rights violations during the civil war between 1980 and 1992 'whose impact on society was deemed to require an urgent and public knowledge of the truth', and making recommendations to the Government of El Salvador and to the FMLN for the implementation of its findings.<sup>24</sup> The second body was the *Ad Hoc* Commission on the Purification of the Armed Forces, charged with evaluating the professional behaviour of all members of the armed forces, with the aim of recommending personnel to be discharged in the process of 'purification' of the armed forces.

Both Commissions have been faced with a failure on the part of the Government of El Salvador to comply fully with their recommendations, despite the fact that these recommendations are binding under the terms of the peace agreement. With respect to the Truth Commission's extensive recommendations, published on 15 March 1993 following pressure from the UN Secretary-General and the Security Council<sup>25</sup>, the El Salvadorian Government has only just begun an incomplete process of implementation very recently.<sup>26</sup> In December 1993, after an ominous rise in political violence in the preceding weeks, including a series of killings carried out in a manner suggesting the resurgence of 'death squad' activity in El Salvador, the Secretary-General announced the establishment of a Joint Group to investigate the activities of so-called illegal armed groups, in accordance with one of the still unimplemented recommendations of the Truth Commission.<sup>27</sup>

territory, as well as the Moroccan Government's continued refusal to account for or allow investigations into the fate of hundreds of 'disappeared' Sahrawis. Amnesty International believes the 'disappeared' Sahrawis must be included amongst the detentions to be investigated and publicly accounted for.<sup>11</sup> These conditions in the Western Sahara violate the human rights guarantees in the referendum agreement, and Amnesty International has called on the UN to address these issues urgently by expanding MINURSO's mandate to allow for human rights monitoring and investigation, and deploying the UN civilian police monitors immediately.<sup>12</sup> In Amnesty International's view, the political stalemate over the referendum voting criteria, which has stalled the implementation of most of the measures set out in the agreement, does not release the UN from its responsibility to ensure a climate of freedom of expression in the run-up to the referendum and to clarify the fate of the 'disappeared' and oversee the immediate release of political prisoners.

### CASE STUDIES 3: Structural weaknesses in verification

#### Angola, Mozambique & Liberia

In ANGOLA, the UN's operation (UNAVEM II) is judged to have failed largely because the operation was unable to ensure sufficient disarmament of the parties, particularly the *União Nacional para a Independência Total de Angola* (UNITA) National Union for the Total Independence of Angola, before the elections took place. The Secretary-General has lamented that the parties only assigned a limited role to UNAVEM II in the Bicesse Accord (so called because they were signed in Bicesse, Portugal, in May 1991); according to him this weak mandate hampered the ability of UNAVEM II to 'correct the drift towards non-compliance'.<sup>13</sup>

Amnesty International has been concerned at the weaknesses in the civilian components of UNAVEM II, including a lack of sufficient attention to human rights as well as weak verification mechanisms established to investigate alleged violations of the peace accords. The Bicesse Accords contain provisions requiring respect for human rights, including freedom of expression, association, movement and the prohibition of acts of violence against the civilian population. Although these provisions appear in various parts of the agreement, there was no clear human rights chapter specifying the source of specific rights to be guaranteed and setting out investigative and remedial provisions. The Bicesse Accords also required the release of all prisoners detained in the context of the conflict, yet by the time the elections were held in September 1992, UNITA had not complied with this requirement.

The supervisory and monitoring mechanisms provided for in the Bicesse Accords were composed of Government and UNITA representatives, but lacked UNAVEM II or any other impartial participation. These mechanisms were based on the principle of consensus, which granted each side what amounted to the power to veto action on any complaint which might be launched by the other party. Amnesty International believes that the incorporation of the principle of consensus was a major reason behind the failure to investigate and remedy violations of the peace agreement which took place in the period leading up to the elections, including political killings and other serious human rights violations. Amnesty International considers that the UN's inability to speak out or respond effectively in the face of such violations contributed to contempt for and the eventual total breakdown of the peace process itself.



## CASE STUDIES 2: Decolonization settlements Namibia & Western Sahara

In Namibia, the UN Transition Assistance Group (UNTAG) had the political task of ensuring that a major change in political atmosphere took place so that there could be a free and fair campaign in a fully democratic climate.<sup>28</sup> This included the withdrawal of all South African military forces except for 1,500 who were confined to base, as were the forces of the armed liberation group, the South-West African People's Organisation (SWAPO). The South West African Police (SWAPOL) were the only remaining South African-controlled security force left in Namibia during the transitional period.<sup>29</sup> The police were required to carry out law and order functions during the transition impartially and without intimidation, and this required close monitoring by UNTAG civilian police monitors. The UN civilian police observed SWAPOL patrols, investigations, conduct at political rallies and in communities. However the UN police monitors had no direct law enforcement powers themselves, in contrast to Cambodia.

Discriminatory and restrictive legislation was repealed or substantially amended, an amnesty for political exiles proclaimed and the return of over 42,000 exiled Namibians was monitored and assisted. The release of political prisoners and detainees was provided for in Security Council Resolution 435 (1978), and about 40 detainees and just over 20 convicted prisoners held by the South African authorities, as well as over 200 persons held by SWAPO, were released. This required a certain amount of investigation to follow up cases and places of detention, and an Independent Jurist was appointed to advise UNTAG on disputed cases. However, many hundreds of people had 'disappeared' in the custody of the other side; they remained unaccounted for by the time UNTAG withdrew.

The UN Mission for the Referendum in WESTERN SAHARA (MINURSO) was established in April 1991 in order to supervise the referendum which was due to be held around February 1992. By the end of 1993 the referendum had not yet been held and MINURSO's presence had not stopped human rights violations occurring in the territory. MINURSO is supposed to guarantee a free and fair political climate during a process leading up to and including a territorial referendum on the question of Western Saharan independence or incorporation as a Moroccan territory. The referendum agreement stipulates that the UN is responsible for establishing 'the conditions and modalities for a referendum campaign in which freedom of speech, assembly, movement and the press are guaranteed'.<sup>30</sup> MINURSO, with the assistance of an Independent Jurist who has yet to be sent to the territory, is also to take steps to ensure the release of all political prisoners and detainees. As in the Namibian model, the Independent Jurist is supposed to advise on an amnesty to be promulgated for political prisoners, and to assist in the settlement of any disputes concerning the release of prisoners and detainees and identification of laws and measures which 'could obstruct the conduct of a free and fair referendum' and are therefore to be suspended.<sup>31</sup> Like their counterparts in Cambodia, MINURSO civilian police monitors are to have the power of arrest.<sup>32</sup>

Amnesty International has raised with the UN its concerns about arrests and harassment of hundreds of Sahrawis, on suspicion of supporting Western Saharan independence or for participating in peaceful protests against Moroccan control in the

The current situation in Angola is a dire one indeed. Amnesty International has received information about hundreds of extrajudicial and arbitrary killings by Government and UNITA forces since November 1992. Further prisoners have also been detained since the resumption of hostilities after the elections, many of whom have been subjected to 'disappearance' or extrajudicial execution.<sup>16</sup>

The weaknesses of UNAVEM II's mandate are echoed somewhat in the UN's operation in MOZAMBIQUE (ONUMOZ). The main oversight mechanism established in the Mozambique peace agreement, the Supervisory and Monitoring Commission (CSC), is at least now chaired by the UN. However, the role of the UN in preventing obstruction in this body remains limited and the consensus system still applies. Amnesty International is concerned that human rights investigations could be blocked by one side or the other in Mozambique, as happened in Angola. The General Peace Agreement for Mozambique (concluded in Rome in October 1992) binds the parties to respect civil and political rights. However, it does not provide a specific mechanism to monitor reports of human rights violations and ensure that such reports are properly investigated and remedied.

Under the Rome agreement, the national police will continue to perform their functions under the responsibility of the Government, and both the police and the state security agency are required to act impartially and with strict respect for human rights and fundamental freedoms. The activities of these two governmental security bodies are to be monitored by two of a number of separate verification commissions established under the accord, which report to the overall CSC. Two CSC sub-bodies, the National Information Commission and the National Police Affairs Commission, are mandated to investigate irregularities and inform the competent state authorities so that appropriate judicial or disciplinary measures can be taken. However, because both these bodies are required to report through the CSC, investigations into violations of the agreement, including its human rights provisions, could still be blocked by either of the parties. (It should be noted that disputes over the composition of the various commissions delayed their establishment until December 1993.)

Furthermore, although the peace agreement provides that 'bodyguards' from the opposition party, the *Resistência Nacional Moçambicana* (RENAMO) Mozambique National Resistance, will be given police status, their activities do not appear to be subject to any form of monitoring. Indeed RENAMO forces seem exempt from any of the supervisory structures and it is not clear that any state security structures are to have access to RENAMO-held territory.

Finally, a new army comprising both RENAMO and government soldiers is to be formed under the Rome agreement, which established a further verification mechanism to monitor the formation of this new force. However, there do not appear to be provisions for monitoring the behaviour of the new army once it is established, despite the past record of serious human rights violations committed by both government and RENAMO armed forces and the fact that the new army is required to cooperate with the police 'to protect civilian inhabitants against crime and violence of all kinds'.

Amnesty International has brought these concerns to the attention of the UN and recommended that ONUMOZ include a civilian police contingent to monitor the conduct of police investigations into reported human rights violations, as well as police access to RENAMO-controlled areas. Amnesty International urged that the UN civilian police monitors be required to report frequently and regularly on the activities of the Government's security forces, RENAMO bodyguards, and the respective

verification commissions established in the peace agreement. In its implementation plan for ONUMOZ, issued in December 1992, the UN did recommend inclusion of a civilian police component to monitor the 'neutrality of the Mozambiquan police', subject to the parties' agreement. However, although agreement was eventually obtained from both parties, the UN Secretary-General announced in October 1993 that there would be a delay in providing such a police contingent, due to a lack of available trained personnel.<sup>77</sup>

Amnesty International has also noted that in a UN document published in July 1993 concerning the financing of ONUMOZ the UN intended to appoint a Human Rights Adviser to work within the office of the head of the mission, the Special Representative of the Secretary-General.<sup>78</sup> According to the document, the Human Rights Adviser was stated to be responsible for 'overall monitoring of the human rights situation in the mission area, keeping the Special Representative informed of current developments and, in consultation with the Department of Humanitarian Affairs and the relevant authorities, recommending courses of action to address identified issues.' While welcoming this proposal, Amnesty International is disappointed that no such human rights monitoring is really taking place as of December 1993.

In **LIBERIA**, the Cotonou agreement provides, among other things, for the release of prisoners, return of refugees and the promulgation of an amnesty for acts committed during military engagements. However, the agreement contains no express human rights guarantees. A six-month transitional government to be established under the agreement is to 'operate as closely as practicable under the Constitution and laws of Liberia'. Not only is 'practicable' an extremely unclear term, but the Constitution is itself a deeply flawed document, allowing extensive derogation of basic human rights.<sup>79</sup> In addition, these provisions do not directly apply to the parties but only to the transitional government (which, at the time of writing, has yet to be established).

The agreement lacks any provisions for reconstructing the essential institutions of civil society which will be able to ensure the rule of law and lasting respect for human rights. There are no provisions for rebuilding the judicial system along lines which ensure that courts are competent, independent and impartial, affording all the necessary guarantees for fair trial, for establishing an independent prosecution and guaranteeing an independent bar. Indeed, apart from a provision stating that the current Supreme Court will continue to exist, the agreement fails to provide for any court system in the transitional phase. The agreement's provision for the release of political prisoners does not require parties to identify the names and status of individual prisoners, nor is there any clear system of independent supervision of detention conditions or screening of the distinction between political detainees and 'common criminals'.<sup>80</sup> There are no provisions for human rights training for judicial, law enforcement or prison personnel. Similarly, it is not clear what armed forces or police forces will be established under the transitional government or after elections.

Finally, the amnesty provision in the Cotonou agreement would seem to undermine the recommendations of the UN panel of inquiry into the June 1993 massacre of civilians which took place near Harbel, Liberia. The panel, established by the UN Secretary-General in accordance with a request by the Security Council, stressed in its general conclusions

*the need at this juncture for similar investigations of a number of major atrocities attributed to the parties to the conflict. This request was made strongly and with conviction by nearly all the persons whom the Panel met. The Panel agrees that this is necessary in the interests of both equity and to deter the recurrence of such actions. It agrees with many Liberians who expressed the view that the identification and disclosure of the perpetrators of such acts would lead toward atonement and reconciliation. Finally, it believes that this approach would help to construct a more solid foundation for durable peace.<sup>41</sup>*

The amnesty provision would not cover those responsible for the Harbel killings since, according to the panel of inquiry, these killings did not take place 'in the course of actual military engagements'. However, if persons responsible for war crimes and crimes against humanity during military engagements should be granted an amnesty, this would be in breach of Liberia's obligations under the Geneva Conventions to suppress breaches of humanitarian law, and would also be inconsistent with the UN's own findings and recommendations. Amnesty International regrets that there is no provision in the agreement for investigation of breaches of human rights and humanitarian law obligations, or for bringing those responsible to justice or for compensating victims or their families.

The verification bodies established under the Cotonou agreement<sup>42</sup> are to monitor, investigate and report all cease-fire violations. Amnesty International finds several problems with these new verification mechanisms. The first is the lack of any express mandate to address violations of human rights and humanitarian law obligations. Secondly, the agreement does not specify whether they are to decide questions by consensus or majority vote. If they are to proceed by consensus, this system of addressing violations of the cease-fire will be prey to the same deadlocks seen in Angola and Mozambique. If it is determined that the verification bodies are to take decisions by majority vote, the provision for ECOMOG enforcement of such decisions could be more effective than the mechanisms established in Angola and Mozambique. However, the enforcement powers granted to ECOMOG under the agreement are not spelled out. Furthermore, whether an expanded ECOMOG, which was previously seen as one of the parties to the conflict, can do this effectively remains to be seen. Although the agreement that the UN monitor ECOMOG's activity may partially address the difficulties inherent in enforcing the decisions of the verification bodies, the relationship between the two bodies in the event of disputes is not that clear. If the UN is going to further delegate peace-keeping duties to regional organizations it is important that such organizations are properly equipped to carry out the necessary tasks. Furthermore, thought will also have to be given to the question of how to ensure that regional peace-keepers act and are seen to act in an impartial way.

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Although the UN's operation in Rwanda (UNAMIR) has barely been established as yet, Amnesty International fears some of its concerns regarding the Angola, Mozambique and Liberia settlements may apply to Rwanda as well. UNAMIR's overall mandate is 'contributing to the establishment and maintenance of a climate conducive to the secure installation and subsequent operation of the transitional Government.'<sup>43</sup> Elections are proposed for some time between October and December 1995. The UN's

implementation plan does not provide for a human rights component, although the following elements are included in the mandate of UNAMIR: monitoring the security situation during the final period of the transitional government's mandate leading up to the elections; investigating, at the request of the parties, instances of alleged non-compliance of the peace accords relating to the integration of armed forces; providing security for distribution of humanitarian assistance; monitoring the repatriation of Rwandese refugees and the resettlement of displaced persons; and for UN civilian police to assist in the maintenance of public security through the monitoring and verification of the activities of reconstituted *Gendarmerie* and Communal Police.

The Rwandese Government and the Rwandese Patriotic Front signed a series of protocols in the months leading up to the eventual signing of the Peace Accord on 4 August 1992. Some of the protocols, in particular the 'Protocol relative to the Rule of Law', included provisions for the protection of human rights. Article 15 calls for the establishment of an independent national commission of inquiry responsible for monitoring human rights violations and Article 16 calls for the signatories to set up an international commission of inquiry to investigate human rights violations committed during the war. As far as Amnesty International is aware none of these commissions have been initiated, as at the end of 1993.

### *3. Civilian observer missions: peace-keeping and peace-building without the military?*

The deployment of purely civilian observer missions without military staff, in the absence of a cease-fire, and possibly even without an underlying peace agreement, is a very new option for the United Nations. The two civilian human rights missions established thus far in the UN system are the International Civilian Mission in Haiti (MICIVIH) and the UN Observer Mission in South Africa (UNOMSA).<sup>44</sup> (There have additionally been smaller-scale and shorter-term electoral observation teams sent to countries requesting this, but these are not addressed in this paper.<sup>45</sup>)

There are striking differences between this kind of operation and all those discussed above. First, these are purely civilian missions with no military peace-keeping component. The purpose nevertheless is similar, since the deployment of international civilian personnel is intended to lower or diffuse levels of violence and create a climate of greater security and confidence to enable peaceful political processes to go forward. As in traditional peace-keeping operations this is intended to be achieved essentially by the significant pressure of having international witnesses on the scene, albeit unarmed. Since their presence is not necessarily based on a comprehensive peace agreement or an effective cease-fire, the real pressure must come from credible and visible activity on the ground.

A second difference is that these civilian missions have been specifically human rights-related. The international observers are charged with monitoring and reporting on the general human rights situation and they may be mandated to take up individual violations with the authorities. Their presence may be predicated on a consent agreement such as that with the *de facto* military authorities in Haiti, which specified the terms of reference of the mission and required the monitors be given access to places of detention, courtrooms, etc. The observers may also have general human rights education functions.

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A third difference with other kinds of peace-keeping missions is that in procedural and political terms the mission might be approved in a number of ways, but not solely by the Security Council, as has become the tradition for peace-keeping.<sup>46</sup> This means the General Assembly can take the initiative, as it did with Haiti, rather than wait for Security Council approval of a huge military peace-keeping operation; or a 'memorandum of understanding' can be agreed between the UN and the country concerned as happened in Iraq with regard to the security guards.

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#### **CASE STUDIES 4: Civilian Monitoring Missions**

##### **Haiti & South Africa**

Although the human rights monitors in HAITI were evacuated to the Dominican Republic for security reasons on 15 and 16 October 1993 and, at the time of writing, the fate of the Mission was still in doubt, the work achieved by the Mission from February 1993 until its withdrawal is worth evaluating. One of MICIVIH's unique features is that it is a joint venture of the UN and the Organization of American States.<sup>47</sup> With a combined personnel of over 230 human rights monitors from both organizations, this is the largest specific human rights operation yet established. The monitors' job in Haiti was to engage in actual verification of respect for human rights, based on the rights guaranteed in the Haitian Constitution and the international human rights treaties to which Haiti is a party.<sup>48</sup> The Mission was entitled to receive allegations of human rights violations, interview anyone freely and privately, visit any place or establishment, including places of detention, and enjoy full freedom of movement throughout Haiti. In addition they observed political meetings and demonstrations where it was feared human rights violations might occur, as a 'dissuasive presence'.<sup>49</sup> The Mission regularly made its concerns known to the Haitian authorities, including remedial recommendations, and inquired as to any follow-up taken by the authorities.

The results of MICIVIH's presence have been mixed. The Mission took an 'active approach to information gathering' and sought access throughout the state both for educational and information-gathering purposes, notwithstanding serious obstacles for the proper investigation of reported human rights violations.<sup>50</sup> Certainly, the knowledge on the part of the police and security forces that incidents would be followed up by the international monitoring Mission meant that beating, arbitrary detention and other irregularities were sometimes avoided.<sup>51</sup> In addition, the presence and assistance of observers during judicial proceedings has strengthened the observance of the Constitution and penal code, at least for those cases attended, as well as the authority and confidence of the judiciary. The Mission took steps to see that prisoners and other victims of human rights violations received medical and legal assistance. As public knowledge about the Mission grew during the months the observers were present, more and more people sought out the Mission to seek assistance or provide information on human rights violations.

Nevertheless, summary executions continued through 1993 despite the presence of the Mission and their condemnations of the violence. In July, August and the first part of September, and in Port-au-Prince in particular, the Mission observed a dramatic increase in killings and 'disappearances'. The Mission received reports of several hundred cases of arbitrary arrests and illegal detention, often with

evidence of torture. A disturbing feature of the violence has been persistent threats and attacks against people who have been in contact with the Mission or have featured in cases publicized by the Mission.

Since the departure of the international human rights observers, threats and intimidation against local human rights monitors have reportedly increased, and many have been forced into hiding. Amnesty International has also received reports that military and paramilitary forces have increased acts of intimidation against those believed to support President Aristide's return. With MICIVIH's withdrawal and the increased danger facing local human rights monitors, these reports are difficult to verify in detail but Amnesty International fears very serious human rights violations and massacres may take place with no international witnesses to record or report them. The organization believes it is vital that effective, impartial human rights monitoring take place in Haiti during this extremely precarious period. It is also naturally concerned at the conditions which led the international observers to withdraw, including the escalating level of human rights violations directed in many cases against Haitian human rights monitors.

There are two particular issues in Haiti on which the UN and OAS have not taken a public stance. The first of these is the treatment of Haitian refugees, who have continued to be forcibly returned to Haiti by the United States, in violation of international refugee and asylum law. The UN and OAS must ensure that all Haitian refugees are granted full protection and asylum, and are not subjected to illegal *refoulement*. All Member States, including the United States, must comply with proper asylum procedures.<sup>22</sup>

The second issue of concern to Amnesty International is the amnesty to be granted to members of the Haitian armed forces under the terms of the Governors Island Agreement.<sup>23</sup> By effectively giving in to a state of continued impunity in Haiti, the international community has shown it is not serious about human rights in the longer term.

Amnesty International does not underestimate the delicacy of this balancing act. Amnesty International considers it absolutely crucial that the UN, regional organizations such as the OAS in the case of Haiti, and individual Member States must act in a consistent fashion to support civilian human rights missions. There must be ongoing express political support given to the activities and protection of the mandate of the mission. Close vigilance and high-level political support is the only way to guarantee the success of such a project. In the case of Haiti, there was insufficient political censure for the generalized level of human rights violations as well as the specific threats against MICIVIH personnel since their arrival in Haiti. The international community must show that it will not tolerate such abuses or violations of the terms of reference of the mission itself, and the guarantees given therein.

In SOUTH AFRICA, the Security Council gave the Secretary-General a mandate couched in wide terms to deploy observers 'to address effectively the areas of concern noted in his report, in coordination with the structures set up under the peace accord'.<sup>24</sup> After an initial deployment of UN observers in August 1992, the main contingent of some 50 observers arrived in South Africa from September onwards with a very broad brief to strengthen the capacity of the structures established under the terms of the country's National Peace Accord, which was signed by representatives of a number of political parties and the South African Government in September 1991. The United Nations Observer Mission in South

Africa (UNOMSA), whose members were drawn primarily from UN headquarters staff in New York, was initially criticized for deploying observers who lacked specialized training in the areas of human rights monitoring or policing, mediation or legal skills, for interpreting its terms of reference extremely narrowly, for being inaccessible to non-governmental organizations outside the structures of the National Peace Accord, for, in certain instances, relying upon the protection of the security forces when observing events in black residential areas, and for failing to report publicly on the mission's activities.

More positively, the presence of UNOMSA observers, along with observers from the Commonwealth, the Organization of African Unity (OAU) and the European Union, at public demonstrations and rallies have clearly had a restraining effect on local participants and the security forces at these events, resulting in a marked reduction in loss of life or the unjustified use of excessive force by the security forces. The unfortunate exception in this specific regard concerns restrictions on access by the observers from intergovernmental organizations to territory controlled by the nominally independent 'homeland' of Bophuthatswana. The 'homeland's' authorities, who are not signatories to the National Peace Accord and are refusing to participate in the interim governing structures prior to South Africa's first non-racial elections in April 1994, have continued to use restrictive legislation, arbitrary detentions and unjustified, excessive force to curb public political activities. UNOMSA and the other international observer missions have relied upon 'quiet diplomacy' with the South African Government and Bophuthatswana authorities in a bid to open up the territory to international scrutiny, but with remarkably little success.

Despite the lack of clear cut authority from the Security Council and the lack of precision in the mission's terms of reference, individual members of the mission have acted creatively in response to local conditions and in recognition of the continuing weakness of the National Peace Accord structures in certain areas of the country. They have become more open to contacts with non-governmental organizations. Their active support has helped strengthen a number of successful grassroots peacemaking initiatives. Some UNOMSA observers have visited police stations and prisons, assisted in the tracing of detainees, and intervened with police authorities to obtain medical assistance for injured detainees. The mission has expressed concern privately to government authorities about the evidence of torture and ill-treatment in custody, and other human rights abuses which have come to UNOMSA's attention. On occasions, through press interviews with the head of mission or through press releases, UNOMSA makes public some of its concerns. However overall the mission has been reluctant to provide detailed public reports of the mission's activities, as, for instance, has been done by the operations in Haiti and El Salvador and indeed by the Commonwealth Observer Mission in South Africa (COMSA).

Amnesty International believes that UNOMSA should commit itself to greater public reporting, as a means both of building public understanding of and confidence in the mission, and of increasing pressure upon those in authority and in leadership positions to be accountable for their actions. This will become increasingly important as the UN steps up its operations in South Africa prior to the elections. In October 1993 the Security Council authorized the expansion of the mission to 100, in view



of the increasing violence. In addition, following a decision on the report of the needs assessment team, more personnel will be sent to South Africa as election observers.

#### 4. *The UN's new quandary: enforced peace?*

The US Ambassador to the United Nations, Madeleine Albright, remarked in a statement to the US Senate Foreign Relations Committee on 20 October 1993: 'The difficulties of peace operations in Angola, Somalia, Bosnia and Haiti demonstrate that traditional approaches are not adequate where government and civil society have broken down or where one or more of the parties is not prepared to end the conflict.'<sup>55</sup> In other words, the UN is increasingly confronted with situations where it is not receiving full 'consent' for its peace-keeping aims and is therefore faced with the unpleasant choice of withdrawing, conducting its activities under fire, or using the authority of Chapter VII of the United Nations Charter<sup>56</sup> to enforce its aims militarily.

A new phenomenon in the area of peace-keeping is the use of military personnel to assure the **SAFE DELIVERY OF HUMANITARIAN ASSISTANCE** within a conflict situation in the absence of a cease-fire but usually in the context of peace-making efforts. The two examples so far of peace-keeping operations organized purely around the delivery of humanitarian assistance are the early UN operation in Somalia (UNOSOM I, before the United States-led Unified Task Force arrived in December 1992), and the UN's current operation in Bosnia and Herzegovina.<sup>57</sup> In both these situations, the UN has attempted to act as neutral broker for a peace settlement while also attempting to deliver humanitarian assistance to the civilian population caught in the conflict. But the very fact of delivering or attempting to give assistance has not necessarily been seen as neutral, either by warring factions or even by the population at large. UN humanitarian personnel in the field are increasingly being fired upon in the line of duty as their actions are perceived as aiding enemy forces, while the UN's credentials for impartial peace-making efforts have foundered. In such situations, the issue of consent seems moot in the absence of clear sovereign authorities, and the UN is no longer in a position of keeping the peace but is getting caught up in war. These operations have had to consider resorting to military responses on the ground, such as firing on roadblocks even before actually being attacked, and have deployed much heavier weaponry with back-up from regular armies or regional defence organizations.<sup>58</sup>

'**PEACE ENFORCEMENT**' generally refers to situations where UN troops, initially stationed between two parties as part of a traditional peace-keeping operation with the consent of the parties, would become authorized to use force should the cease-fire break down. This would be the scenario should the UN or NATO begin taking offensive military action to enforce the provisions of any eventual peace plan for Bosnia and Herzegovina. Such an international force would not only act in self defence but also to 'silence guns that persisted in violating the cease-fire.' In the current operation in Somalia (UNOSOM II), the UN soldiers are authorized to use force to defend themselves from attacks or against parties using force to obstruct them from carrying out their mandate to establish a secure environment for relief operations. The initial consent has not been a factor due to the collapse of state institutions which could produce legitimate or lasting consent.<sup>59</sup> Secretary-General Boutros-Ghali had recommended that the peace enforcement mandate in Somalia should be authorized with

a phased time limitation and only as part of a longer-term strategy 'for the restoration of peace, stability, law and order'.<sup>60</sup>

The international community is now faced with an impasse. While it may sanction peace-enforcement measures the UN does not always have the means to take on armies or even rebel forces. Moreover, in Bosnia and Herzegovina there has been no agreement, even by the beginning of 1994, as to whether the use of force would save lives or actually aggravate the conflict and disrupt the UN's delivery of humanitarian assistance. The hard decisions have to be taken at the political level as to whether governments supplying troops to these operations want to put their nationals at risk. Nevertheless there has been a proposal that a multinational UN volunteer force could be formed. It has been suggested that such a force could operate without the administrative and political problems that currently bedevil the start-up of operations as units would be ready and waiting, specially trained, willing to take combat risks and not a liability or heavy responsibility for any one government. However, the public debate on this and similar options is only just beginning.<sup>61</sup>

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#### **CASE STUDIES 5: Peace Enforcement in Somalia (UNOSOM II)**

Security Council Resolution 794 (1992) authorized the US-led Unified Task Force (UNITAF), 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations'.<sup>62</sup> Later this role was taken over by UNISOM II. In Resolutions 814 (1993) and 837 (1993), the Security Council stated that those found responsible for breaches of humanitarian law would be 'held individually accountable'<sup>63</sup> and UNOSOM II was asked to assist in the re-establishment of the Somali police including 'the investigation and facilitating the prosecution of serious violations of international humanitarian law'.<sup>64</sup> Resolution 837 explicitly reaffirmed that the UN would be 'authorized to take all necessary measures against all those responsible for the armed attacks [against UNOSOM II on June 5 1993] to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigations of their actions and their arrest and detention for prosecution, trial and punishment.'

The thrust of these later resolutions was to single out the Somali faction of General Mohamed Farah Aidid for arrest by the UN forces, after a UN inquiry found him responsible for the killing of UN troops, and the American head of UNOSOM II, Admiral Jonathan Howe, announced a reward for Aidid's capture. According to Mr Kofi Annan, Under-Secretary-General for Peace-Keeping Operations: 'When the Aidid distraction constituted a threat to UNOSOM's mandate, as it did and continues to do, the Security Council authorized the removal of the threat'.<sup>65</sup> Thus began a very dark period for UN peace-keeping, in which the UN forces were pitted as a party in a bitter conflict with one group in the larger Somali conflict, which came to dominate the whole operation and resulted in the deaths of many Somali civilians and fighters as well as UN troops. By November 1993, faced with adverse international criticism and domestic US pressure, UN and US policy changed to revert to the search for a political settlement of the Somali crisis, which would involve General Aidid. The Security Council in Resolution 885 (1993) suspended its arrest order and asked the Secretary-General to establish an international inquiry into the attacks on UN personnel.

Amnesty International has been deeply concerned at the gross and widespread human rights abuses that have been committed by several of the armed Somali groups which emerged in January 1991 at the end of the brutal 21-year dictatorship of President Mohamed Siad Barre. Both before and during the military conflict between the international troops and General Aidid's force (the Somali National Alliance, or SNA), which began in June 1993, SNA forces had been responsible for major human rights abuses against members of opposing clans or sub-clans, as well as the killing of UN troops and summary killings of Somalis suspected of being informers for the UN. Pro-Aidid mobs killed four foreign journalists taken to witness civilian deaths caused by a US raid on 12 July 1993, and abused the bodies of US troops killed on 3 October 1993. The SNA mistreated two military captives—a Nigerian UN soldier and an American helicopter pilot—before releasing them on 14 October.

In the second half of 1993, the military objective of arresting General Aidid on suspicion of being responsible for the killing of 25 Pakistani UN troops on 5 June 1993 has overshadowed the humanitarian objective of the UNOSOM II operation. Amnesty International deplores the heavy loss of life during this latest phase of the UN operation in Somalia. Several hundred Somalis, including many women and children have been killed, as have over 60 UN troops and 18 US soldiers. Some of the civilians killed by UN or US troops seem to have been victims of the use of lethal force in breach of human rights and international humanitarian law obligations. In addition, hundreds of Somalis, including SNA political leaders, have been detained by UNOSOM II troops since the operation began in May 1993. Most of these prisoners were released after some days or weeks in UN custody, but some 400 prisoners were transferred to the custody of the new Somali police force for eventual processing by the recently re-established Somali courts. At the end of 1993, some eight Somali detainees were still being held in UN custody without charge or trial, and most of the other Somali detainees were still reportedly held without charge or trial, and without access to relatives or lawyers. Most recently the UN has appointed an Independent Jurist (Mr Enoch Dumbutshena, former Chief Justice of Zimbabwe) to deal with matters relating to detainees held by UNOSOM in Somalia.

The UN-held detainees have reportedly been denied access to relatives, although the International Committee of the Red Cross has been allowed to visit them. Their legal status is undefined: none has been charged with any offence, brought before any kind of court or allowed access to lawyers. A UN spokesperson said they were being held in 'administrative detention', and their location was not to be disclosed for security reasons.<sup>66</sup> Amnesty International has expressed its serious concern to the UN that this situation amounts to arbitrary and indefinite detention without charge or trial, in contravention of the UN's own human rights standards. The legal basis on which the prisoners are being detained, or on which they may be tried, has not been specified. The UN's own basic standards for the treatment of prisoners affirm that all prisoners must be allowed access to lawyers, review of their detention and the benefit of a fair trial after they are charged with an offence.

Amnesty International wrote to the UN at the end of October 1993 after a ceasefire with the SNA went into effect, and called on the UN to fulfil its obligations as the world's human rights standard bearer to carry out a thorough, prompt and impartial investigation into the killings of civilians by the UN (and in particular the incidents of 13 June, 12 July and 3 October) and to see if there have been violations of human rights standards, and to make the results of such an investigation public. In a public statement Amnesty International noted there was an urgent need for all parties, including UNOSOM II as well as the armed Somali groups, to seize the

opportunity of the cease-fire to put human rights for Somalia high on their agendas and, in particular, to ensure they respect human rights and basic international humanitarian law obligations.

One of the other disturbing effects of the conflict between UNOSOM II and the SNA, was that it detracted attention from what the UN had been doing outside of southern Mogadishu in terms of humanitarian work to end the famine, improve security, and establish local administrative, police and judicial structures. The Mogadishu conflict from June to October 1993 ended such work in Mogadishu for the rest of the year and severely affected the program outside Mogadishu. It must be additionally noted that the bulk of the cost of UNISOM II went on military operations.

Amnesty International is concerned at the weakness of the human rights components relating to the UNISOM II operation. The Human Rights Office referred to by the Secretary-General in his August 1993 report had apparently not been set up by the end of the year, and the independent expert on Somalia called for by the UN Commission on Human Rights in March 1993 had hardly begun his work by the end of the year, and even then had no plans for an early visit to Somalia.<sup>47</sup> Investigations by the UN or the responsible national authorities into the killings or other abuses by foreign troops were in most cases non-existent or minimal. It is also unclear whether the institution-building arrangements have been consistent with UN principles of political impartiality, human rights accountability and transparency, and the monitoring and correction of abuses. In the northwest, the administration of the self-declared Somaliland Republic has itself improved security in the area, creating opportunities for reconstruction and establishing human rights protection. However its relations with UNISOM II officials have not been good.

## **B. Amnesty International's Observations on Human Rights in UN Field Operations**

### **1. Traditional peace-keeping**

The common element of traditional peace-keeping operations is that they are primarily organized and staffed by military personnel, with a mandate to observe military activities in the country concerned and, of course, with the consent of the parties to the conflict. The variable is largely in the scope of activity they monitor and the degree to which they can respond to non-compliance. One concern often expressed about traditional peace-keeping forces which have remained in place for many years, such as in Cyprus, is that the very presence of the force can itself encourage political stalemate, making the need to resolve political conflict appear less urgent to the parties.

Amnesty International does not take a position with respect to peace settlements, political negotiations, or the deployment of peace-keeping and military forces *per se*. However, the organization is concerned with such situations when human rights violations continue to occur notwithstanding the presence of UN troops or field personnel. Despite the presence of peace-keepers along the Iraq-Kuwait border and in southern Lebanon, Cyprus, Croatia, and Kashmir, Amnesty International and other

human rights organizations have documented numerous human rights violations in those areas, including extrajudicial killings, arbitrary detentions, 'disappearances', torture and rape. On bringing its concerns to the UN, or in seeking confirmation of allegations, Amnesty International has in the past been told that UN personnel can not publicly report on human rights violations as this would compromise their neutrality.

Nonetheless, in January 1993, after reports of arrests of Sahrawis who had participated in public demonstrations in the Western Sahara, the UN Secretary-General himself wrote, 'while MINURSO's current military mandate is strictly limited to the monitoring and verification of the ceasefire, MINURSO, as a United Nations mission, could not be a *silent witness* to conduct that might infringe the human rights of the civilian population. Hence MINURSO patrols were alerted to possible unrest.'<sup>66</sup> Amnesty International concurs with the view that UN personnel cannot ignore human rights violations taking place in situations where the UN has a peace-keeping mandate. The UN must recognize its responsibility to respond to such violations in order to maintain its impartiality and credibility in keeping the peace, including by taking up allegations with the appropriate local authorities. Furthermore, in situations where there is no UN human rights verification activity, Amnesty International considers that information regarding human rights violations, including any complaints received by UN field operations, should be reported by the field personnel to the relevant human rights investigatory mechanisms, such as those established by the UN Commission on Human Rights.<sup>67</sup>

## 2. Implementation of comprehensive settlements

Comprehensive peace settlements such as those mentioned in this chapter have had or will have a significant impact on the future of human rights in the territories or countries where they have been implemented. Yet only two of the UN operations mandated to oversee comprehensive peace processes—ONUSAL and UNTAC—have provided for specific UN civilian human rights components empowered to correct abuses through inquiries, publicized recommendations, compensation, and even the dismissal and arrest of human rights violators in the case of Cambodia. In both El Salvador and Cambodia the presence of UN's human rights officers is considered to have served as a significant deterrent to possible human rights violations. Their work has resulted in the release of detainees and the improvement of prison conditions. They have made important contributions to the legislative and institutional reform of the legal order for improving the protection of human rights in accordance with international standards and to raising public awareness of human rights issues, including through education programs. Amnesty International considers that the relative success of these operations can be at least partly attributed to the serious, open and accountable procedures of the human rights divisions.

Without open and accountable procedures of this type, human rights concerns are likely to go uncorrected and jeopardize the ultimate credibility of the whole operation. Amnesty International therefore considers it necessary that all such comprehensive peace-keeping operations should have a specific human rights monitoring component. It is of some concern to Amnesty International that in several operations the UN on the ground has not always been prepared to take up violations of the settlement with one or another party in a vigorous or consistent way. This has been particularly a problem where the

UN operation sees itself, not as a guardian of the settlement, but rather as an impartial facilitator, and becomes cautious about protesting too loudly lest it be perceived as taking sides. This has meant in practice that disputes over interpretation or actual violations have tended to be dealt with only through informal political channels, rather than being addressed directly through public and vigorous condemnations and remedial action.<sup>76</sup> It is unacceptable that disputes over particular aspects of an agreement, such as that in the Western Sahara, should prevent the UN from undertaking its responsibilities to monitor and address human rights problems even if other aspects of the agreement are on hold.

Another reason for the relative effectiveness of the El Salvador and Cambodia processes is that the respective peace agreements specified which human rights the parties were obliged to guarantee, as well as international verification mechanisms to ensure their compliance. Such human rights chapters should be included in any new or renewed peace agreements for other conflicts at the time they are drawn up. These may include a customized charter of human rights to be guaranteed in any one specific context, as was the case with the San José Agreement, but the emphasis must also be on internationally accepted standards. Peace agreements should state that violations of fundamental human rights will not be tolerated and the human rights chapter should include a list of specific rights to be guaranteed and establish impartial and effective procedures for monitoring, investigation and remedial action in respect of any violations. International and national verification bodies should be required to conform to UN standards for investigation of human rights violations. The agreement should also call for ratification of any major international and regional human rights treaties to which the concerned state is still not a party.

UN civilian police monitoring components (CIVPOLs) have complemented the human rights components in El Salvador and Cambodia. International police monitors will often be best equipped to carry out proper training and supervision of existing or new police forces in the country concerned, and indeed the national police forces may be more receptive to other police personnel, their professional counterparts, as monitors. There is a certain confidence which police personnel can instill in restructured or new police forces through their practical experience and training. It must be stressed, however, that preparation and training is essential. It is not merely a question of redeploying police from one country to another. There will always be a risk that police monitors may identify too closely with the police force under scrutiny and certainly care must be taken to select monitors who are themselves above reproach in their conduct and are committed to respect for human rights. Civilian police monitors have to understand the political context in which they are working and attempt to instill a greater sense of fairness, neutrality and respect for human rights in the local police force in question. They must themselves be trained in, and prepared to exemplify, UN standards for human rights and the conduct of law enforcement personnel.

Their role should include monitoring police investigations, ensuring impartial and effective complaints procedures exist and are functional and accessible. They can provide technical advice on improving such procedures and they should evaluate and advise on training programs for local security forces. They must be prepared to work closely with UN human rights monitors as their respective roles will be closely linked, and the activities of the UN police monitors should be included in public reporting on the operation. It is also important that the deployment of civilian police monitors alone is not accepted as an adequate measure to address human rights issues in the context of

the UN operations and is not used as a substitute for an experienced impartial human rights component. A civilian police contingent should not preclude establishing a separate corps of experienced human rights investigators who are not burdened with other duties involving law enforcement, training and oversight of the civil administration.

It is to be regretted that other current operations in this category—in Angola, Mozambique, Western Sahara, Liberia and Rwanda—have relatively weak human rights monitoring programs, despite the recognition in the respective peace agreements that the UN operation should guarantee a climate conducive to free, fair and peaceful transition processes. Amnesty International believes the UN should endeavour to add a human rights monitoring component to all these operations. However, there may be other options for human rights monitoring, besides UNTAC- or ONUSAL-style divisions within the UN's operation itself, which may be more feasible or appropriate for particular situations, especially where the peace plans are already agreed. In the case of Mozambique, Amnesty International has recommended to the parties the establishment of an independent, national human rights monitoring body whose members would include Mozambiquans of recognized expertise and impartiality. In Angola, Amnesty International has drawn on ideas originally suggested in the context of negotiations for a political settlement in Bosnia and Herzegovina and proposed the appointment of a UN human rights commissioner for Angola as part of UNAVEM II, and the establishment of an ombudsman's office. Amnesty International believes such proposals, which are described more fully in Part III of this paper, could work in other contexts too.

Any monitoring and verification system set up must avoid the problems in Angola and Mozambique where the requirement of consensus has in effect given the parties the power to veto investigations into complaints made by the opposing party. Verification systems must have an impartial, international component which can prevent the blocking of investigations. As stated above comprehensive, widely distributed public reports by the human rights component are essential to the success of such components.

Refugee repatriation processes must similarly be accompanied by full guarantees for the protection of returnees. The repatriation of refugees should take place only under conditions of absolute safety. UNHCR should be recognized as having a legitimate concern for the consequences and outcome of return, and should be given direct and unhindered access to returnees for as long as necessary to monitor the safety of returnees and the fulfillment of amnesties, guarantees or assurances on the basis of which the refugees have returned. Refugees who, despite the existence of a repatriation program, still do not wish to return because they fear for their lives or freedom should not be coerced to do so. Each such individual's case and his or her reasons for not wishing to return should be fully examined in a fair and satisfactory procedure in order to establish whether his or her fears are well founded.

Provisions related to the release of prisoners should require that all parties identify by name, place of detention and dates of detention all persons being held or who have been held, and report the circumstances of all deaths in custody, which should be properly investigated in accordance with international standards. Such a requirement is an essential safeguard against political killings and 'disappearance' and would ensure that anyone responsible for such abuses can be held accountable. All too often parties in similar circumstances fail to account for the fate of all detainees and simply declare that persons who are released were the only persons being held. There should be an independent verification mechanism such as appointment of an Independent Jurist, as in Namibia and Western Sahara, mandated to receive information regarding prisoners from

other sources, including non-governmental organizations, and to monitor compliance with prisoner release provisions, including any processes established to distinguish between 'political' and 'criminal' detainees.

Only in El Salvador has systematic impunity for massive human rights violations been recognized as one of the aspects which must be addressed in order to ensure success in the longer-term peace-building process. Amnesty International believes it is essential that past human rights violations are fully investigated, that the truth is made known, and that structural impunity is dismantled through an investigative and purification process, such as that in El Salvador. Bringing those responsible for violations to justice is an essential aspect of healing the wounds and revealing the truth in a society after internal conflicts and large-scale violations of human rights, but pre-conviction amnesties undermine this goal. Amnesty International takes no position on pardons granted after a judicial process and conviction, recognizing that it may be deemed that the interests of national reconciliation after a period of violence and repression would thus be best served; however, the organization insists that the truth has to be revealed and the judicial process completed. Long-term peace can only be guaranteed on the basis of public accountability and justice — otherwise the goal of 'sweeping the table clean' can not be achieved.<sup>21</sup>

Finally, the lack of active follow-up to a peace-keeping operation, and particularly to the work of any human rights component, can pose just as serious risks for the ultimate success of such operations. The UN and its Member States, especially those which were particularly involved as negotiating partners or observers in a peace-making process, must be prepared to stay the course. If a peace-keeping operation is completely withdrawn after elections have taken place, there may be no effective guarantees that hostilities will not resume or that human rights concerns will be adequately addressed. An evaluation should always be made as to whether the situation in the country warrants some level of continued UN civilian monitoring presence, especially in the area of human rights, even after a full-scale peace-keeping operation has completed its work and withdrawn. Recent developments in El Salvador, Cambodia and Angola in particular signal the need for continued human rights monitoring even after elections have taken place, armed conflict has ended or military demobilization has largely been obtained.

The UN's Commission on Human Rights and Centre for Human Rights could play important roles in this respect. While human rights education and training and technical assistance programs, particularly in the areas of legislative and institutional reform, will be particularly important follow-up measures, it is also essential that international monitoring of the human rights situation and other measures of protection are not wholly abandoned when the main peace-keeping operation leaves. The Independent Expert on El Salvador, appointed by the Commission on Human Rights, has a specific mandate to maintain scrutiny of the human rights situation and to monitor compliance by the parties of their obligations under the peace agreements, as well as the recommendations of ONUSAL. In this regard he has made important recommendations in his own reports. In Cambodia, on the other hand, the Commission on Human Rights did not make adequate provision for continued on-site human rights monitoring and investigation in the post-UNTAC period and did not appoint a Special Rapporteur (even though such a step was envisaged in the original peace agreement). Instead the Commission's February 1993 resolution called on the Secretary-General to appoint a Special Representative and concentrated more on technical assistance and advisory



services to be provided by the UN Centre for Human Rights. Administrative delays have meant that the Centre's program had barely begun by the end of 1993. Furthermore, even if a monitoring and/or assistance program is established under the auspices of the Commission on Human Rights, it remains important that the UN bodies and Member States which were involved in and authorized the organization's role in the respective peace processes to begin with, including the General Assembly and Security Council, also continue their own close vigilance, approve adequate resources, and press for full compliance by the parties of all long-term obligations undertaken in the relevant peace agreements.

### *3. Civilian Human Rights Observer Missions*

In countries where no full scale peace-keeping operation is in place or is warranted, international civilian human rights observer missions may be of critical importance in addressing serious human rights crises, including in the context of internal violence such as in South Africa and Haiti. In so doing, observer missions may be able to help reduce the level of human rights violations as well as assist in bringing about conditions where peaceful and viable political processes can be pursued.

This idea is not entirely new. In July 1991, Amnesty International was gravely concerned for the lives and safety of hundreds of thousands of Kurds, Arab Shi'a Muslims and others in Iraq at serious risk of human rights violations in the wake of the final withdrawal of Gulf War coalition forces which had been protecting 'safe havens' in the northern Kurdish area. Amnesty International proposed that the UN should set up a sustained human rights monitoring operation in Iraq by sending a team of on-site observers to Iraq to investigate human rights violations, to protect the population against further abuses and to assist in establishing more durable guarantees and institutions for the future protection and promotion of human rights in the country.<sup>22</sup> A similar proposal has continued to be suggested and supported by the UN Commission on Human Rights' Special Rapporteur on Iraq, Mr Max van der Stoep.<sup>23</sup> Although this proposal for field monitors in Iraq has been expressly supported and endorsed in resolutions of both the General Assembly and the Commission on Human Rights, such an operation has not been established. There is a rather beleaguered UN humanitarian aid program in Iraq, which operates under the protection of a small number of UN security guards, but its mandate does not directly address human rights issues. Amnesty International has continued to press for on-site human rights monitors in Iraq. On 20 December 1993 the General Assembly adopted its latest resolution (48/144) on the subject and called for the 'immediate and unconditional stationing of human rights monitors throughout the country.'

Amnesty International considers that the presence of civilian human rights observers with a specific mandate for investigation has proved of significant importance in preventing human rights violations in situations such as South Africa and El Salvador. But the lesson of Iraq shows that mere presence is never enough. Clearly the presence of the UN security guards in northern Iraq has done little to change to pattern of human rights repression. Nor has it resulted in any public information about what the guards may have witnessed or achieved.

The advance team sent to Haiti to assess the possibility of an observer mission remarked that the 'credibility of the Mission will depend crucially on its ability not

merely to report on human rights violations but to bring about redress and prevent future human rights violations.<sup>74</sup> Apart from reducing the immediate violence, the long-term challenge of such missions should be to ensure that national bodies, including police, judiciary and prosecution, are established or reformed in such a way as to function in accordance with human rights standards after the international observers depart.

Obviously, the establishment of such missions must be permitted by the national authorities (whether *de facto* or otherwise) in the first place. The mission must receive cooperation and basic guarantees for the safety of its own personnel as well as any nationals of the country in contact with it or the subject of its investigations and publicity. At the same time its mandate must be specific and clear and it must be able to make public its concerns. One of the most essential aspects of maintaining the credibility of an operation is to ensure that its findings and activities are regularly and frequently reported and widely disseminated internationally and in the country itself.

Amnesty International believes that other authorities in similar situations can be persuaded to accept human rights monitoring. One aspect of such monitoring missions which should not be overlooked is their contribution to establishing a climate of confidence on the part of the government and other officials as well as the general population. It is clear that whether the issue is the transition to democracy, or a closely fought election or referendum, the tension surrounding such events is in danger of precipitating a renewed cycle of human rights violations where there is a fear on the part of the police or other government officials that they may be subject to violent lawless retribution for past abuses.<sup>75</sup> This also underscores the need to guard against measures which contribute to impunity, both in the immediate and long-term sense, and the need to safeguard the credibility and impartiality of the civilian mission at all times.

Amnesty International hopes these issues will be addressed urgently but carefully in the case of Haiti, in order to allow MICIVIH's prompt return. Amnesty International recognizes that there are considerable complexities inherent in such a project. One dichotomy evidenced in Haiti is the question of whether MICIVIH's withdrawal may have done more harm than the good done by the presence of the mission in the preceding months. However, without the mission's presence the human rights situation could well have been worse, and Amnesty International is extremely concerned that the situation may now deteriorate still further if the observers are unable to resume their monitoring functions.

#### 4. Enforcement Operations / Securing Humanitarian Relief

Enforcement operations, and the Somalia operation in particular, have highlighted big questions for the UN and its Member States in the area of peace-keeping, most prominently the issue of the humanitarian and human rights standards to which the UN forces should themselves be held accountable. In enforcement situations, especially where the national government and state institutions have collapsed, international peace-keeping soldiers may increasingly be given what are essentially *civilian* law enforcement and policing tasks, as has been the case in Somalia. While they may be involved in open combat situations, responding to armed attacks, the guidelines which should apply for the defensive use of force and for riot control are the same as those which regulate police forces. However, without proper training, advice and human rights supervision to provide this kind of orientation, it is quite predictable that troops will act and react

in the military combat mode in which they are trained. As has already happened in Somalia, such a response may involve the disproportionate and excessive use of force, in contravention of international standards guiding law enforcement personnel. Furthermore UNOSOM II's mandate to make arrests, hold people in detention and ensure judicial prosecutions highlights even more the need to monitor and guarantee compliance with international human rights and law enforcement standards. Amnesty International believes it is axiomatic that UN personnel should comply with the United Nations' own basic standards. Amnesty International's views and recommendations in this regard are described in detail in Part II of this paper.

On an even more fundamental level, Amnesty International is deeply concerned that the UN and Member States have not yet begun to take up human rights questions at an early enough stage to avoid being faced with such dilemmas, despite years of UN debate about improving 'early warning' systems and other preventive measures. In situations where humanitarian disasters have occurred due to 'manmade causes' (armed conflict), the human rights aspects have generally not been considered or tackled early enough to prevent conflict from escalating to a situation where attempts to deliver aid may draw international agencies into the conflict itself. Amnesty International does not believe this is a problem of lack of information but the lack of political will on the part of Member States to tackle human rights concerns before they degenerate into a major crisis. The argument that taking human rights into account at an early stage will taint 'purely' humanitarian efforts is not convincing - on the contrary assessment of the human rights situation must be part of what informs humanitarian policy at the earliest stages. Time and again the links between violations of human rights and the necessity of humanitarian assistance have been highlighted. The need for a more integrated approach is nowhere better illustrated than in the UN's response to the situation in Somalia. What started as an ostensibly humanitarian operation became overwhelmingly militarized and political in its aims, prompting even Jan Eliasson, as Under-Secretary-General for Humanitarian Affairs, to bemoan the absence of humanitarianism even where action had been taken in the name of 'humanitarian intervention'.<sup>28</sup>

The Sudan today is another example of an urgent humanitarian challenge facing the international community. In the Sudan, civilians have been the deliberate target of governmental forces seeking to destabilize territory controlled by the armed opposition, the Sudan People's Liberation Army (SPLA). The forced displacement of millions of people, 'ethnic cleansing'-style extra-judicial executions and 'disappearances' of civilians targeted on account of their racial or ethnic origin, and the use of torture are tactics practised by both sides of the conflict. The flagrant violation of human rights standards and the principles protecting civilians and others in times of conflict has created famine and dependency on food relief in many areas affected by war. Hundreds of thousands of people have died from illness and food shortage as a direct result of the tactics used in the conflict; these are not merely incidental casualties.

The international community has an obligation to the people of Sudan to ensure that the Government and all factions of the SPLA respect humanitarian and human rights principles. The UN's extensive relief operation there, Operation Lifeline Sudan, is attempting to ameliorate the consequences of the humanitarian disaster. However relief efforts alone will not be enough in a situation where the disaster is being continually and purposefully worsened by the conflict itself. The human rights issues lying at the heart of the destruction and displacement being wrought by the warring parties must be urgently and seriously addressed by the international community, including in the peace

process sponsored by the Organization of African Unity. In the meantime all UN agencies, including those participating in Operation Lifeline Sudan, should be monitoring and demanding conformity with international human rights and humanitarian law standards. This cannot be avoided in the name of humanitarianism.

## **PART II**

### **Attacks on peace-keepers and indiscriminate use of force by peace-keepers**

#### **I. Attacks on UN peace-keepers: investigations and jurisdiction**

With the massive expansion of UN military and civilian personnel deployed in the field in the last couple of years, peace-keepers have faced increasing attacks and higher numbers of casualties among their ranks, with over 170 killed in 1993 alone.<sup>77</sup> Even where peace-keepers are mandated to use force, as in Somalia, the UN has suffered serious casualties. This has made UN Member States understandably increasingly reluctant to risk the safety and lives of their own soldiers in such operations, and the UN is now faced with a crisis of confidence in this regard.<sup>78</sup>

It is now almost standard for Security Council resolutions authorizing peace-keeping operations to include statements that individuals found guilty of attacks on international peace-keeping and humanitarian personnel will be held individually accountable for these acts. In a March 1993 Presidential statement, the Security Council made it clear that it 'may consider measures appropriate to the particular circumstances to ensure that persons responsible for attacks and other acts of violence against United Nations forces and personnel are held to account for their actions'.<sup>79</sup> The Secretary-General similarly suggested in a report on the security of UN operations that all attacks on UN personnel should be considered 'interference with the exercise of the responsibilities of the Security Council under the respective provisions of the Charter of the United Nations and may require the Council to consider measures it deems appropriate'.<sup>80</sup> Recent Security Council resolutions on Somalia, Liberia and Rwanda all contain clauses threatening the application of such measures against individuals found responsible for attacks on international personnel. However, the measures have not been clearly spelled out in any of these three situations.

In many cases where a UN presence has been secured without recourse to enforcement powers, it should be expected that the national authorities in the country where the peace-keepers are stationed would investigate and prosecute such attacks. National authorities would normally be obliged to do this under status-of-forces agreements with the United Nations through which they grant permission and set the terms for the deployment of the peace-keeping force. However, operations mandated under Chapter VII of the UN Charter, where peace-keepers are authorized to use force beyond what would be necessary purely for self-defence, present particularly complex problems in this regard. The UN's own expert appointed to conduct an initial inquiry into the 5 June 1993 attack on UNOSOM II forces, which had caused the deaths of over 20 Pakistani soldiers, indicated one way in which this authorized use of force is

constrained. He stated that the use of force against UN soldiers in order to prevent them from carrying out their mandated responsibilities should be considered an international crime, except perhaps, in a case where UN personnel are manifestly exceeding their jurisdiction and the use of force against them is the only means available to prevent grave and permanent injury to interests which the accused is entitled under general principles of international law to protect.<sup>41</sup>

While it may be quite legitimate for the Security Council to authorize the investigation of attacks on the UN and the arrest of those suspected of being responsible, Amnesty International considers that it is necessary that the review of the grounds for detention, prosecution, judgment and any eventual punishment be handled by independent judicial bodies. At the moment, however, such bodies do not exist at the international level to adjudicate crimes of this nature, except in respect of the conflict in the former Yugoslavia. The February 1993 decision to establish the International Tribunal for Crimes in the Former Yugoslavia<sup>42</sup>—marks the first time such an international mechanism with a jurisdiction for trying individuals under international law has existed since the Nuremburg and Tokyo war crimes tribunals. Amnesty International has observed that *ad hoc* tribunals often lack real independence and impartiality, and the organization has expressed its concern that the Yugoslavia tribunal risks being no more than a token gesture to satisfy the short-term interests of states. Amnesty International has urged that this tribunal be a first step towards setting up a *permanent* international court competent to try grave violations of humanitarian and human rights law, wherever these may occur.

The New Zealand Government has suggested that, where no state can assume responsibility for detention, trial and punishment, then international jurisdiction ought to extend to individuals who have violated norms of international law covering UN forces and personnel. They rightly point out that there would be less incentive for the Security Council to employ Chapter VII and for the UN to use grave options if there were an established regime for exercising such jurisdiction.<sup>43</sup>

In the long term, the crime of attacks on UN personnel might be covered by an international convention, as suggested by the New Zealand and Ukrainian Governments, possibly with international jurisdiction residing not only at the national level but also eventually with the proposed international criminal tribunal currently under discussion in the UN's International Law Commission and General Assembly.<sup>44</sup> It will be essential, however, that the statute of any such tribunal incorporates full guarantees for fair trial and due process. Amnesty International also believes consideration could also be given in appropriate situations to a fact-finding role for the commission established under Protocol I to the Geneva Conventions. In the case of Somalia, for example, the level of allegations, recriminations and reprisals demonstrate the need for impartial investigation conducted from outside the United Nations structure.

Finally, Amnesty International considers it equally imperative, when drawing up any declaration or mechanism outlining the obligations on Member States and possible individual criminal responsibility in relation to attacks on UN forces and personnel, that similar obligations are attached to UN forces themselves, and the Member States which contribute troops to those forces. If UN forces are to be covered by special status agreements, and privileges of diplomatic immunity and non-combatant status, the corollary is that their own rules of engagement have to restrain UN forces from resorting to the excessive use of force, as outlined in the following section. The degree to which these two issues are inextricably linked has also been echoed by the New Zealand

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Government: 'Confronted with a situation in which there is no legal system to detain, try and punish offenders, United Nations forces on the ground will need to resort to increasingly robust rules of engagement'.<sup>85</sup>

## **2. Disproportionate use of force and other abuses by UN peace-keeping troops**

According to Security Council Resolution 794, the Secretary-General and Member States are authorized under Chapter VII of the Charter 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations' in Somalia. As stated above, Resolution 814 similarly authorized UNISOM II, and, following the 5 June 1993 attack on the Pakistani UN troops, Resolution 837 (quickly passed on Sunday 6 June) reaffirmed that the Secretary-General was authorized to take 'all necessary measures against those responsible for the armed attacks'. On occasion, peace-keeping forces are clearly involved in open combat situations, responding to armed attacks. But when launching operations to establish a secure environment, UNISOM II or US forces cannot exceed the Council's authorization and pursue a course which is aimed at traditional military gains. It must be stressed that the word 'necessary' has a legal meaning which implies that there are no alternative options which would be less harmful. In fact, applying the customary principle of proportionality in this context demands that, for any one attack, the civilian damage must be the minimum necessary to achieve the particular aim (in the Somalia example, establishing a secure environment for the delivery of humanitarian aid). If the civilian casualties and damage are disproportionate to the attempted gains by the international forces, then those forces and their commanders would be in breach of international humanitarian law and acting outside the authority mandated to them by the Security Council.

It is explicit in the UN Charter that the Security Council must 'act in accordance with the Purposes and Principles of the United Nations', which include respect for justice and international law. However, Amnesty International believes that it must also be explicitly stated that UN personnel are bound by international humanitarian and human rights law in the carrying out of their tasks. In particular, the UN must ensure that troops under its command carrying out law enforcement functions, such as arrest, detention, search and seizure, crowd dispersal or ensuring public order, are trained in and abide by international human rights and criminal justice standards. Such standards should include, among others, the Code of Conduct for Law Enforcement Officials<sup>86</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>87</sup>. The fundamental principle of these standards is that force may be used only when strictly necessary and only to the minimum extent required under the circumstances. Principle 9 of the Force and Firearms Principles states: 'In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life'.

The functions of arrest, detention and assisting Somali police in investigation and prosecution procedures, which have been mandated to UNOSOM II soldiers, are also policing rather than military functions. If troops are to carry out these policing functions they must abide by and be trained in international standards of policing, rather than the practices of war. Any pre-emptive use of force resulting in unlawful killing, rather than a fair and prompt judicial procedure, would exceed the Security Council's authorization in Somalia.

When actually responding to an armed attack it must similarly be made clear to all troops that, despite the humanitarian nature of their mission and the authorization of the Security Council, they still have to abide by international humanitarian law as set out in the Geneva Conventions and their Protocols as well as general principles of humanitarian law such as proportionality and the avoidance of indiscriminate attacks. Proportionality in this context means only using the force necessary to avert the immediate danger. It cannot relate to the mission's overall military objectives, as the peace-keeping soldiers are not fighting a war with military aims. The principle is applicable whether or not the Geneva Conventions are legally binding. In fact, the report of the independent expert engaged to carry out an investigation into the 5 June 1993 attack on UN forces in Somalia notes that, with regard to the principles embodied in the Conventions: 'Plainly a part of contemporary international customary law, they are applicable wherever political ends are sought through military means. No principle is more central to the humanitarian law of war than the obligation to respect the distinction between combatants and non-combatants'.<sup>88</sup> Amnesty International considers that forces acting under UN authority are similarly bound by these principles.<sup>89</sup>

According to Article 51(4) of Protocol I of the Geneva Conventions, indiscriminate attacks are those which cause incidental civilian losses and damage excessive in relation to the concrete and direct military advantage anticipated. Again, because the advantages are not military but merely what is necessary for self-defence or the protection of humanitarian assistance, or even exceptionally the arrest of someone wanted in connection with war crimes, the permissible use of force is likely to be even less than that which might be justified in the event of all-out war. It has recently been pointed out that there is now increasing danger that UN forces operating in an enforcement capacity may perceive themselves to be fighting a just war and therefore believe those objectives would somehow warrant taking the risk of greater collateral civilian casualties than would normally be anticipated.<sup>90</sup>

### 3. Ways for the UN to address and prevent abuses by UN personnel

As early as 1961, the International Committee of the Red Cross (ICRC) drew the attention of the UN Secretary-General to the application of the Geneva Conventions to UN forces.<sup>91</sup> More recently, the ICRC has stated that 'the measures decided upon and recommendations made by the Security Council under Chapter VII of the Charter cannot be considered *neutral* within the meaning of international humanitarian law, even though their ultimate objective may in some cases include the aim of putting an end to violations of that law. The use of armed force is thereby not excluded. Should such force be used, it will itself be subject to the relevant provisions of international humanitarian law'.<sup>92</sup> The International Conference for the Protection of War Victims (an inter-governmental meeting of states parties to the Geneva Conventions held in September 1993) stressed that 'peace-keeping forces are bound to act in accordance with international humanitarian law'.<sup>93</sup>

In addition, Amnesty International believes it is now imperative that the UN explicitly state in some appropriate form that it considers itself bound by the Geneva Conventions and their Protocols. Similar action has been urged in the past by resolutions of the Council of Delegates of the Red Cross (1963), the International Law Association (1966) and the Institut de Droit International (1971 and 1975). Now more

than ever such a declaration and proper implementation would be timely.<sup>94</sup> Amnesty International furthermore considers that the UN should state in an equally explicit manner that the UN itself, and all forces and other personnel acting under a UN mandate, are bound by UN standards in human rights, the administration of justice, and law enforcement and human rights.<sup>95</sup>

Violations of these international humanitarian norms carries individual criminal responsibility — that is to say, any individual found to have committed such violations may be prosecuted, regardless of having acted under orders of a commanding officer. Ever since the 1956 Status of Forces Agreement, under which the first UN Emergency Force (UNEF I) was established in Egypt, exclusive jurisdiction has traditionally been granted to the national authorities of the state contributing troops to the UN operation whose soldiers committed a crime while serving in a UN operation.<sup>96</sup> Some incidents where UN peace-keeping soldiers have reportedly been involved in the disproportionate use of force in Somalia, including killings of unarmed civilians, have apparently been the subject of such national inquiries.<sup>97</sup> However, Amnesty International is concerned about the sufficiency of leaving this strictly in the hands of national authorities. One problem is that military investigative and even court-martial procedures may be inadequately designed or orientated for dealing with breaches of standards for the use of force and the protection of human rights. Another concern is the often closed nature of such procedures. In addition such procedures will generally not be appropriate for investigating the contravention of international human rights and criminal justice standards relating to the arrest, detention and treatment of detainees held under UN authority and to fair trial procedures for such persons. Nor would they necessarily extend to civilian as opposed to military UN personnel involved in a peace-keeping operation.

The UN's overall responsibility for the conduct of its personnel cannot be absolved through such national procedures, and the UN operation as a whole will probably suffer the impact of increasing negative public opinion regarding its impartiality and a growing public perception of UN impunity and self-absolution if an impartial and public complaints and investigation procedure is not available in such cases. The responsibility for ensuring proper and open investigative channels must rest with the UN. The UN should make explicit and promote its own existing criminal justice standards, and if national authorities fail to deal properly with criminal allegations the UN should set up its own inquiries, the results of which should be made public.

The UN's own Research Institute for Social Development (UNRISD) has pointed to the need to have better guidelines regarding the recruitment, briefing and training of peace-keeping and other international personnel. In a recent workshop the Institute also concluded: 'There is a need to establish a monitoring unit to assess the conduct of peace-keeping personnel and public perceptions concerning the behaviour of United Nations security personnel. It is important that there exist an office (or ombudsman) with sufficient resources and powers to investigate and deal promptly with complaints concerning behaviour.'<sup>98</sup> Amnesty International also considers that it is essential to establish proper and regular institutions both for training and for monitoring the law enforcement and other activities of UN civilian and military peace-keeping personnel.

Amnesty International welcomes the proposal in a recent UN report on Somalia to establish an office within UNOSOM II to 'investigate and facilitate prosecution of serious violations of international humanitarian law.'<sup>99</sup> Amnesty International has suggested to the UN that this office should examine all such violations, including alleged



violations by UN troops. The UN report goes on to propose that the International Committee of the Red Cross (ICRC), UN agencies and NGOs should be able to monitor conditions in prisons established by UNOSOM. Although Amnesty International is aware of ICRC visits to UNOSOM-held detainees, as stated above, the organization is not aware of access by other organizations to regularly monitor conditions. Furthermore, the report does not suggest measures for the supervision of the use of force by UN peacekeepers, which Amnesty International also deems necessary.<sup>100</sup>

Security Council Resolution 885 (1993) authorized the Secretary-General to establish a commission of inquiry to investigate armed attacks on UNOSOM II personnel.<sup>101</sup> The resolution appropriately stresses that the investigation should be thorough and the procedures followed should be in accordance with UN standards. The resolution also requests the Secretary-General to 'suspend arrest action against individuals' implicated in the 5 June incident and 'make appropriate provision to deal with the situation of those already detained.' However, it is unclear whether this commission will also undertake to determine the legality of the use of force and other alleged human rights violations by UN troops.

Of course the actions of UN troops will be examined in the context of the responses which UN behaviour elicited and the origins of the attacks on UN personnel, but it is important to have an investigation into the various killings of civilians by UN, US or any other troops operating under UN authority in Somalia.

Whatever investigative mechanisms are established or utilized, whether regularly or for specific incidents, Amnesty International considers it of the highest importance that these always conform to the UN standards, including the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.<sup>102</sup> These principles set crucial standards for the conduct of thorough, prompt and impartial investigations, including the need for a public written report of such investigations.

In the former Yugoslavia, serious allegations against UNPROFOR personnel have included rape and forced prostitution. The UN has appointed a commission of inquiry to look into 'allegations of improper conduct among personnel from UNPROFOR, UNHCR and other humanitarian agencies.'<sup>103</sup> The commission is comprised entirely of former or current UN peace-keepers. Amnesty International hopes the results of this investigation will be made public, particularly since it is an internal investigation.

In general, Amnesty International considers that, in contexts where clear international jurisdiction for such abuses is still absent, as in Somalia today, the UN Commission on Human Rights' special rapporteurs and human rights investigative mechanisms should also be able to receive complaints and follow up incidents of violence and allegations of the lethal use of force by UN peace-keepers.<sup>104</sup> Amnesty International is concerned that, at least at the present time, there is no part of the UN system which is looking at the institution's own potential for human rights abuses, and so the UN is taking no serious steps to prevent such abuses. As the UN consolidates its human rights system under the umbrella of the newly established High Commissioner for Human Rights, Amnesty International hopes that one of the Commissioner's functions will be to infuse the highest human rights standards into the UN system, and particularly into its peace-keeping and field operations.<sup>105</sup>

### **PART III**

## **Amnesty International's Recommendations: Implementing Human Rights in International Peace-keeping Operations**

#### **I. The political role of the international community**

Human rights considerations should be part of what informs the UN's peace-making, peace-keeping and humanitarian policy at the earliest stages. There must also be consistent and effective political support by the international community for human rights measures at the outset and for the duration of any peace-keeping operation, as well as a long-term commitment to the promotion and protection of human rights during post-conflict peace-building phases.

Human rights questions should be on the agenda of all peace-making processes. UN Member States, and observer governments in particular, participating in such negotiations, and the UN officials involved, should ensure effective protection and verification measures are built into peace settlements and plans for their implementation. The UN should ensure that its own human rights bodies and experts are fully involved in the design, planning, implementation and follow-up of the human rights measures decided upon. The UN should not agree to supervise such settlements if human rights safeguards are not adequately dealt with as part of settlement agreements. The UN's political organs, including the General Assembly and Security Council, as well as individual Member States, particularly those acting as observers or mediators in peace negotiations, must be prepared to follow closely the reports and activities of peace-keeping operations, civilian observer missions, and humanitarian relief operations. The international community must demonstrate serious, consistent and long-term interest in resolving conflict, and must be prepared to condemn violations of human rights and international humanitarian law.

The UN should exercise flexibility in the implementation of the human rights components of peace-keeping plans and keep them under constant review. If initial verification and protection measures are shown to be inadequate or failing, the UN should be prepared to push for the strengthening of its implementation plan. At the end of the operation it should also undertake comprehensive and frank evaluations of the implementation measures, including the human rights aspects, in order to benefit from the lessons learned in other operations. The UN should support extensive and long-term post-conflict and institution-building work for the promotion and protection of human rights, and it should ensure international human rights monitoring is not terminated prematurely.

The international community should ensure that human rights considerations are addressed not only in peace-keeping situations but also in the context of UN humanitarian relief operations, particularly in situations where humanitarian disaster is a product of internal strife. All UN field operations, including those involved in disaster relief, should be instructed to monitor compliance with international human rights and humanitarian law, and they should have clear channels to transmit reports on violations.

International electoral verification missions should be mandated to verify conditions of free expression and assembly in the broadest sense in the period leading

up to the referendum or election, and this must include access to political detainees and the ability to receive and take up complaints of human rights violations.

## 2. No international "silent witnesses"

UN field personnel in all sectors—military, diplomatic, humanitarian, electoral and administrative—should be instructed that they have a duty to report human rights violations. If there is reason to fear the occurrence of violations, the UN should take preventive steps, including maintaining an alert "dissuasive presence" by going to the sites of potential or alleged human rights violations. UN field personnel should also report any allegations of past incidents which they receive. The UN should establish proper channels for field personnel to report such information, including to the relevant human rights mechanisms established by the UN Commission on Human Rights. UN field personnel should be instructed as a matter of course to follow up allegations of human rights violations with appropriate local authorities to ensure that further inquiry and prompt corrective action is taken. The Secretary-General's various reports on peace-keeping operations should include a chapter on human rights activities and findings.

UN personnel in all sectors - military, civilian, and diplomatic - should not shy away from reminding parties of their legal obligations in the fields of international human rights and humanitarian law. In the context of the former Yugoslavia the General Assembly called upon 'all United Nations bodies, including the United Nations Protection Force and the specialized agencies', to provide human rights information on a continuing basis to the Special Rapporteur for human rights.<sup>106</sup> Often personnel executing the delivery of humanitarian assistance will be confronted with evidence of human rights abuses on a daily basis. It is unacceptable that this information should be suppressed. The principle established in the context of the former Yugoslavia has to be applied universally.

## 3. Human rights chapters in peace agreements

At the stage when peace settlements are being negotiated, international observers and mediators should ensure that these include full human rights guarantees. Peace agreements should specify the rights and standards which the parties are to respect in the transition and post-settlement periods, and they should specify a clear and workable international human rights verification mechanism. Peace-keeping operations established to implement comprehensive settlements should always include a specific international human rights monitoring component.

Human rights chapters should be worked into renewed or renegotiated agreements if previous agreements have been weak in this area. Such human rights chapters may include a customized charter of human rights to be guaranteed in any specific context, but the emphasis must also always be on internationally accepted standards. Peace agreements should include a list of specific rights to be guaranteed, including those contained in the relevant national constitution and legislation, (where these are in conformity with international standards), in international instruments to which the state concerned is a party, and in other international human rights and criminal justice standards and principles, including those listed below. Agreements should state that, in

the event of any discrepancies, the provisions affording the greater protection of human rights shall prevail.

Peace settlements should require ratification of any major international and regional human rights treaties and adherence to systems of human rights protection to which the concerned state is still not a party.

#### **4. Effective and independent human rights verification**

Parties to a peace settlement should authorize the UN to play a key role in the supervision of the human rights aspects of agreements, investigate alleged human rights violations and take appropriate corrective action.

Peace-keeping operations established to implement comprehensive settlements should always include a specialized international civilian human rights monitoring component. Even in less comprehensive settlements smaller-scale human rights mechanisms, such as human rights advisers and independent jurists, should be appointed to deal with human rights issues.

Human rights components should be headed by human rights experts and must be adequately resourced and staffed. The human rights component should incorporate mechanisms for monitoring the human rights situation, receiving complaints of violations, full investigations of such complaints and the capacity for remedial action. It should also incorporate measures for establishing human rights education programs, for constitutional and legislative reform, for establishing or strengthening a fair criminal justice system, an independent judiciary and legal profession and other institutions aimed at the promotion and protection of human rights. Monitors should be trained in international human rights standards as well as in human rights monitoring, investigation and reporting. They should operate under clear and consistent guidelines and procedures. They should not be confined to urban centres but should also cover the situation in remoter areas where human rights violations are reported or are likely to occur.

Human rights verification mechanisms must be independent and impartial. International human rights missions, offices or components must be assured a high level of independence and autonomy from any ongoing political relations between the UN and the parties. If verification mechanisms or bodies established under peace agreements include parties to the conflict in their decision-making structure, none of the parties should be able to obstruct human rights investigations. If the decisions of verification mechanisms are to be consensus-based, it should be explicitly agreed at the outset that the UN has an overriding voice to prevent the blocking of investigation or action.

All verification bodies — whether international or national — should be required to conform to UN standards for the investigation of human rights violations, including the Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

In situations where there may not be a comprehensive settlement, but where agreements provide for the release of prisoners and detainees, there must still be an independent verification system mandated to receive information regarding prisoners not only from the parties but also from other sources. Provisions related to prisoners should require all parties to identify by name, place of detention and dates of detention all persons detained and report the circumstances of all deaths in custody, which should be fully and promptly investigated. There must be international oversight of review

procedures distinguishing prisoners-of-war, political prisoners and criminal detainees, if they are to be treated differently under the agreement. Oversight of prisoner releases could be done by a human rights monitoring component or an Independent Jurist.

### 5. Ensuring peace with justice

Peace settlements should include provisions for investigating past human rights abuses and ensuring that perpetrators are brought to justice. If abuses by those responsible for law and order are to be brought to an end and peace is to be better guaranteed for the future, Amnesty International believes that all governments must fulfil certain fundamental responsibilities, and these should be required in peace settlements. First, provisions for investigating past violations should be ensured in order to determine individual and collective responsibility and to provide a full account of the truth to the victims, their relatives and society. Investigations must be undertaken by impartial institutions, independent of the security forces. In the context of peace-keeping arrangements, investigations into the past should preferably include international participation. The results of the investigation must be made public. Where there has been an endemic pattern of human rights abuses, a public inquiry commission should be established to investigate the entire pattern of abuses and the reasons why they occurred. Such an inquiry should be able to examine the institutions and agencies responsible and make recommendations regarding the accountability of personnel; legislative, institutional, and procedural reforms; and human rights education and training for officials who continue in office.

Amnesty International considers that those responsible for human rights violations must be brought to justice. Those accused of human rights crimes should be tried, and their trials should include a clear verdict of guilt or innocence. Although Amnesty International takes no position on *post-conviction* pardons, where it is deemed that such a measure would be in the best interests of national reconciliation, the organization does oppose amnesty laws which prevent the emergence of the truth of individual cases as well as the pattern of abuses in the society, or which prevent the full completion of the judicial process.

### 6. On-site human rights monitoring: 'active verification', investigation and corrective action

Human rights monitors should have a clear and specific mandate to engage in 'active verification' of human rights violations, which would include a monitoring, investigatory and correctional role. They should have the authority to enter places of detention and interview prisoners in private. They should be empowered to take up incidents with local authorities and parties, and be able to follow up such approaches until cases are considered resolved. They should ensure that authorities take appropriate disciplinary and other action in respect of any offending personnel, and follow up their recommendations.

Human rights monitors should be guaranteed free and unencumbered access to the local media, non-governmental organizations and individuals seeking assistance or wishing to make complaints. Parties must undertake to guarantee that no one having contact with the human rights component, or reporting on their activities, will be threatened or harmed in any way.

Peace-building measures such as assistance with drafting or revising legislation, training the police, and conducting human rights education programs must complement, but should not replace, the essential verification role.

Where other human rights mechanisms are established, such as ombudsmen, human rights advisers, national commissioners and special prosecuting authorities, the human rights monitoring component should be cooperative but not co-opted.

#### **7. Frequent and public reporting**

Human rights components and civilian monitors should prepare periodic public reports on their work, describing allegations received regarding human rights abuses, steps the component has taken to investigate or correct them, and general recommendations made to the authorities. These reports should be readily available and widely disseminated in the host country, as well as to the relevant UN political organs. National dissemination is vital as this will have a deterrent and educational effect: first, the parties will be made more aware of the international implications of respect for human rights; second, victims and witnesses will be informed of the importance of making complaints and should be better protected by publicity; third, specific cases not resolved at the national level can be followed up at the international level; fourth, confusion and misunderstandings concerning the role and limitations of the UN operation can be diffused.

#### **8. International civilian police monitors**

In comprehensive settlements, international civilian police monitors should be deployed to monitor, supervise and train emerging police and security forces. They may also have a useful role in working with the human rights component in the investigation of violations. Their role should explicitly include monitoring police investigations and ensuring that impartial and effective complaints procedures exist and are functional and accessible. Civilian police monitoring activity should be described in public reports on the overall peace-keeping operation. Police monitors must be prepared to work in close cooperation with any international human rights monitoring component.

International civilian police monitors must themselves have received adequate preparation and training in international human rights and criminal justice standards, and they must be prepared to exemplify and pass on this training to the national security forces they work with. Police monitors should provide technical advice on creating or improving criminal justice and investigation procedures, and they should evaluate and advise on training programs given to national security forces. Nascent and reformed national security forces should receive training in basic international human rights and criminal justice standards, including those listed below.

In some situations, such as where state structures have collapsed, consideration should be given to supplementing civilian police monitors with 'police advisers' (international experts initially to assist the UN military component and eventually organize the creation of a police training academy), such as those suggested by the UN Secretary-General in the context of Somalia.

### 9. Long-term measures for human rights protection: the judicial system and national human rights bodies

The UN should encourage and assist in the creation or re-building of independent and effective institutions that will be capable of ensuring that respect for human rights is fully guaranteed long after international supervision of the settlement ends. These should include an independent judiciary and a fair criminal justice system. In some cases it may be appropriate also to assist in the building of supplementary human rights mechanisms at the national level, such as ombudsmen or national human rights commissions. While Amnesty International considers that national human rights bodies, particularly commissions, can be important institutions for strengthening human rights protection, these must never replace or diminish the safeguards inherent in comprehensive and effective legal structures, enforced by an independent, impartial and accessible judiciary. It is also important to ensure that such initiatives are accompanied by a strong anti-impunity policy, in order to prevent such institutions from serving more to protect than to expose agencies which are responsible for human rights violations.

- **Ombudsmen** can play a role in investigating violations of human rights as defined in international standards, interceding with the competent national authorities, referral of matters to prosecuting authorities and follow-up of cases through the criminal justice system to see that they are conducted in accordance with international standards for fair trial.

Ombudsmen should be men or women of recognized impartiality, independence and competence. They should have the explicit duty and the necessary powers and resources to investigate, either on the basis of complaints or on their own initiative, all violations of human rights and fundamental freedoms as defined in international standards. They should also be able to take appropriate action to call for the correction or reversal of violations, including interceding with the competent national authorities and, when appropriate, providing information to international agencies such as the International Committee of the Red Cross. Each ombudsman should be empowered to refer matters to the proper judicial channels and to follow cases through the criminal justice system to see that they are dealt with fairly and in accordance with international standards.

The ombudsmen should publish regular reports on their inquiries, their recommendations and the responses of the authorities or parties. An ombudsman could be mandated to carry out a human rights education program to inform citizens of their rights and how to seek redress for violations of these rights.

Ombudsmen, preferably nationals of the country concerned, can also be established during the transitional period to work alongside the peace-keeping operation. All parties to the conflict should be able to nominate their own ombudsman and the UN operation should assist in ensuring the national publication and dissemination of the ombudsmen's reports.

- **National human rights commissions** can play a useful role to supplement and strengthen capacity at the national level for proper human rights investigations and for the hearing of complaints. The independence and impartiality of such bodies must be guaranteed and they should be staffed by independent and prominent national or international persons with experience in human rights law and protection. The UN's Principles Relating to the Status of National Institutions should serve as the basic minimum guidelines for the establishment of national institutions for the promotion and protection of human rights.<sup>167</sup>
- An interim relationship with **international courts or tribunals**, including any set up by the United Nations, could also be established.<sup>168</sup> Such a relationship would bring objectivity and instill confidence while national institutions are reconstituted to be impartial guarantors of the rule of law.

#### 10. Human rights education and advisory assistance programs

Human rights monitoring components within peace-keeping operations should also take on promotional tasks, including conducting a vigorous public information and education program on human rights. This should include specific human rights training for judges, prosecutors, police, security and prison officers and other government personnel and lawyers.

Independent experts within the human rights monitoring component should be charged with giving advice and assistance in the drafting of constitutional and other legislative changes. They should advise on the incorporation of human rights guarantees and safeguards into new legislation, drawing on UN standards and norms in the field of human rights, crime prevention and criminal justice.

The human rights component should also actively encourage, strengthen and protect national non-governmental human rights organizations. This could include providing security and material support for the activities of independent national groups engaged in the promotion and monitoring of human rights.

However, promotional activity should not be allowed to be used as a way of avoiding real human rights monitoring by the international human rights component itself.

#### 11. The protection of refugees, internally displaced and returnees

The UN High Commissioner for Refugees should be mandated to monitor the return and resettlement of refugees. In any UN peace-keeping operation in a country where the return of refugees is likely to take place, it must have a full and explicit in-country protection role. However, it must be emphasized that the international system for the protection of refugees can only work effectively if all states respect their obligations towards those who seek protection. States must abide by the principle of *non-refoulement* and not forcibly return refugees to territories where they would be at risk of human rights violations. In the context of peace-making and peace-keeping activities, it is vital that all states fully respect the fundamental principles of refugee protection and apply specific safeguards necessary to ensure any repatriation is completely voluntary



and is conducted only in accordance with adequate international access and supervision. Those who do not wish to return should have their claims examined in accordance with the UN High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*. States who adopt policies contrary to these principles counter the peace-making and peace-keeping efforts of the international community as a whole, as well as violating fundamental human rights principles and the international law which governs asylum.

### 12. The gender dimension

Human rights and police monitors need to consider the gender dimension of their work as they prepare their mission and conduct investigations. This should include consulting women's groups before and during the mission, ensuring that women's prisons and places of detention are located and investigated, and ensuring that victims of rape and other violence have suitable and confidential facilities to meet with investigators who are specially trained and experienced in this area. In addition, UN personnel must be familiar with specific international standards relating to the detention of women, including those contained in the UN's Standard Minimum Rules for the Treatment of Prisoners, and the Declaration on the Elimination of Violence Against Women.<sup>199</sup>

All UN personnel, civilian and military, deployed to a country as part of a UN mission should have, as part of their training, information about local cultural traditions and their impact on women so that they can both deal properly with violations of the human rights of women, and also so that they behave (both on duty and off duty) in a way that does not actually exacerbate existing violations of the human rights of women and girl-children in the host country.

### 13. Adherence of international peace-keeping forces to human rights and humanitarian law standards

All international peace-keeping forces must abide by the highest standards of international humanitarian and human rights law, especially where they have enforcement authority.

In the short term, an unambiguous statement should be issued by the UN Secretary-General, as well as a declaration adopted by the General Assembly and Security Council, affirming that forces acting under UN authority are bound by international human rights standards and international humanitarian law. Public reports on how these standards are being observed should be compiled by the Secretary-General. In the longer term the UN should consider ways of becoming formally bound by the relevant legal standards, including possibly by acceding to the Geneva Conventions and their Protocols, as well as to the international human rights treaties.

Where peace-keeping forces or police monitors are carrying out policing functions such as riot control, crowd dispersal, searches, seizures, arrests, detentions or interrogations, they should abide by the international principles which cover the conduct of law enforcement, the use of force and firearms, and the treatment of prisoners (see list of basic standards below). Wherever necessary, UN forces should be properly prepared and equipped to use non-lethal crowd dispersal techniques rather than resorting to the use of their firepower in a disproportionate and indiscriminate way.

UN human rights officers or advisers should be attached to peace-keeping operations that are empowered to use force. The human rights advisers should be mandated to hear complaints and investigate allegations regarding improper behaviour of the peace-keeping forces. There should be an accessible and transparent procedure whereby individuals can complain about violations by UN troops and receive compensation. Investigations must be timely, the results made public and disciplinary and other appropriate action must be taken against personnel who violate these norms.

Special rapporteurs and other UN investigative mechanisms appointed by the Commission on Human Rights might additionally be asked to receive complaints and follow up allegations against UN peace-keepers.

#### **14. Prosecution of war crimes and attacks on international peace-keeping personnel**

Threats against and attacks on international peace-keeping personnel and civilians working with them should be investigated by the national authorities of the host country, under the status of forces agreement between the UN and these authorities. Where the UN is mandated by the Security Council under Chapter VII to use force and ensure law and order, and sufficient national structures do not exist for such investigation and prosecution, any action taken by the UN must be in conformity with international law.

Prosecution and punishment measures should be carried out by an impartial tribunal or an international court. The creation of a eventual permanent institution for the prosecution of international crimes should be encouraged. All the international standards and guarantees for fair trial and due process must be explicit in the statute of any international tribunal.

#### **15. Continued promotion and protection of human rights in the post-settlement phase**

The UN should ensure that effective international human rights monitoring and assistance continues after the elections or other agreed political measures are completed, until it is clear that the government in question is able and willing to implement international human rights guarantees effectively without international monitoring and assistance.

The commitment to human rights in the long term should be made at the time of the settlement. Well in advance of the end of the mission there should be an evaluation as to whether the human rights component ought to stay on or what other measures may be needed to ensure a complete transition to a society characterized by the rule of law. Tasks to be undertaken in this context could include: further work to strengthen the judicial system, human rights training for law enforcement officials, general human rights education programs, support for national non-governmental human rights organizations and the establishment of UN 'integrated or interim offices' to coordinate UN system-wide activities relating to issues such as human rights, development, the return of refugees, health, nutrition and the coordination of information after the withdrawal of the peace-keeping troops.<sup>110</sup>

Human rights monitors who remain in the country should continue to be required to publish regular reports, and they should be requested to work closely with any other relevant UN human rights monitoring mechanisms and the UN Centre for Human Rights.

The UN Commission on Human Rights should consider in much greater depth its role in the post-settlement phase and any measures it takes or recommends should be integrated into, and coordinated with, the final stages of the peace-keeping operation. Advisory assistance programs may be particularly important in this phase but should never be a substitute for continued monitoring, investigation and other protective measures. Post settlement monitoring and assistance should be agreed and prepared in good time to ensure a smooth transition when the peace-keeping operation leaves.

It may be appropriate for the UN Commission on Human Rights to appoint its own expert rapporteur to be given a complementary task of following up the peace-keeping operation's recommendations to the parties. The mandate and role of such experts should be clear and should relate to real needs, rather than a means of paying lip-service to human rights promotion and protection. If an expert is appointed during the life of the peace-keeping mission, particular thought must be given to the integration and coordination of the expert's role with the human rights component and other aspects of the peace-keeping operation. Whenever necessary, an on-site presence should remain to continue the monitoring, investigating and reporting work initiated by the human rights component from within the peace-keeping mission.

If the recommendations of international human rights components remain unimplemented, UN bodies — the Commission on Human Rights, the General Assembly and the Security Council — as well as individual Member States must continue to maintain their involvement and press for full compliance.

#### **List of international human rights and criminal justice standards to be guaranteed and incorporated into peace agreements**

In addition to the major international human rights treaties,<sup>111</sup> Amnesty International considers that incorporation of and respect for the following non-treaty human rights standards must also be guaranteed by all parties to a conflict, reformed and nascent security forces established by virtue of peace settlements, as well as by international peace-keeping personnel involved in peace settlements.

These include:

- **Standard Minimum Rules for the Treatment of Prisoners, and the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners** (adopted by the Economic and Social Council in Resolutions 663 (XXIV) and 1984/74, respectively)
- **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (adopted by the General Assembly in Resolution 43/173)
- **Code of Conduct for Law Enforcement Officials, and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials** (adopted, respectively, by the General Assembly in Resolution 34/169 and the Economic and Social Council in Resolution 1989/61)
- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)

- **Basic Principles on the Independence of the Judiciary and the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** (adopted, respectively, by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990, and the Economic and Social Council in Resolution 1989/60)
- **Basic Principles on the Role of Lawyers** (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)
- **Guidelines on the Role of Prosecutors** (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)
- **Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** (adopted by the Economic and Social Council in Resolution 1989/65) and the UN's **Manual on these Principles**.
- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (adopted by the General Assembly in 1992 as resolution 47/135)
- **Declaration on the Protection of All Persons from Enforced Disappearances** (adopted by the General Assembly in 1992 as resolution 47/133)
- **Declaration on the Elimination of Violence against Women** (adopted by the General Assembly in 1993 as resolution 48/104)

### Concluding Remarks

There will soon be more than 100,000 UN peace-keepers operational around the world. As this paper demonstrates, Amnesty International believes that it is imperative that these complex, extensive and costly operations address the promotion and protection of human rights. Amnesty International also considers that it is essential that UN personnel, who are often performing a policing function, must themselves respect and be held accountable to human rights standards. In order to respond to these demands the UN and its Member States urgently need to review and implement special human rights training for all personnel involved in peace-keeping.

So far the General Assembly and the Security Council have encouraged the Secretary-General in the development of his *Agenda for Peace*. However, little attention has been paid to the human rights dimension of peace-keeping and there is very little evidence that the issue of training with respect to human rights and criminal justice principles is being taken seriously either by Member States or by the UN.<sup>112</sup>

The recommendations contained in this paper are intended as a contribution to the current discussion on the future of peace-keeping and the UN. There is a danger that human rights will get caught between the hard rock of military intervention and the wide open sea of humanitarianism. For too long the world of human rights has been divorced from the arena of peace-keeping. The issues are urgent and pressing. The links between human rights and peace-keeping are now well established. The UN needs to act if it wants to ensure that its operations are to fulfill the expectations they have generated and retain the UN's greatest asset, its credibility.

## NOTES

1. UN Department of Public Information, *Background Note: United Nations Peace-Keeping Operations*, October 1993.

2. *An Agenda for Peace: Preventive Diplomacy, Peace-Making and Peace-Keeping* (UN document A/47/277-S/24111, 17 June 1992) was produced at the request of the Summit Meeting of the Security Council held on 31 January 1992, which was the first time the Council had met at the level of heads of state and government. In *Agenda for Peace*, Secretary-General Boutros-Ghali made the following observations: 'Increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military... Peace-making and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include... advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation... The authority of the United Nations in this field would rest on the consensus that social peace is as important as strategic or political peace... Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the [UN] Charter. It requires as well deeper understanding and respect for the rights of minorities and respect for the needs of the more vulnerable groups of society... This is not only a political matter. The social stability needed for productive growth is nurtured by conditions in which people can readily express their will... To this end, the focus of the United Nations should be on the "field", the locations where economic, social and political decisions take effect.'

The Vienna Declaration and Programme of Action, adopted 25 June 1993 (UN document A/CONF.157/23), included the following recommendations:

'96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

'97. The World Conference on Human Rights, recognizing the important role of the human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

3. The definitions and terminology used here are largely derived from a typology suggested by Marrack Goulding, formerly UN Under Secretary-General for Peace-Keeping and now Under Secretary-General for Political Affairs. See 'The Evolution of United Nations Peacekeeping', 69 *International Affairs* (July 1993), pp. 451-464.

4. These are, respectively: the UN Truce Supervision Organization (UNTSO), which was set up to supervise the 1949 armistice agreements after the Security Council called for an end to the Arab-Israeli war, and now numbers 224 observers; and the UN Military Observer Group in India and Pakistan (UNMOGIP), which monitors the cease-fires following hostilities between India and Pakistan over Jammu and Kashmir in 1965 and 1971, and currently has 38 observers.

5. These are, respectively: the UN Peace-Keeping Force in Cyprus (UNFICYP), established to prevent violence between the Greek Cypriot and Turkish-Cypriot Communities in Cyprus, now numbering 1,518; the UN Disengagement Observer Force (UNDOF), established to maintain cease-fire between Syria and Israel and supervise agreements on areas of separation, now numbering 1,120; the UN Interim Force in Lebanon (UNIFIL), mandated to help Lebanese Government restore authority in the Southern part of Lebanon, now numbering 5,857, and largely stymied since 1982 from operating due to the maintenance of the Israeli 'security zone'; and the UNPROFOR operation in Croatia, established in March 1992 as an interim arrangement to create conditions of peace and security required for the negotiation of an overall settlement of the conflict in the former Yugoslavia. UNPROFOR's mandate in Croatia has been gradually expanded to include demilitarization, verification and protection of three 'United Nations Protected Areas' in Croatia and currently has a strength of 14,000 personnel in Croatia. UNPROFOR troops deployed in Bosnia and Herzegovina and in the former Yugoslav republic of Macedonia are operating under different mandates, neither of which fall into the 'traditional peace-keeping' category (see below notes 57 and 141).

6. For a description of the considerable difficulties encountered by UNIFIL in implementing this aspect of its mandate since 1978 see, *inter alia*, *The Blue Helmets: A Review of United Nations Peace-Keeping*, United Nations, 2nd edition 1990, pp. 111-152.

7. *Ibid.*, pp. 279-311.

8. The issue of missing persons in Cyprus (including Turkish Cypriots reported to have been taken prisoner by the Greek Cypriot authorities in 1962-63 and Greek Cypriots reported to have been taken by members of the Turkish armed forces during the 1974 conflict) has also been addressed by a United Nations Committee on Missing Persons in Cyprus, set up by the UN Secretary-General in 1981. This Committee's work is strictly confidential and Amnesty International is not aware of whether the Committee has been able to resolve any of the cases. Amnesty International has called on both sides in the Cyprus dispute, as well as on the United Nations, to ensure that the issue of the unresolved 'disappearances' will not be overlooked in ongoing talks or any proposed framework for a resolution of the conflict.

9. The agreement, which mandates the UN to oversee a referendum on independence, has foundered due to a dispute over electoral eligibility criteria. Once the terms of the referendum are agreed, the operation will become more like those which supervise a comprehensive settlement (see below) and the authorized strength of the operation will be expanded about fivefold.

10. The Security Council imposed sanctions against UNITA in Resolution 864 (1993), which went into effect in late September 1993. This was the first time the Council had ever taken such a measure against a non-governmental group. As the sanctions took effect and the Special Representative's efforts began to yield some progress on the political front with the restoration of the Bicesse Accords, the Secretary-General recommended an initially slight re-expansion of UNAVEM II's strength, with active contingency planning for full restoration, in a report submitted to the Security Council at the end of October: 'In the present atmosphere of cautious optimism and hope, I feel that the United Nations should be prepared to respond rapidly and decisively to consolidate any progress that might be achieved in coming days' (UN document S/26644, 27 October 1993).

11. 'Peace enforcement' is generally defined and discussed in note 12, and elsewhere in this paper. Article 8 of the Cotonou Agreement states that 'ECOMOG shall have the right to self-defence where it has been physically attacked'. The article also establishes a Violations Committee, composed of members of the Liberian factions and chaired by a member of UNOMIL, which is empowered to receive and investigate alleged cease-fire violations. In the event violating parties do not take corrective measures recommended and overseen by the UN observers, 'ECOMOG shall be informed thereof and shall thereupon report to the use of its peace-enforcement powers against the violator.' The full text of the Cotonou Agreement is in UN document S/26272, 9 August 1993.

12. Genditting (*sup* (1)) includes UNIKOM as an example of post peace-enforcement peace-keeping. Although such follow-up operations would themselves be deployed under Chapter VII of the UN Charter and so do not require the consent of the parties, the received wisdom is that they can only work if the relevant party agrees. Chapter VII is the section of the UN Charter which regulates the application of sanctions and the authorization by the Security Council of the use of armed force to maintain or restore international peace and security in situations where other measures fail. The resort to military force under Chapter VII is now sometimes called peace-enforcement.

13. In *Agenda for Peace (op cit)*, the Secretary-General recommended that, 'In inter-state disputes, when both parties agree... that if the Security Council concludes that the likelihood of hostilities between neighbouring countries could be removed by the preventive deployment of a United Nations presence on the territory of each state, such action should be taken' (para 31). However, even where the danger of conflict is strictly internal, preventive deployment remains an option. 'In conditions of crisis within a country, when the Government requests or all parties consent, preventive deployment could help in a number of ways to alleviate suffering and to limit or control violence. Humanitarian assistance, impartially provided, could be of critical importance; assistance in maintaining security, whether through military, police or civilian personnel, could save lives and develop conditions of safety in which negotiations can be held' (para. 29).

14. The Security Council originally requested UNPROFOR to establish a presence in the former Yugoslav Republic of Macedonia with about 700 infantry soldiers, 35 military observers and 26 civilian police in Resolution 795 (1992) of December 1992. In June 1993, the United States augmented this number with about 100 of its own troops, sent to 'reinforce the presence of UNPROFOR' (see Security Council Resolution 842 (1993)).

15. See *The Blue Helmets, op cit*, pp. 341-388, for a description of the original settlement plan for Namibia, endorsed in Security Council Resolution 435 (1978), and the eventual establishment and mandate of the UN Transition Assistance Group in Namibia (UNTAG). This is generally referred to by UN representatives as the first comprehensive settlement, involving a large number of UN military and civilian staff in a wide range of transitional tasks, including creating political conditions for free and fair elections, and ensuring the repeal of discriminatory laws, an amnesty and the release of prisoners and detainees, as well as the return of refugees. UNTAG is also generally considered a success, in contrast to later troubled operations in Angola and elsewhere. For a general assessment by UN officials of the beginning of the comprehensive settlement era of UN peace-keeping, see *The Singapore Symposium: The Changing Role of the United Nations in Conflict Resolution and Peace-Keeping, 13-15 March 1991*, United Nations document DPI/1141, September 1991.

16. The United Nations Transitional Authority in Cambodia (UNTAC), established in March 1992, had 9,354 military and civilian personnel in October 1993. The operation which began winding up in September 1993, had fully withdrawn by the end of the year. The United Nations Observer Mission in El Salvador (ONUSAL), established in July 1991, has a current strength of 363 staff, now mostly civilians including the fully civilian human rights division. ONUSAL's civilian staff should be expanded in 1994 when electoral observers will be sent to observe the March 1994 elections. The United Nations Operation in Mozambique (ONUMOZ) was established in December 1992 with a current strength of 6,517. These are mostly military personnel so far but the operation is to include large refugee repatriation and humanitarian assistance components, also leading up to elections, which are to be observed by UN staff. UNAVEM II is the second United Nations Angola Verification Mission, and was established in June 1991. At its peak, UNAVEM II comprised over 1,000 personnel up to the observation of the September 1992 elections. The Security Council authorized the establishment of the UN Assistance Mission in Rwanda (UNAMIR) in Resolution 872 (1993) on 5 October 1993. UNAMIR is projected to have a full strength of over 2,500 military and civilian staff.

17. The operation in the Western Sahara is somewhat different, as MINURSO's role is to prepare the ground for and oversee a referendum on the status of the territory.

18. UN document A/47/912-S/25521, 3 April 1993, para 41.

19. See *Agreements on Comprehensive Political Settlement of the Cambodia Conflict, Paris, 23 October 1991*, published by the UN Department of Public Information in DPI/1180, January 1992.

20. *Ibid.* See the Paris Agreement's Annex 1 (UNTAC mandate), which authorizes UNTAC to reassign and remove offending administrative personnel (section B, para. 4b) or take other 'corrective steps' where administrative actions are shown to be 'inconsistent with or work against the objectives of this comprehensive agreement' (section B, para 6). The Annex also provides for 'corrective action' in human rights cases (section E).

21. Directive 93/1 issued by the Special Representative of the Secretary General. The directive was issued in accordance with powers delegated to UNTAC pursuant to Articles 6 and 16 of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, and Sections B and E of Annex I, regarding direct control or supervision by UNTAC of the maintenance of law and order, law enforcement, judicial processes, and protection of human rights. Directive 93/2 authorized UNTAC to detain suspects until a competent court becomes available.

22. According to Alvaro de Soto, the UN's mediator in the Salvadorian peace process: "...the principles laid down in the constitutional reform were fleshed out so that the portion of the Chapultepec Peace Agreement on the National Civil Police is one of the most detailed, covering not only the new Police but also the new National Public Security Academy as well as a new doctrine for the Police. According to the latter the Police is placed at the service of the community and integrated with it, lightly armed and providing security and the defense of citizen's rights rather than instilling fear in the them. The Army may only be used for public security purposes in extraordinary circumstances, if the police is overwhelmed, and subject to checks by the Legislative branch clearly specified in the Constitution." Alvaro de Soto and Graciana del Castillo, 'An Integrated International Approach to Human Security - El Salvador: A Case Study', mimeograph, April 1993.

By May 1993, some of the security units which had been accused of systematic human rights violations in the past, including the Atlacatl Battalion, civil defence patrols, the Treasury Police and the National Guard had been dismantled, while the existing National Police was to be gradually dismantled as the new National Civil Police moved towards becoming fully operational. However, the Salvadorian Government has been criticized for boosting the ranks of the National Police with members of the abolished security forces and demobilized soldiers, instead of taking steps towards its disbandment. (See Amnesty International, *El Salvador: Peace without Justice*, AI Index AMR 29/12/93, June 1993.)

23. The January 1992 New York Agreement, which was the final accord in the series making up the comprehensive peace agreement for El Salvador, included the following provision: "The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which the perpetrators belong, must be the object of exemplary action by the law courts so that the punishment proscribed by law is meted out to those found responsible." *El Salvador Agreements: The Path to Peace*, published by the UN Department of Public Information in DPI/1208, May 1992, p. 53.

24. Amnesty International presented its own recommendations to the Truth Commission regarding the interpretation of its investigative scope, functions and methodology. (See *El Salvador: Observations and recommendations regarding the Commission of Truth*, AI Index AMR 29/06/92, June 1992.) Amnesty International also transmitted to the Commission information about the hundreds of cases of killings, torture and 'disappearances' which it had documented during the period under investigation.

25. The Commission's report confirmed what many Salvadorian and international organizations had denounced throughout the course of the civil war: that the armed forces, security forces, and paramilitary groups were responsible for massacres, killings, torture and 'disappearances' on a massive scale. Many of the killings, it said, were preceded by torture, 'disappearance' or rape. It concluded that 'death squads' linked to state structures became 'an instrument of terror responsible for the systematic physical elimination of political opponents', and cited the judiciary as bearing a great responsibility for the impunity with which the abuses had been committed. Ninety-five percent of the abuses reported to the Commission were attributed to the military, security forces or 'death squads' linked to them, but the FMLN was also held responsible for a number of killings and abductions.

The Truth Commission's recommendations fell into four categories: remedy of the Commission's findings, in specific cases; eradication of structural causes directly connected with the incidents investigated; institutional reforms to prevent the repetition of such events; and measures for national reconciliation. More specifically, the recommendations included: removal from office of all military and judicial officials named in the report; banning of all such officials from public office for ten years, including FMLN members held responsible for abuses; establishment of a compensation fund for victims of past human rights abuses; an urgent investigation into 'death squads', including individual cases, as the Commission perceived these groups still posed a threat to society; extensive judicial reforms; establishment of a special legislative commission to ensure the armed forces



would fulfil their new roles and remain under civilian control; derogation of army regulations obliging subordinates to obey orders of superiors even in violation of international human rights standards; implementation of the recommendations made by the human rights division of ONUSAL including numerous institutional reforms. The Truth Commission's report, *De la locura a la esperanza* ('From Madness to Hope'), is published in the annex to UN document S/25500, March 1993.

26. Indeed, the main official response to the report has been the promulgation just a few days later of a sweeping amnesty law, which shields the perpetrators of massacres, killings, torture and 'disappearances' from prosecution. The UN Secretary-General issued a statement after the promulgation of this law expressing concern because it is related to the report of the Commission on the Truth which was, and remains, an integral part of the Peace Settlement in El Salvador.' (UN Press Release SG/SM 4950, 24 March 1993). Amnesty International has called on the Salvadorian Government to take a number of measures in compliance with its obligations under the peace agreements and in response to the Truth Commission's report. Amnesty International's recommendations included: the immediate repeal of the amnesty law, full investigations into past human rights abuses and the bringing to justice of those responsible, removal of all military and judicial personnel named in the Truth Commission's report, compensation for victims, an immediate and full investigation into 'death squads', much stricter control over the possession and use of weapons by active military and police personnel, reform of the judiciary into a genuinely independent and impartial body which can carry out full and effective investigations into human rights violations and bring to justice those responsible, and recognition by the Government of the jurisdiction of the Inter-American Court of Human Rights, as well as adherence to other international human rights instruments to which El Salvador is not yet a party. See *El Salvador: Peace without Justice*, *op cit*.

Amnesty International has also called upon members of the UN Security Council and other governments closely involved in the peace negotiations to actively follow up the matter of compliance with the recommendations of the Truth Commission, as required in the peace agreement. In Resolution 832 (1993) of 27 May 1993, the Security Council urged the Government and FMLN 'to respect and implement fully all commitments they assumed under the Peace Accords, including, *inter alia*,... the recommendations of the *Ad Hoc* Commission on the purification of the Armed Forces and the Commission on the Truth'. In an October 1993 report to the Security Council on the implementation of the Truth Commission's recommendations, the Secretary-General concluded that only partial implementation had been effected, and that there had been no action at all on the most crucial recommendations (UN document S/26581, 14 October 1993).

27. In response to the 'death squad'-style killings of two FMLN leaders in late October 1993, the Secretary-General stated that these acts substantiated ONUSAL reports that there was evidence of the continued and resurgent paramilitary and 'death squad' activity in El Salvador. The Secretary-General's statement called for vigorous investigation of the recent killings, which were said to 'confirm the need for immediate investigation of illegal groups... [as well as] the need to accelerate the implementation of other recommendations of the Commission on the Truth relating to the eradication of structural causes linked to human rights violations that occurred during the civil war and also to institutional reforms to prevent the repetition of such acts'. The Secretary-General said he had instructed ONUSAL's human rights division to assist the Government with a thorough and immediate investigation into the death squads. In the same statement, the Secretary-General also observed that 'ONUSAL has met with persistent difficulties in carrying out its task of verifying that only individuals meeting certain criteria are recruited to the National Civil Police' and he stated that 'ONUSAL must be allowed to carry out its verification mandate unimpeded' (UN document S/26689, 3 November 1993). The formation of the Joint Group was announced in ONUSAL Press Release No. 225, San Salvador, 8 December 1993.

28. *The Blue Helmets*, *op cit*, p. 353.

29. However, the South African authorities increased their numbers by incorporating members of a disbanded paramilitary police unit known as Kierwaer (crowbar) which had been responsible for gross human rights violations.

30. UN document S/21360, 18 June 1990, para. 59.

31. *Ibid.*, paras. 70-71.

32. The referendum implementation plan states that the terms of reference for the civilian police 'will define the circumstances under which members of the Civil Police Unit may in the course of their duties take offenders into custody, and the procedures to be followed thereafter.' *Ibid.*, para. 80.

33. Amnesty International remains concerned about over 260 former 'disappeared' Sahrawis who were released in June 1991, but continue to suffer restrictions on movement and freedom of speech. Although the reappearance of these detainees itself proved the fact that large numbers of Sahrawis have been held in secret detention by Moroccan security forces after their arrests between 1975 and 1988, no inquiry has been made into how they were held in unacknowledged and incommunicado detention for up to 16 years without charge or trial and they have been denied the relief, rehabilitation and compensation which is their due. Some have reportedly been rearrested. Amnesty International furthermore believes there may be hundreds more 'disappeared' prisoners, also arrested between 1975 and 1988, still held in secret detention.

34. See Amnesty International, *Morocco: Continuing arrests, 'disappearances' and restrictions on freedom of expression and movement in Western Sahara* (AI Index MDE 29/03/93, February 1993). In May 1993, the Secretary-General announced that 30 civilian police would be sent to the territory (see S/25818, 21 May 1993 para. 7), and by January there were 25 deployed, and the Identification Commission was partially deployed sometime around July 1993.

35. S/25140, 21 January 1993, para 33.

36. See Amnesty International, *Angola: Assault on the right to life* (AI Index AFR 12/04/93, August 1993).

37. See UN documents S/24892 (3 December 1992) and S/26666 (1 November 1993), respectively.

38. UN document A/47/969/Corr.1 (27 July 1993), Annex VIII.B.

39. The Liberian constitution, which was adopted in 1985 under President Samuel Doe, contains an extensive list of human rights guarantees, however most of these are subject to restrictions at any time and, in case of emergency, all of them—including rights considered non-derogable at all times under international human rights law—may be completely suspended.

40. The agreement specifies that, upon signing, 'all prisoners-of-war and detainees shall be immediately released to the Red Cross authority in an area where such prisoners or detainees are detained, for onward transmission to encampment sites or the authority of the prisoner-of-war or detainee [sic]. Common criminals are not covered by this provision.' UN document S/26272, Section I, Article 10.

41. *Executive Summary - The Carter Camp Massacre: Results of an Investigation by the Panel of Inquiry appointed by the Secretary-General into the Massacre near Harbel, Liberia, on the Night of June 5/6, 1993*, New York, September 10, 1993, para. 112.

The incident in question was an attack by armed soldiers who killed and mutilated the bodies of nearly 600 displaced civilians, mostly women, children and elderly people, in two encampments near Harbel, Liberia, on 5 and 6 June 1993. ECOMOG had assigned the Liberian armed forces (those serving under the interim government of Amos Sawyer) to maintain security in the area. ECOMOG and the armed forces blamed Charles Taylor's group, the National Patriotic Front of Liberia (NPLF), for the killings. Taylor denied responsibility and demanded that the UN conduct an investigation. In a 9 June statement, the Security Council strongly condemned the massacre and requested the Secretary-General to commence an investigation.

The three-person panel of inquiry appointed by the Secretary-General (S. Amos Wako, Robert Gernony and Mahmoud Kassem), which lacked a forensic expert or pathologist, concluded that the killings had been 'planned and executed' by the armed forces. Although it concluded that there was 'no evidence that ECOMOG personnel had advance knowledge of the massacre', ECOMOG 'may have suspected soon after learning of the incident what had actually happened and treated the matter as if it were not its responsibility' (paras. 97-98 and 101). The panel called for further inquiry, including proper criminal investigations and prosecution of those found responsible. Amnesty International is not aware of any further investigation undertaken by the UN, ECOMOG, the armed forces or the Interim Government.

42. Initially there will be a Joint Cease-fire Monitoring Committee (JCRC), composed of an equal number of representatives from each of the parties and ECOMOG, and the UN acting as chair. After UNOMIL and ECOMOG are fully deployed, a Violations Committee of the same composition will take over from the JCRC.

43. UN document S/26488 (24 September 1993), para. 66. The military observers in the UN Observer Mission Uganda-Rwanda (UNOMUR) now come under the command of the UN Assistance Mission in Rwanda (UNAMIR) even though the mandate of that former mission continues in order to ensure that no military assistance reaches Rwanda.

44. MICIVIH was established jointly by the United Nations and the Organization of American States in March 1993. Originally intended to comprise over 300 international observers provided by the two organizations, only 240 observers had been deployed by the time MICIVIH was withdrawn from Haiti in October 1993. As was the case in El Salvador, the human rights observers began their work before a political agreement had been reached. The agreement signed in Governors Island, New York, on 3 July 1993 by President Aristide and Gen. Raoul Cedras, commander of the Haitian Armed Forces, established a framework for the *de facto* military authorities to step down, President's Aristide return to Haiti and the reconstitution of his government. One of the provisions of the Governors Island Agreement was that the United Nations should dispatch to Haiti UN military and civilian police monitors, with the mandate of assisting in modernizing the Haitian military and establishing a new police force. This military training force, called the UN Mission in Haiti (UNMIH), was to be deployed beginning in October 1993. However this plan was scrapped after a series of threats and violent incidents against UN personnel were carried out in the face of the run-up to the projected arrival both of President Aristide and the UN military trainers. New economic sanctions against Haiti were imposed by the UN and OAS in mid-October and the human rights observers in MICIVIH were withdrawn a few days later in view of the high level of violence and the demise of the Governors Island Agreement. At the time of writing the status of the MICIVIH observers remains in limbo, as they wait out events in the Dominican Republic. It should be noted that MICIVIH, as a purely civilian mission, was established under the joint authority of the UN General Assembly and the OAS, while UNMIH was authorized by the UN Security Council (resolution 867 of 23 September 1993). Despite the fact that UNMIH are not deployed in Haiti or even elsewhere, their mandate has been authorized until March 1994 (S/26864, 11 December 1993).

UNOMSA, the United Nations Observer Mission in South Africa, was deployed under the authorization of the Secretary-General in September 1992, with about 50 observers initially. A UN publication noted that UNOMSA signaled for the United Nations 'a new exercise in preventive diplomacy. The mission falls squarely within the long-established UN functions of fact-finding, preventive diplomacy and good offices. But in addition to observing developments and regularly reporting to the Secretary-General, UNOMSA actively supports indigenous efforts to resolve disputes and promote reconciliation... Through their presence as impartial witnesses, the observers facilitate communication among various parties and intervene when appropriate, most often informally and quietly, by offering suggestions and options.' (UN Department of Public Information, *United Nations Focus: South Africa*, DPI/1391, August 1993.) See also Angela King (Chief-of-Mission, UNOMSA) 'The aim is to help open channels of communication between communities, reduce political intolerance and create a spirit of reconciliation among South Africans of all races and ethnic backgrounds... While UNOMSA's objectives remain unchanged, the range of its activities has broadened in order to carry out more effectively its mandate in addressing the issue of public violence and other related matters.' *UN Chronicle*, September 1993, p.31.

45. For example, in Eritrea, the General Assembly authorized a UN Observer Mission to Verify the Referendum (UNOVER). Although not a human rights mission as in Haiti, this mission did have to verify that there existed complete freedom of organization, movement, assembly and expression without intimidation. This included observing rallies and other referendum-related activities. The mission established a special relationship as observer to the Referendum Commission so that human rights complaints could be taken up to the extent that they related to the referendum. More problematic were cases of human rights violations unrelated to the referendum but detracting from the confidence-building measures being established.

46. During the 1940s and 1950s, the United States answered the Russian veto in the Security Council by getting approval from the General Assembly for operations to investigate communist infiltration into Greece by neighbouring Balkan states (UNSCOB) as well as during the Korea war. At this time the West dominated the General Assembly. Later, the UN's first peace-keeping operation, UNEF I (the first United Nations Emergency

Force, which lasted from 1956-1967 with a mandate to supervise withdrawal of invading British, French and Israeli forces in Suez) was set up following an emergency meeting of the General Assembly. Another exception was the United Nations Security Force in West New Guinea (West Irian) - UNSF - where the General Assembly authorized a force to maintain peace and security following an agreement between Indonesia and the Netherlands. The United States successfully side-stepped the Security Council in the context of Korea in the 1950s with the so-called 'Uniting for Peace' resolution. More recently, there have been attempts to shift the focus to the General Assembly, where Muslim Member States have a stronger voice, to again address blockage in the Council in order to deal with the crisis in Bosnia and Herzegovina. The General Assembly has issued more than one resolution urging the Council to consider exempting Bosnia and Herzegovina from the arms embargo imposed on the former Yugoslavia and urging Member States to extend cooperation to Bosnia and Herzegovina in the exercise of its inherent right to self defence under the Charter. See most recently A/48/88 adopted 20 December 1993.

47. President Aristide originally requested the joint deployment by the UN and the Organization of American States of a civilian human rights monitoring mission in January 1993. Both organizations were already involved in the situation in Haiti. The UN had monitored the elections which had originally brought President Aristide to power. For its part, only four months before the September 1991 Haitian coup d'état, the OAS had passed a resolution establishing a mechanism by which the OAS Permanent Council would be convened in the event of a coup in an OAS member state, in order to take measures to counteract the effects of the coup. The first monitors to arrive in Haiti were from the OAS, with a mandate to re-establish and strengthen constitutional democracy. This civilian mission was first known as OEA/DEMOC and later as the 'OAS civilian mission in Haiti' when 18 observers had been deployed in September 1992. Only in February 1993 did a group of 40 UN observers arrive in Haiti with a clear human rights mandate, and the joint mission was formally established.

48. For MICIVIH's terms of reference see UN document A/47/908 (27 March 1993) and General Assembly Resolutions 47/20A of 24 November 1992 and 47/20B of 23 April 1993. The Mission is generally charged with obtaining information on the human rights situation in Haiti and making appropriate recommendations to promote and protect human rights. It is to pay particular attention to respect for the rights to life, personal integrity and security, and freedoms of expression and association. The terms of reference provided, *inter alia*, that the Mission may 'go immediately to any place or establishment where possible human rights violations have been reported' and may 'speak freely and confidentially with any person, group or member of any organization or institution'. The Haitian military and *de facto* authorities are to guarantee the security both of MICIVIH staff and people who communicate with the Mission. See also the three reports issued on MICIVIH's work to date, in UN documents A/47/960 (3 June 1993) and A/48/532 (25 October 1993), A/48/532/Add.1 (18 November 1993) as well as the 'Rapport sur l'assassinat d'Antoine Izmerly' attached to A/48/532/Add.1.

49. UN document A/48/532, 25 October 1993, para. 12.

50. One MICIVIH report noted: 'The investigation of such reports in Haiti presents great difficulties. In most cases there is no active judicial investigation after the death is recorded by the local justice of the peace, and no efforts by the police to undertake a criminal investigation. Witnesses are frightened to come forward, and those interviewed by the Mission have often not been interviewed by the relevant authorities. The Mission has no access to any information coming from an official investigation, and in most cases it is clear that no such information exists. No autopsies are carried out. ... The report also noted that there are no detention registers. (A/48/532, para. 21).

51. The October report on MICIVIH (UN document A/48/532) gives a number of cautious examples of areas where the presence of the Mission appears to have reduced the potential for human rights violations or even remedied some cases. For example, where it gained access to some places of detention, the mission was able to record the identity of over 640 detainees, most of whom had been held illegally and without proper judicial procedures or legal representation, and in some cases for more than a year. Some illegally detained prisoners were released after the mission's intervention, however there was 'only a small alleviation of the situation of others' (para. 62).

While reporting that some peaceful demonstrators had been beaten and arrested in front of MICIVIH observers, it was noted that the Mission's presence has probably limited the extent of human rights violations associated with the demonstrations, and the Mission has intervened immediately after demonstrations to seek

release and respect for the physical integrity of those arrested, with some success' (para 50). MICIVIH also reports: 'Beatings in military custody appear to have become less frequent in some places since the Mission has been present, with some detainees being released without having been beaten; elsewhere, however, severe beatings in custody continue to be reported regularly. There are indications that in some areas beating by *attachés* without the victim being taken into custody may have been substituted for beating in custody as an adaptation to the presence of the Mission' (para. 38).

With regard to the judiciary, the report notes: 'Despite such intimidation, several judges and prosecutors have shown great courage and integrity in the face of threats and possible reprisals. Some judges... have ordered detainees to be released because their arrests or continued detention were illegal. Many of these releases have been ordered when observers of the Mission have been present in court. Through its constant insistence that the requirements of Haitian law be followed, the Mission has seen an increased willingness by judges to apply the law on arrest and detention, and a marked increase in granting provisional liberty to detainees. Prisoners have been processed through the system faster and some now even receive a hearing within 48 hours after arrest, as is required by the Constitution but was exceedingly rare before the presence of the Mission... For the most part, however, members of the judiciary remain extremely reluctant to investigate cases involving the FAD'H [Haitian armed forces]' (paras. 68-69).

52. See *Refugee Protection at risk: Amnesty International's recommendations to the 44th session of the Executive Committee of UNHCR* (POL. 33/06/93, September 1993)

53. The Governors Island Agreement provided that an amnesty would be granted by the President of the Republic within the framework of Article 147 of the Haitian constitution. This Article provides that the President can accord amnesties only with respect to political matters, and only in accordance with the law. The final terms of any eventual amnesty have never been made clear.

54. According to Security Council Resolution 772 (1992) the 'areas of concern' to serve as guidelines for the work of UNOMSA include: hostels and related security problems; dangerous weapons; security forces and other armed groups; investigation and prosecution of criminal conduct; and conduct of political parties.

Angela King, Chief-of-Mission of UNOMSA, has described the essence of their mandate as follows: 'to help bring an effective end to public violence and intimidation, to assist in creating a conducive climate for negotiations leading towards a peaceful transition to a democratic, non-racial, non-sectarian and united South Africa and to support the peace structures—the Goldstone Commission, the National Peace Committee, the National Peace Secretariat, and the 100 local peace committees throughout the country.' In its first ten months, UNOMSA observers witnessed over 8,500 'events'. (UN Centre against Apartheid, *Notes and Documents*, No. 6/93, August 1993.)

55. 'Opening statement by Ambassador Madeleine K. Albright before the US Senate Foreign Relations Committee, October 20, 1993', United States Mission to the United Nations Press Release USUN 164-(93).

56. See note 12 regarding Chapter VII of the Charter.

57. See note 5 for an explanation of UNPROFOR's mandate in Croatia. In Bosnia and Herzegovina, UNPROFOR's mandate was enlarged in June 1992 to assure the security and functioning of the Sarajevo airport, and the secure delivery of humanitarian assistance in and around Sarajevo. In September 1992, the mandate was further expanded to assure the safe delivery of humanitarian assistance throughout Bosnia and Herzegovina, and to protect convoys of released civilian detainees if so requested by the International Committee of the Red Cross (ICRC). Since November 1992, UNPROFOR has been monitoring compliance with the ban on military flights over Bosnia, and since April and May 1993 UNPROFOR has been mandated to protect and monitor the humanitarian situation in the six regions declared as 'safe areas' by the Security Council (Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde and Bihać). The total number of UN civilian and military personnel in UNPROFOR in Bosnia and Herzegovina is 9,200.

58. The issue of the observance of human rights and international humanitarian law by UN forces is dealt with in Part II of this paper. It should be noted here, however, that in the context of the delivery of humanitarian assistance the authority of the Security Council cannot take UN forces outside the ambit of the laws of war. According to Yves Sandoz, a member of the Executive Board of the International Committee for the Red Cross

(ICRC) and Director of the ICRC Department for Principles, Law and Relations with the Movement. The theoretical possibility of relying on Article 103 of the Charter to tolerate a derogation from treaties as universally recognized as the Geneva Conventions would warrant in-depth consideration at least. But it can be affirmed already that a decision of this nature would, in any event, have to be based at least on a conscious, reasoned decision on the part of those responsible for taking it. He stressed that even on the basis of United Nations resolutions, the use of armed force to impose the passage and delivery of relief supplies could on no account be justified by international humanitarian law: 'firstly they would deprive their intervention of all credibility by refusing to accept this "island of humanity" which even the worst aggressor is bound to accept; secondly they would give the opposing combatants a pretext not to respect humanitarian law either, to the detriment of the wounded and prisoners of war of their own armed forces.' Yves Sandoz, "Droit" or "devoir d'ingérence" and the right to assistance: the issues involved', *International Review of the Red Cross*, No. 288 (May-June 1992), pp. 12-22 at p.17.

59. Marrack Goulding (*op cit*) suggests the first UN peace-keeping operation deployed in a country where the institutions of state had largely collapsed was in the Congo in the 1960s (the United Nations Operation in the Congo—ONUC).

60. UN document S/25354, 3 March 1993 para. 91.

61. See Brian Urquhart 'For a UN Volunteer Military Force', *New York Review of Books*, 10 June 1993, pp. 3-4; 'A UN Volunteer Military Force - Four Views' *Ibid*, 24 June 1993, pages 58-60; 'A UN Volunteer Force - The Prospects' *Ibid*, 15 July 1993, pp. 52-56; 'Can blue helmets keep the peace?', *Observer*, 20 June 1993, p.13; Monique Chemillier-Gendreau 'Comment les Nations unies auraient pu dénouer la crise du Golfe en 1990', *Le Monde Diplomatique*, July 1993 pp. 16-17; Laurence Martin, 'Peacekeeping as a Growth Industry', *The National Interest*, Summer 1993, pp. 3-11; 'A Volunteer UN Army? The Case Against' Stephen John Stedman, *International Herald Tribune*, 28 July 1993, (letter) p. 7; J.F.O. McAllister, 'Pity the Peacemakers', *Time*, June 28 1993, pp. 46-48, who ends by saying 'Making peace against determined foes still demands a willingness to see soldiers, no matter what colour their helmets, come home in body bags.'

62. The first United Nations Operation in Somalia (UNOSOM I) was established in April 1992 to monitor the cease-fire in Mogadishu, to provide security for UN personnel and equipment and to protect the delivery of humanitarian assistance in and around Mogadishu. In August 1992, the humanitarian assistance protection mandate was expanded to cover all of Somalia. Continued hostilities prompted the UN to pull most of its humanitarian personnel out of Somalia and in December 1992, the Security Council authorized the US-led Unified Task Force (UNITAF) to use 'all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia' (Resolution 794 (1992)). Although the Security Council authorized the use of force, it should be noted that UNITAF was organized and commanded by the US military, not the UN. It was intended that UNITAF would lay the groundwork for the resumption of 'normal' UN peace-keeping functions and, in March 1993, the Security Council authorized under Chapter VII of the Charter a second UNISOM operation, known as UNOSOM II, to complete the task begun by UNITAF and 'assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia' (Resolution 814 (1993), para. 14). US troops remained in Somalia participating as a tactical 'Quick Reaction Force' to give support to UNOSOM II, but they were still operationally separate from the UN force.

63. Security Council Resolution 814 (1993), 26 March 1993, para. 13.

64. *Ibid*, para. 4(d).

65. Speech to a meeting of troop-contributing countries at United Nations Headquarters, New York. UN Press Release SOM/31, 21 July 1993.

66. UN spokesman Joe Sills, speaking at a press briefing at UN Headquarters in New York, 4 October 1993.

67. S/26317, 17 August 1993, the report explains that the 'UNOSOM Office for Human Rights will be staffed by a six-person investigation team from Member States and will, among other things, assist in the establishment of a local Somali human rights committee' (para 54). The report also suggests that the Independent Expert, in

in addition to his functions with regard to human rights, (act as) Ambassador for police, judicial and prison issues" (para. 55). There were also to be police advisors and police advisers to give assistance to local officials, as well as civilian political advisers to provide advice and assistance in the re-establishment of the Somali judicial system. In any eventual settlement the recommendations relating to comprehensive settlements would be relevant. Note also the recent Resolution of the General Assembly (48/246) which requests the Commission on Human Rights to consider the establishment of a group of international human rights monitors.

68. UN document S/25170, 16 January 1991, para. 25 (emphasis added). The report continues: Hence MINURSO patrols were alerted to possible unrest. Their reports did not corroborate the allegations made by the Frente POLISARIO.

69. Such mechanisms include the Special Rapporteur on Torture, the Special Rapporteur on Summary, Arbitrary and Extra-judicial Executions, the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, and the country rapporteurs as appropriate.

70. This can be a danger even where human rights components do exist. One member of the human rights division of ONDASAL, Dr Reinhard Jung-Hofer, was prompted to write an open letter to the UN Secretary-General stating that his perception was that the autonomy of the human rights component had been unduly limited by diplomatic and political considerations. He was supported in a letter signed in the name of a number of Salvadoran legal and human rights institutions *the Prensa Grafica*, 17 July 1992.

71. In a letter to the Security Council dated 3 November 1991, shortly after the late October killings of two FMLN leaders, Secretary-General Hristov said expressed the view that "Recent developments have also brought out the need to accelerate the implementation of other recommendations of the Commission on the Truth relating to the eradication of structural causes linked to human rights violations that occurred during the civil war and also to institutional reforms to prevent the repetition of such acts... [T]hat recent murders have brought into sharper focus the need to accelerate the implementation of the Accords in order to set the stage for a genuinely free and fair electoral process. At a high-level meeting on 3 September 1991... the Government and the FMLN agreed on the need to step up the implementation process with a view to "sweeping the table clean" before 20 November 1991, when the electoral campaign will begin. I fully share that sense of urgency..." (UN document S/26689, 3 November 1991).

72. See *Iraq: The need for further United Nations action to protect human rights* (AI Index MDH 14/06/91, July 1991) and *Iraq: Marsh Arabs still persecuted, UN should monitor human rights on-site* (Amnesty International weekly update service MDH 14/WA 02/92, November 1992).

73. See especially "Report on the situation of human rights in Iraq, prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/74", UN document E/CN.4/1992/31, and also circulated by the Security Council as UN document S/23685/Add.1, 9 March 1992, paras. 136-157.

74. UN document A/47/908, annex III, para. 76 (reprinted in A/48/532, para. 71).

75. In this respect, MICIVIH observed: "There have throughout its presence been fears that if progress did not continue to be made towards a peaceful political settlement, more generalized violence would break out. Violence exercised against agents of the State by the civilian population has been almost non-existent. This does not of course mean that fears of more generalized violence can be disregarded. The fact that serious human rights violations have continued to be committed, overwhelmingly without any sanctions against the perpetrators and without the prospect of those responsible being brought to justice, has increased the risk of such violence" (UN document A/48/532, para. 38).

76. In a statement to the Economic and Social Council in July 1991, Mr Ekasson said:

"Due to security needs, the international community is spending ten dollars on military protection for every dollar of humanitarian assistance in Somalia, even if the 1993 Relief and Rehabilitation Programme were to be fully funded. Unless sufficient funds are provided for rehabilitative activities, there is a risk that the military operation can be perceived as an end

in itself, rather than as a means of ensuring security for rehabilitating the country's infrastructure and forging national reconciliation.

Clearly, the impact and the aftermath of the recent escalation of violence cannot be allowed to wreck the transition to peace, security and reconstruction. Nor can one disregard the vicious attacks on United Nations peacekeepers or the use of civilians as 'human shields'. At the same time we are noting genuine concern, not least in the relief and NGO community, that continued military actions in Mogadishu can result in the marginalization of the humanitarian dimension of the United Nations' mission in Somalia.

77. According to the UN Spokesman's Office, over 22% of all UN peace-keeping fatalities since the first UN peace-keeping operations occurred in the first nine months of 1993 alone. 754 UN peace-keepers were killed in the period between 1948 and 1988; 269 were killed between 1989 and October 1993; and from January to October 1993, there were 170 fatalities, 81 of these in Somalia alone. (Citation from H. Puroda, 12 October 1993).

78. See, for example, Julia Preston, 'U.N. Officials Scale Back Peacemaking Ambitions: Planned U.S. Withdrawal from Somalia Demonstrates World Body's Limitations', *Washington Post*, 28 October 1993, A40.

79. UN document S/25493, 31 March 1993.

80. UN document A/48/349-S/26358, 27 August 1993, para 35(e).

81. Professor Tom Farer, 'Report of an inquiry conducted pursuant to Security Council resolution 837 into the 5 June 1993 attack on UN forces in Somalia' (12 August 1993) p.12 fn.3. An executive summary of the report is reprinted in UN document S/26351, 24 August 1993.

82. The Security Council authorized the *ad hoc* tribunal for Yugoslavia in February 1993, and in May it adopted the tribunal's statute. The eleven judges who will sit on the tribunal were elected by the UN General Assembly in September 1993 and the Council appointed the chief prosecutor in October. The tribunal, which is based in The Hague, held its inaugural meeting on 17 November 1993 and began to formulate its rules of procedure.

When UN legal advisers first began working on the draft statute, Amnesty International submitted to the UN detailed recommendations aimed at ensuring the tribunal would be just, effective and fair, in accordance with international human rights and criminal justice standards. (See *Memorandum to the United Nations: The question of justice and fairness in the international war crimes tribunal for the former Yugoslavia*, AI Index EUR 48/02/93, April 1993. Following the adoption of the statute Amnesty International published *Moving forward to set up the war crimes tribunal for the former Yugoslavia*, AI Index, EUR 48/03/93, May 1993.

83. The comments of the New Zealand Government are contained in 'Report of the Secretary-General: Comprehensive review of the whole question of peace-keeping operations in all their aspects, Addendum', UN document A/AC.121/40/Add.2, 28 April 1993. See also S/25493, *op cit*, S/25667, 26 April 1993, A/48/144, 25 June 1993.

84. New Zealand's proposal is in UN document A/C.6/48/L.2 (6 October 1993) and the Ukrainian proposal is in A/C.6/48/L.3 (12 October 1993). See also UN documents S/25667, 26 April 1993 submitted by New Zealand and A/48/349-S/26358 (Report of the Secretary-General: Security of United Nations operations, 27 August 1993). Lastly see the statement of the chairman of the working group of the Sixth Committee of the General Assembly, A/C.6/48/SR.29, and resolution A/48/37.

The International Law Commission, an expert UN body working for the progressive development and codification of international law, submitted to the General Assembly in 1993 a revised draft statute for a permanent International Criminal Tribunal. A final draft is expected in 1994. According to the latest draft (contained in A/48/10 p.255 (f)) the court would have jurisdiction over war crimes and crimes against humanity, but only if states parties to the Statute consented—except in cases submitted by the Security Council (Art. 25). The draft contains a number of important safeguards for defendants, such as the right not to testify and, like the tribunal for the former Yugoslavia, a prohibition on the use of the death penalty. However, Amnesty International is concerned that current proposals still fall short of international standards for fair trial in a number of other respects.



85. UN document A/AC.12/1/40/Add.2, *op cit.*, para. 15.

86. Adopted by the General Assembly in Resolution 34/169 of 17 December 1979.

87. Adopted in September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba.

88. See S/26351, *op cit.*, para. 9.

89. See the resolutions of the Institut de Droit International in 1971 stating that rules of a humanitarian nature must be respected by UN forces where they are engaged in hostilities (Zagreb, *Annuaire*, vol. 54 II, pp. 449-454), and in 1975 adding that all rules of armed conflict apply to hostilities in which UN forces are engaged (Weissbaden, *Annuaire*, vol. 56, pp. 541-544).

90. Judith Gail Gardam, 'Proportionality and Force in International Law', 87 *American Journal of International Law* (1993), pp. 391-413; John Mackinlay and Jarat Chopra have attempted to set out principles for the use of force by peace-keepers in 'A Draft Concept of Second Generation Multinational Operations (1993)', (available from the Thomas J Watson Institute for International Studies, Brown University). They state that force may not be used to 'punish an aggressor or as a long term deterrent. The response must be proportional to the threat.' (pp. 33-34).

91. See the Memorandum of 10 November 1961 referred to by Umesh Palwankar, formerly a member of ICRC's legal division, who states that:

'Since the UN as such, is not a party to the Conventions, the ICRC considers that each State remains individually responsible for the application of these treaties whenever it provides a contingent for a PKF [peace-keeping force]. In consequence, the State should do what is necessary, especially by issuing appropriate instructions to the troops before they are posted abroad.

The memorandum also stressed that by virtue of Article 1 common to the four Conventions, which also requires the High Contracting Parties to ensure respect for the Conventions, the States providing contingents "should each, where necessary, use their influence to ensure that the provisions of humanitarian law are applied by all the contingents concerned as well as by the unified command".

'Applicability of international humanitarian law to United Nations peace-keeping forces', *International Review of the Red Cross*, May-June 1993, p. 230.

92. 'Report to the International Conference for the Protection of War Victims, Geneva, August 30 to September 1, 1993', p. 35. See also the statement by the ICRC to the Fourth Committee of the UN General Assembly, 29 November 1993, where the ICRC states that the rules relating to the method and means of combat apply to UN forces, and that the UN should incorporate into various status of forces agreements and instructions to its forces specific rules such as the prohibition of attacks on the civilian population.

93. In full, para. 1.7 of the Final Declaration reads: 'We demand that measures be taken at the national, regional and international level to allow assistance and relief personnel to carry out in all safety their mandate in favour of the victims of an armed conflict. Stressing that peace-keeping forces are bound to act in accordance with international humanitarian law, we also demand that the members of peace-keeping forces be permitted to fulfil their mandate without hindrance and that their physical integrity be respected.'

94. On the background to this debate and the legal methods whereby the UN could either accede to treaties or make declarations, see D. Schindler, 'United Nations Forces and International Humanitarian Law', in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, C. Swinarski (ed), 1984, pp. 520-530.

95. See Part III of this paper for a list of the standards and treaties which are among those which Amnesty International considers essential for the full protection against human rights violations and for proper inquiries into allegations.

96. See the model status-of-forces agreement for peace-keeping operations in UN document A/45/594, 9 October 1990, para. 47(b), and *The Blue Helmet*, *op cit*, p.54.

97. After accusations that members of the Belgian parachute regiment in UNOSOM II had been responsible for extrajudicial killings, torture, ill-treatment and racial abuse of Somali citizens, the Belgian military judicial authorities initiated an inquiry. It is interesting to note that the Belgian military has military inspectors attached to the armed forces for this purpose. These inspectors were sent to Somalia in August 1993 to investigate the allegations. Preliminary investigations were reported to have confirmed accusations of deliberate murder of Somali citizens during military operations, leading the Belgian military inspectors to state their belief that the soldiers had not acted in legitimate self-defence (*La Stampa*, 27 August 1993). In Canada, a military board of inquiry has conducted investigations into alleged extrajudicial killings and fatal beatings by Canadian soldiers during the UNTAF phase, leading to charges against some soldiers, although others had charges against them dropped. Amnesty International has requested further information on the results of national investigations into alleged human rights violations by UNOSOM contingents from Belgium, Canada and the US, but has not received responses from the relevant national authorities of these three countries.

98. UNRISD workshop, Geneva, 29-30 April 1993, p. 3.

99. UN document S/26317, 17 August 1993, para 53.

100. *Ibid.*, paras. 29-63.

101. Security Council Resolution 885 (1993), 16 November 1993. It should be noted that the investigation undertaken by a UN-appointed expert into the 5 June 1993 armed attacks in Mogadishu against UNOSOM troops (S/26351, *op cit*) was apparently not considered adequate by the Security Council. Amnesty International had also been concerned that that report, which had also made some preliminary conclusions regarding UNOSOM killings of Somalis on 13 June, did not fulfil the requirements for a thorough and impartial investigation into acts by the UN, and has therefore expressed its hope that the new commission of inquiry will also address acts by UNOSOM troops.

102. Adopted by the Economic and Social Council in Resolution 1989/65 of 24 May 1989.

103. UNPROFOR Press Release, Zagreb, 7 November 1993.

104. For example, allegations of summary executions could be taken up by the Commission's Special Rapporteur on Summary and Arbitrary and Extra-Judicial Executions and conditions of detention examined by its Working Group on Arbitrary Detention.

105. See Amnesty International, *A High Commissioner for Human Rights: Time for Action* (1 October 1993); the General Assembly has now created the post of High Commissioner for Human Rights whose Office is to be located in Geneva with a liaison office in New York, resolution 48/141, 20 December 1993.

106. In resolution 47/147, adopted 18 December 1992, para. 17 the General Assembly 'Calls upon all United Nations bodies, including the United Nations Protection Force and the specialized agencies, and invites Governments and informed inter-governmental and non-governmental organizations to cooperate fully with the Special Rapporteur and in particular to provide him on a continuing basis with all relevant and accurate information in their possession on the situation of human rights in the former Yugoslavia.'

107. Adopted by the UN Commission on Human Rights in Resolution 1992/34 in March 1992. See also Amnesty International's own recommended guidelines for such bodies: *Prepared Standards for National Human Rights Commissions* (AI Index IOR 40/01/93, January 1993).

108. From quite an early stage the peace plan for the Former Yugoslavia envisaged the establishment of a number of human rights institutions including: four ombudsmen, one for each of the recognized groups, a constitutional court and a human rights court (with provisions linking these to the International Court of Justice and the European Commission and Court of Human Rights), an international commission for human rights and

a human rights monitoring mission as well as an Interim Commissioner for Human Rights for Bosnia and Herzegovina. See UN docs: S/24795, 11 November 1992, S/25221, 2 Feb. 1993, S/25403, 12 March 1993, S/25479, 26 March 1993 and reproduced again in S/26260, 6 August 1993.

109. For recommendations concerning the situation of women in detention and in situations of armed conflict, see the following Amnesty International reports: *Women in the Front Line* (AI Index ACT 77/01/91, March 1991), *Rape and Sexual Abuse: Torture and Ill-Treatment of Women in Detention* (AI Index ACT 77/11/91, December 1991) and *Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces* (AI Index EUR 63/01/93, January 1993).

110. There is some discussion over the feasibility of turning the UN field offices of UNDP, UNICEF, DPI, etc. in different countries around the world into UN integrated or interim offices. UN Information Centres already present themselves in their publicity leaflet as participating in an electronic network linking UN Headquarters with 68 cities thus providing 'a unique source of information on such topics as peace-keeping, peace-making, human rights, economic and social development ...'.

The Secretary-General's recent report of the future of the UN Interim Offices in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Ukraine and Uzbekistan states that these offices provide a framework for the UN and all its programs, funds and offices including UNDP, UNFPA, UNHCR, UNICEF and WFP carry out their activities. In devising a new model with the interim offices the Secretary-General suggests a human rights role which seems to go beyond the mere provision of information. A/48/146/Add.1, 20 July 1993, para. 7. He states that the 'principle duty of the United Nations is to devise and apply an integrated approach to human security in all its aspects'. (para 17.) The new breed of 'United Nations integrated offices' should adapt to the broader functions which will be expected of them. Although UNDP already carries out a number of human rights projects in conflict situations (see A/Conf.157/PC/61/Add.13, 8 June 1993) it has been pointed out that UNDP officers are uneasy about working with armed opposition groups yet their cooperation is essential for new police and human rights training (see 'Human Rights, Development and Democracy: Experience of the UN in Post-Conflict El Salvador', Margaret Popkin, available from UNDP). Clearly the UNDP in cooperation with the peacekeeping operations such as ONUSAL and UNTAC as well as working with the Centre for Human Rights can achieve lasting changes in the human rights situation in a country. It is hoped that the combination of UNICEF, UNDP and the concept of the Interim/Integrated Offices will become real contributions to the UN's in-country human rights work. See also 'Operational activities for development: field offices of the United Nations development system', A/48/733 and resolution 48/209. On the idea of an 'integrated office', post-UNTAC, which would, *inter alia*, 'foster respect for human rights in Cambodia', see S/26360, 26 August 1993.

111. Amnesty International considers the following treaties to be particularly relevant to the protection of human rights in UN peace-keeping operations: the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the two Optional Protocols to the International Covenant on Civil and Political Rights, the first of which allows individual petitions and the second of which aims at the abolition of the death penalty; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Conventions on the Elimination of Racial Discrimination and the Elimination of all Forms of Discrimination against Women; and the Convention on the Rights of the Child.

112. In 'Report of the Secretary-General: Implementation of the recommendations contained in "An Agenda for Peace"', there is scarcely any mention of efforts in the field of either training or human rights (UN document A/47/965-S/25944, 15 June 1993). In the Secretary-General's most recent 'Report on the Work of the Organization', there is a mention of training manuals being prepared for troops, military observers and civilian police, as well as a code of conduct for peace-keeping personnel (UN document A/48/1, 10 September 1992, para. 306). In resolution 48/42 on the comprehensive review of peace-keeping the Secretary-General is asked to include a clause in agreements with troop contributing states so that those states would ensure that members of their contingents are fully acquainted with the principles and rules of relevant international law, in particular international humanitarian law and the purposes and principles of the Charter (para 40).

**ANNEX: Relevant Amnesty International external documents**

'Amnesty International calls on UN Security Council to halt massacre of Kurds by Iraqi armed forces' (press release MDE 14/08/88, 8 September 1988)

NAMIBIA: Human Rights Promotion in the Training of Police and Military Personnel (AFR 42/03/90, May 1990)

NAMIBIA: The Human Rights Situation at Independence (AFR 42/04/90, August 1990)

ANGOLA: Human Rights Guarantees in the Revised Constitution (AFR 12/04/91, June 1991)

GUINEA-BISSAU: Human rights guarantees in the new constitution (AFR 30/06/91, July 1991)

IRAQ: The Need for Further United Nations Action to Protect Human Rights in Iraq (MDE 14/06/91, July 1991)

STATE OF CAMBODIA: Human rights development: 1 October 1991 to 31 January 1992 (ASA 23/02/92, April 1992)

ANGOLA: An appeal for prompt action to protect human rights (AFR 12/01/92, May 1992)

EL SALVADOR: Observations and recommendations regarding the Commission of Truth (AMR 29/06/92, June 1992)

ANGOLA: Will the new government protect human rights? (AFR 12/09/92, August 1992)

ANGOLA: Oral statement by Amnesty International to a UN conference on human rights in Angola (AFR 12/10/92, September 1992)

STATE OF CAMBODIA: Update on human rights concerns (ASA 23/04/92, October 1992)

FORMER YUGOSLAVIA: Intergovernmental initiatives to protect human rights in the former Yugoslavia - text of an open letter (EUR 48/27/92, 23 October 1992)

IRAQ: Marsh Arabs still persecuted, UN should monitor human rights on-site (MDE 14/WU 02/92, 30 November 1992)

WORLD CONFERENCE ON HUMAN RIGHTS - Facing up to the Failures: Proposals for improving the protection of human rights by the United Nations (IOR 41/16/92, December 1992)

MOZAMBIQUE: The role of the United Nations in the protection of human rights under the General Peace Agreement (AFR 41/01/93, January 1993)

WESTERN SAHARA: Morocco: Continuing arrests, 'disappearances' and restrictions on freedom of movement in Western Sahara (MDE 29/03/93, February 1993) - issued with weekly update advice to editors. Morocco: Amnesty International denounces neglect of human rights concerns in Western

Sahara (MDE 29/WU 01/93, 23 February 1993)

FORMER YUGOSLAVIA: Statements to the UN Commission on Human Rights, August 1992, November 1992 and February 1993

CAMBODIA: Human rights concerns July to December 1992 (ASA 23/01/93, February 1993)

FORMER YUGOSLAVIA: Memorandum to the United Nations - The question of justice and fairness in the international war crimes tribunal for the former Yugoslavia (EUR 48/02/93, April 1993)

SOMALIA: Update on a disaster - proposal for human rights (AFR 52/01/93, April 1993)

AZERBAIDZHAN - Hostages in the Karabakh conflict: civilians continue to pay the price (EUR 55/08/93, May 1993)

TADZHIKISTAN - Hidden Terror: Political killings, 'disappearances' and torture since December 1992 (EUR 60/04/93, May 1993)

GUATEMALA: Impunity - A question of political will (AMR 34/17/93, May 1993)

Appeal by Secretary General of Amnesty International to Organization of African Unity to protect human rights in Africa (IOR 63/04/93, June 1993)

BOSNIAN REFUGEES: A continuing need for protection in European countries (EUR 48/05/93, July 1993)

GEORGIA: Alleged human rights violations during the conflict in Abkhazia (EUR 56/07/93, July 1993)

ANGOLA: Assault on the right to life (AFR 12/04/93, August 1993)

HAITI: Human Rights gagged - attacks on freedom of expression (AMR 36/25/93, October 1993)

Refugee Protection at Risk: Amnesty International's recommendations to the 44th session of the Executive Committee of UNHCR (POL 33/06/93, September 1993)

SUDAN: The Ravages of war - political killings and humanitarian disaster (AFR 54/29/93, September 1993)

A High Commissioner for Human Rights: Time for Action (IOR 41/35/93, October 1993)

LIBERIA: No chance for lasting peace without effective human rights guarantees (AFR 34/01/93, December 1993)

BOSNIA-HERZEGOVINA: Central and Southwest Bosnia-Herzegovina: Civilian population trapped in a cycle of violence (EUR 63/01/94, January 1994)