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**NEW DEVELOPMENT IN INTERNATIONAL  
LAW AND DIPLOMACY: ONE STEP  
FORWARD, TWO STEPS BACKWARD?**

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## **LATE ELIAS**

*1 Elias Memorial Lecture Series*

*ii*

**NEW DEVELOPMENT IN INTERNATIONAL LAW  
AND DIPLOMACY: ONE STEP FORWARD,  
TWO STEPS BACKWARD?**

*By*

**Professor Bolaji A. Akinyemi**  
*Former Hon. Minister of External Affairs*



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## Foreword

The author **Professor A. Bolaji Akinyemi** was the former Hon. Minister of External Affairs in Nigeria, little wonder his choice of topic and detailed research on *New Development in International Law and Diplomacy :One Step forward, Two Steps Backward?*.

The author has done justice to the stages of development in human affairs, which according to him is marked by eras or epochs, such as the end of the Second World War in 1945 marking the end of the era of global international wars, while the collapse of the soviet empire marked the end of preceding era and the beginning of another era filled with proliferation of domestic conflicts. According to him, the epochs posed different challenges to international law and diplomacy as the first era was dominated by inter-state conflicts while liberation wars and independence were the common features of the second era, as former colonies gained independence and became members of international law-making bodies. The author examines the concept of *armed conflict and its challenges to international law and diplomacy*, making a distinction between domestic conflict and non international military conflicts. In his view, domestic conflicts are conflicts not involving the use of armed forces while non international military conflicts are domestic conflicts involving the use of armed forces for its prosecution and resolution.

On the right to humanitarian intervention in the light of armed conflict, not being of international character, the author holds a clear view that the existence of the right of humanitarian intervention when the threshold is crossed by a State during armed conflict is not of international character. With detailed examples of the existence of such humanitarian intervention in some States, he points out that it is worthy to note that only United Nations has the right of intervention when the threshold is crossed by a State but where the legitimate and recognized

government invites a third party to come to its aid in confronting domestic insurrection, the right of intervention does not apply.

According to the author, there should not be selectiveness in indictment of crimes against humanity as selectiveness leads to stigmatization of a whole continent. He further advises third world members of the Security Council to build a block coalition against referring sitting presidents to the International Criminal Courts.

I commend this well researched lecture, which I find quite invaluable to scholars and researchers, lawyers, the general public and the international community at large.

**Professor Epiphany Azingo, SAN**

*Director General*

*September 2011*



**NEW DEVELOPMENT IN INTERNATIONAL LAW  
AND DIPLOMACY: ONE STEP FORWARD,  
TWO STEPS BACKWARD?**

***I***ntroduction

*L*awyers like case studies. They are sources of definitive pronouncements about law. Well, there are plenty of cases (issues) from which we can source for material for dealing with this topic. There are the wars in Libya, Iraq, Afghanistan; there are unrests in Tunisia, Egypt, Syria; there are court cases or indictments concerning leaders of Libya, Sudan, Congo, emanating from the International Criminal Court. In the recent past, there have been the Israel-Gaza military conflict, the Georgia-Russia military conflict, the Sri Lanka civil war, the Cote D'Ivoire civil war, and the civil war or wars in Sudan and the unending Somalia civil war.

Developments in human affairs are marked by eras or epochs. The end of the Second World War in 1945 marked the end of the era of global international wars. The emergence of two nuclear superpowers guaranteed an uneasy global peace marked by an absence of direct military conflict between the superpowers but marked by proxy wars between them. In to this category can be classified such military engagements as the United States/Vietnam/Cambodia war and the Soviet Union/Afghanistan war. This period also witnessed several colonial wars which presented a problem of classification because on one hand, one can argue that they were also international conflicts because they involved deployment of military resources across state borders; on the other hand, one can argue that they were all domestic conflicts because the

colonial authorities were recognized under international law as the lawful authorities. This issue was finally resolved through Article 1, para. 4, Additional Protocol 1 (1977) which provided that “international armed conflicts include situations ‘in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination...’” That this in fact did not amount to conferring any legitimacy on the liberation movements and that its objective was to impose a unilateral burden on the liberation movements was evident from the two caveats added to the provision. Firstly, application “of humanitarian protection may not be made subject to reciprocity” and insurgents are not “exempt from criminal prosecution under the law of the state.” In other words, captured or defeated liberation fighters were not accorded the legal status of prisoners of war but treated as common criminals.

The collapse of the Soviet empire marked the end of the preceding era and the beginning of another era marked by a proliferation in domestic conflicts. The relationship between the collapse of the Soviet Union and the ensuing proliferation of domestic conflicts lay in the paradoxical roles of the superpowers during the so-called cold wars. Each of the superpowers not only kept its surrogates in check to ensure that it did not get dragged into conflicts that might spiral out of control, but it also provided support to ruling regimes to avoid political or military turbulence that might affect the ideological balance. Now that the cold war is over, the international community is now captive to internal convulsions in some of its member states. This is an attempt at a tidy classification in an untidy state of affairs as is evident by the wars between the United States and Iraq, United States and Afghanistan, Russia and Georgia at a time when these types of international conflicts were supposed to be a thing of the past.

Each of these epochs posed different challenges to international law and diplomacy, and elicited different responses. The first era dominated as it was by inter-state conflicts led to a corpus of laws based on treaties or custom that sought to regulate the behavior of states and armed forces under the control of these states in their armed conflicts. Soldiers are supposed to be always preparing for the last war fought just as law is always reacting to the last atrocities. Just as the Geneva Conventions, which derived from Henry Dunant repulsions at the barbarity of the Italian War of Unification,<sup>1</sup> the Nuremberg trials were actually in most cases retroactive laws dealing with unacceptable behavior and atrocities during the second world war. That law, especially international law, is power determined was shown by the fact not only was none of the WW2 victors put on trial at Nuremberg but only a handful of United States armed forces personnel and no Soviet armed forces personnel was ever put on trial for the wars in Vietnam and Afghanistan. The second era dominated by the liberation wars was not initially addressed by international law. But as more former colonies became independent, and became members of international law making bodies, changes were made. For example, in 1969, the General Assembly of the United Nations specifically directed the Secretary-General of the United Nations to “give particular attention to protection of the rights of civilians and combatants in the struggles of peoples to liberate themselves from colonial or foreign domination”.<sup>2</sup> In 1970, the General Assembly passed a resolution affirming “that participants in resistance movements and freedom fighters

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1. See Dieter Fleck: *The Handbook of International Law, 2nd edition*,(Oxford, Oxford University. Press, 2009, p22.
  2. Fact Sheet No. 13, International Humanitarian Law and Human Rights, Internet.

should, if arrested, be treated as prisoners of war”<sup>3</sup> (*ibid*). Further action was taken in 1973 when the General Assembly broadened the scope to include the struggle against racist regimes “attempts to suppress struggles against colonial and racist regimes are incompatible with the UN Charter, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples as well as with the Principles of International Law concerning Friendly Cooperation Among States. Such attempts constitute a threat to peace and security”.<sup>4</sup> But the progress was short-lived as shown above when the Geneva Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held in 1977<sup>5</sup> imposed an uneven burden on the liberation movements as already demonstrated above. It is not that atrocities were not committed by the colonial authorities. History is replete with the atrocities committed by the Germans in Namibia, the French in Algeria, the Italians in Libya and Ethiopia, the Dutch in South-East Asia, the Belgians in the Congo and the British in Kenya. In not a single case, did international law specifically address this issue. In fact, it is only two weeks ago that a Dutch court ruled on a case dealing with war crimes committed in Java, Indonesia, by Dutch troops against Indonesian nationalists in the forties after the second world war. A similar case dealing with the atrocities committed by British troops against the *Mau Mau* in Kenya during the colonial struggle has just found its way before the British court.

But this period also witnessed internal convulsions all over the world as the military imposed violent and brutal rules in South America, Africa and Asia. The period also witnessed

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3. *Ibid*.

4. *Ibid*.

5. Dieter Fleck: *The Handbook of International Law, 2nd edition*,(Oxford, Oxford Univ. Press, 2009, p. 172.

internal revolts against established governments, often leading to civil wars and wars of secession. The 1977 Protocol II laid down minimum rules that are applicable in internal armed conflicts including “conflicts between the armed forces of a government and dissidents or other organized groups which control part of its territory...”

### **Armed Conflicts and Challenges of International Law and Diplomacy**

In confronting this topic, there are two approaches available to me. I could be a fox and roam far and wide, dealing staccato with many issues which have confronted the international community as illustrated in the 425 resolutions adopted by the Security Council of the United Nations in the past seven years such as the rights of women<sup>6</sup> and children in armed conflicts,<sup>7</sup> drug trafficking, organized crime, illicit arms, continuing sexual violence, gender-based violence and sexual exploitation and abuse to quote from Resolution 1938 (2010), or I could be a hedge hock, concentrating on a significant corner and dealing in extensor with that corner. I have decided to be a hedge hock. To a large extent, not much is lost as the corner which I am going to concentrate on, which is the challenges posed to international law and diplomacy by non-international military conflicts ---the conflicts of the new era also raised issues dealing with exploitation of children, women, diamonds and other resources in armed conflicts.

These conflicts should be distinguished from domestic conflicts even though they could be grouped under the general rubric of domestic conflicts. For the purpose of this lecture, the

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6. See Mackinnon, C.A.: “Rape, Genocide and Women’s Human Rights”, *Harvard Women’s Law Journal* 17(5), 1994.

7. See Van Bueren, G.: *The International Law on the rights of the Child*, (Martinus Nijhoff, 1998).

term, domestic conflicts, will be restricted to conflicts not involving the use of armed forces while non-international military conflicts will be reserved for domestic conflicts involving the use of armed forces for its prosecution and resolution.

This is not an arbitrary classification. In the past seven years (my own definition of recent), the Security Council of the United Nations passed 425 resolutions of which only a handful, not more than two dozen only dealt with conflicts involving inter-state disputes. The overwhelming majority dealt with non-international conflicts.

But the state of the law does not provide for such simple classification. For example, interventions by states in support of armed opposition groups in another state will only internationalize that conflict if the intervening state itself is conducting military operations, or conducting operations being carried out by the opposition groups. But like everything else, the devil is in the details. What constitutes “conducting military operations?” The International Court of Justice, in its judgment of 27 June 1986, in *Nicaragua v. United States* said armed attack included “not merely action by regular armed forces across an international border, but also the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to... an actual armed attack conducted by regular forces ...or its substantial involvement therein.” The court further went on to tackle the issue of terrorism and other low-intensity operations by declaring that they could constitute armed attack if their effects would have been the same if they had been carried out by regular armed forces.<sup>8</sup> If this reasoning had been tested in cases of externally sponsored coups, invasion by mercenaries and

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8. Dieter Fleck, *ibid.*, pp5-6.

externally sponsored assassinations across the Third World, the result would have been revealing. However in 1999, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia extended the rather restrictive remit of the decision in the *Nicaragua* case. In the *Tadic* case, the Appeals Chamber held that “overall control <of insurgents in Bosnia and Herzegovina> by the Federal Republic of Yugoslavia going beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations,’ is sufficient for qualifying the ongoing armed conflict as international”.<sup>9</sup> I have quoted this case because the Federal Republic of Yugoslavia was a case of a civil war that the United Nations and consequently the Tribunal treated as an international conflict with the truncated Republic of Yugoslavia being treated as an external interloper. There cannot be a better illustration of politics being the bedrock of law, whether domestic or international.

The six issues that arise from non-international military conflicts are 1) what is the threshold of permissible use of force by a government on its citizens? 2) What is the threshold of instability sufficient to activate international concern? 3) Where this threshold is crossed, is there an international right of humanitarian intervention? 4) What are the constituents of this right? 5) Who exercises this right on behalf of the international community? 6) When does this right cease?

It would be thought that this is a new phenomenon but in fact, the first recorded instance in history of regulations governing the conduct of troops towards its own citizens in times of a civil war was the Lieber Code. In 1861, Francis Lieber , a Professor of Political Science and Law at Columbia University prepared a Code of Conduct for President Abraham

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9. Dieter Fleck, *ibid.*, p.606.

Lincoln to govern the conduct of United States troops in the civil war. The Lieber Code “was the first attempt to set down, in a single set of instructions for forces in the field, the laws and customs of war”.<sup>10</sup> It had 157 Articles that stipulated that unarmed civilians and their property are immune from attack, and detailed how wounded and captured soldiers were to be treated.

This whole exercise has been bedeviled by the imprecise legal definition of what constitutes non-international armed conflict. Article 3 of the Geneva Conventions simply referred to “the case of armed conflict not of an international character”.<sup>11</sup> Hardly helpful. The Additional Protocol II tried its hand at being more specific. Article 1, para. 1 referred “to all armed conflicts (not covered by AP1) which take place in the territory...between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations...” This protocol raised the threshold by introducing four concepts: 1) responsible command, 2) territorial control, 3) sustained operations and 4) military operations. Article 8, sub-para. 2e of the International Criminal Court statute limits it to “armed conflicts that take place in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups...”

We may not still be clear about what this definition or series of definitions covers but we have a pretty good idea what is not a ‘non-international armed conflict’. It is not police clashing with demonstrators, or riots of an intermittent nature.

While legal arguments raged, the Security Council went about given teeth to the whole concept by adopting specificities

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10. *Ibid.*, p21.

11. *Ibid.*, p. 609.

to specific situations. The first issue is what I will call the Yugoslavian syndrome which manifested itself in every resolution of the Security Council dealing with a country. In its Resolution 1975 (2011) dealing with Cote D'Ivoire, the second preambular paragraph read:

The Security Council ... reaffirming its strong commitment to the sovereignty, independence, territorial integrity and unity of Cote D'Ivoire.

This formula was to be repeated in Resolution 1974 (2011) on Afghanistan, Resolution 1973 (2011) on Libya, Resolution 1972 (2011) on Somalia, Resolution 1969 (2011) on Timor-Leste, Resolution 1971 (2011) on Sierra Leone, Resolution 1740 (2007) on Nepal, Resolution 1742 (2007) on the Democratic Republic of the Congo, Resolution 1743 (2007) on Haiti, Resolution 1752 (2007) on Georgia, Resolution 1757 (2007) on Lebanon, Resolution 1769 (2007) on Sudan, Resolution 1770 (2007) on Iraq, Resolution 1778 (2007) on Chad and the Central African Republic, Resolution 1791 (2007) on Burundi, Resolution 1638 (2005) on Liberia. Not that it was applied only once but this formula was repeated on each occasion that a resolution was adopted on a country.

Where a situation arose which could lead to ambiguity, the Security Council made express provision in phraseology. For example, in Resolution 1582 (2005), dealing with Abkhazia, Georgia, the Security Council reaffirmed "the commitment of all member states to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders, and the necessity to define the status of Abkhazia within the State of Georgia in strict accordance with these principles."

Such was the sanctity of this principle that even when it was obvious to all that the Comprehensive Peace Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army in Nairobi was going to lead to secession in the South, the United Nations still kept the formula about the territorial integrity of Sudan until the referendum was held.

There were major exceptions. One was Resolution 1758 (2007) on Cyprus which pointedly omitted any reference to the sovereignty, unity and territorial integrity of Cyprus. This was due to the fact Cyprus had been invaded by Turkey in June 1999, and the invasion had resulted in the partition of Cyprus effectively into a Greek Cyprus and a Turkish Cyprus. The United Nations was not going to flog a dead horse. Another exception was Resolution 1586 (2005) which in effect recognised the voluntary separation of Eritrea from Ethiopia. Another exception was Resolution 1634 (2005) on Western Sahara which by making no reference to the formula in relationship to Morocco signaled its continuing non-recognition of Western Sahara as part of Morocco.

To understand this Yugoslavia syndrome, one would have to go back to the late 1980s and early 1990s following the rise of Mikhail Gorbachov and eventual collapse of the Soviet Union. The euphoria that followed in Europe led to a partial redrawing of boundaries and frontiers. Some of them like the dissolution of Checkoslovakia and the unification of Germany were peaceful. The disintegration of Yugoslavia was anything but peaceful. Europe seems to have been caught up in the nostalgic euphoria over fond memories of the Austro-Hungarian Empire. Ignoring warning from the United States, Europe embraced and sought to apply the concept of self-determination to Yugoslavia without clarifying the concept of self. What followed was the worst case of genocide and ethnic cleansing in Europe since the Second World War. Confronted with the

consequences of the various civil wars in Yugoslavia which started in 1991, Security Council Resolution 1785 (2007) simply talked of “preserving the sovereignty and territorial integrity of all States there within their internationally recognized borders.” This was simply recognizing a *fait accompli*.

The United Nations seemed to have learnt the lesson and was determined to ensure that its support for human rights was not under any circumstances to be interpreted as support for secessionism. To make assurance doubly sure, the Yugoslavia clause became a standard inclusion in Security Council resolutions.

To start with the first question raised earlier as regards the threshold, the Security Council had set up bench marks. In Res. 1975 (2011) on Cote d’Ivoire, the bench marks were 1) recent escalation of violence, risk of relapse into civil war, provocative action and statements that constitute incitement to discrimination, hostility, hatred and violence, serious abuses and violations of international law including humanitarian, human rights, refugee law, attacks on women, children and civilians. The attacks against civilians must be of such gravity as “to amount to crimes against humanity”.

In its earlier resolution on Cote d’Ivoire, Res 1967 (2011), the threshold benchmarks had included violence against United Nations peacekeepers.

In Res. 1973 (2011), the benchmarks in the Libyan crisis were escalation of violence, heavy civilian casualties, gross and systematic violations of human rights, arbitrary detentions, enforced disappearances, torture and summary executions, violence and intimidation committed against journalists, media professionals. Once again, the Security Council warned that “the widespread and systematic attacks currently taking place

against the civilian population may amount to crimes against humanity”.

In Res. 1964 (2010) on Somalia, the threshold benchmarks focused on violence against women, children, attacks on the Federal Government, the African Union Mission in Somalia (AMISOM) and the civilian population.

In Res.1959 (2010) on Burundi, the threshold benchmarks were continuing human rights violations, extrajudicial killings and torture, restrictions on civil liberties, including restrictions on the freedom of expressions, association and assembly of opposition parties and civil society organizations.

In its earlier Res.1970 (2011) on Libya, the very first on Libya, the emphasis was on violence and the use of force against civilians, gross and systematic violation of human rights, repression of peaceful demonstrators, “incitement to hostility and violence against the civilian population made from the highest level of the Libyan government”.

In Res. 1938 (2010) on Liberia, the threshold benchmarks were identified as drug trafficking, organized crime, illicit arms, continuing sexual violence, gender-based violence and sexual exploitation and abuse.

In all these resolutions, there is an additional preambular paragraph that is common and it reads “determining that the situation ... continues to pose a threat to international peace and security.” This is just sheer legal sophistry reminding one of Alice in Wonderland definitions. The Security Council attaches this label of threat to international peace and security to bring an issue under its remit whether logical or not.

On the surface, it might look like the benchmarks that can trigger intervention are whatever the Security Council decides are the benchmarks. They do have a commonality in several respects, but each will have its own specificity depending on the circumstances that led to the breach.

As pointed out earlier, attempts at a precise legal definition of what constitutes a non-international conflict and consequently what triggers off international reaction might have got bogged down in generalities, but the Statue of Rome which gave birth to the International Criminal Court has itemized what should be regarded as constituent elements of violations of international humanitarian law sufficient to trigger the jurisdiction of the court. It should then come as no surprise that there is considerable similarity between the wording of the Security Council resolutions and the wording of the Rome Statue, especially Article 8(c):

Article 8(c) states: “In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (ii) Taking of hostages;

- (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
  
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus, does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
  
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the

- United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;

- (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### **Right to Humanitarian Intervention?**

The next issue to deal with is when this threshold is crossed, is there a right of humanitarian intervention? From state and United Nations practice, we can point to several instances of humanitarian intervention: India's intervention into Bangladesh in 1971; Vietnam's intervention in Cambodia in 1979 and Tanzania's intervention in Uganda in 1979, ECOMOG intervention in Liberia and Sierra Leone, British intervention in Sierra Leone, the UN intervention into Northern Iraq in 1991; the US and UN intervention in Somalia in 1992; the UN and NATO's interventions in Bosnia in 1995 and in Kosovo and Serbia in 1999, the Russian intervention in Georgia, the African Union Mission in the Sudan, United Nations Mission in Haiti, United Nations Mission in the Democratic Republic of Congo, NATO- led International Security Assistance Force in Afghanistan and the UN and NATO intervention in Libya in 2011. I believe that it is now settled that there is a right of humanitarian intervention. The Canadian Report put it thus: "where a population is suffering serious harm, as a result of internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect".<sup>12</sup>

The next line of inquiry is to inquire into the constituent elements of the right. Some are of the view that the right includes the right to prevent<sup>13</sup> but this is hardly practicable given the Libyan precedence and the difficulty in reaching any decision on Syria. Security Council practice on Libya will prove elucidatory. The first resolution by the Security Council was Res. 1970 (2011) adopted on 26 February 2011 and by that time, the Council was condemning "the violence and use of

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12. The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty, Dec. 2001, p13.

13. *Ibid.*

force against civilians.” The resolution also “deplor(ed) the gross and systematic violation of human rights, including the repression of peaceful demonstrators, express(ed) deep concern at the deaths of civilians, and reject(ed) unequivocally the incitement to hostility and violence against civilian population made from the highest level of Libyan government..., consider(ed) that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity.”

This litany of grievous breaches showed that the breaches had already taken place. Theoretically and conjecturally configured, one could imagine a situation where a secret plan to carry out the crime of genocide had been formulated by a government but not yet executed becomes public knowledge. Presumably, the Security Council could take preventive measures but practical diplomacy does not work that way as the difficulties in reaching any agreement on Syria has demonstrated. The fact that the Rome Statue setting up the International Criminal Court did not list “planning” as one of the trigger crimes to activate the jurisdiction of the court further buttresses this point.

In my view the steps open to the Security Council start with a decision by the Council to be seized of an issue whether the ensuing debate leads to any further action or not. One may argue as to the point to be made if the debate led to no further action. But in fact, it is more a signal to the offending state that it is quite close to the threshold of international concern if it had not already crossed the line.

The second step is a Presidential statement after the debate, issued in the name and by authority of the current monthly President of the Security Council. It usually signified that although the Security Council was unhappy about developments in the target state, it could not reach agreement on concrete steps to be taken to address the issue. It is not exactly a wasted

exercise. It is a shot across the bow for the offending state as well as a signal to the rest of the international community that something was not quite right in the target state. That is the stage where we are now in the case of Syria. On 3<sup>rd</sup> August, 2011, the Security Council adopted the Presidential Statement where it “expressed its concern at the deteriorating situation in Syria” which had already resulted in the loss of hundreds of lives. It condemned “the widespread violation of human rights and the use of force against civilians by the Syrian authorities.” The statement called for an end to the violence and was of the view that the “only solution...was through an inclusive and Syrian-led political process”.

The statement was tepid precisely because it represented the result of the compromise between those who wanted United Nations action and those who did not want any action at all. During the period of the cold war, propaganda games were played where in the absence of a consensus, a member state (usually the United States) would still force a vote, thereby provoking a Soviet veto. In the post-cold war period, that practice has fallen into disrepute.

The next step, if an agreement was reached would be a resolution binding on all member states. If we go back to Res. 1970 on Libya for an illustration, the first substantive step was the Council declaring the legal foundation of its action: “acting under chapter VII of the Charter of the United Nations and taking measures under its Article 41”. Next follows its actions in paragraphs 1-28. The constituent elements of its actions were:

1. Demands an immediate end to the violence and calls for steps to fulfill the legitimate demands of the population;
2. Urges the Libyan authorities to:

- (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
- (b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country ...

Sub-para 2 was now followed by what I would call the punitive sections. Sections 4-8 referred the issue of Libya to the International Criminal Court for prosecution. Sections 9-14 imposed an arms embargo; sections 15-16 imposed a travel ban; sections 17-21 imposed an assets freeze; sections 22-23 designated criteria for individuals against whom sanctions would be imposed; and sections 24-25 set up a new Sanctions Committee.

When Resolution 1970 did not achieve its objective, Resolution 1973 (2011) was adopted by the Security Council on 17<sup>th</sup> March, 2011 which authorized member states “ acting nationally or through regional organizations or arrangements...to take all necessary measures... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” in addition to imposing a no fly zone, ban on flights, enforcement of the arms embargo and asset freeze. It is this catch phrase of “all necessary measures...” that has been controversially interpreted to legitimize the actions of NATO (the North Atlantic Treaty Organisation).

The next issue to raise is who exercises this right of humanitarian intervention? The evidence is uneven even though the legal weight comes down on the side of the Security Council of the United Nations, although it has been suggested<sup>14</sup> that

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14. *Ibid.*

under the Uniting for Peace resolution, the General Assembly can exercise the right. In the instances of humanitarian intervention already cited: India's intervention into Bangladesh in 1971; Vietnam's intervention in Cambodia in 1979, and Tanzania's intervention in Uganda in 1979, ECOMOG intervention in Liberia and Sierra Leone in, British intervention in Sierra Leone in, the UN intervention into Northern Iraq in 1991; the US and UN intervention in Somalia in 1992; the UN and NATO's interventions in Bosnia in 1995 and in Kosovo and Serbia in 1999, the Russian intervention in Georgia and the UN and NATO intervention in Libya in 2011, only five were carried out by the United Nations or under the United Nations imprimatur, leaving six to unilateral actions of doubtful legality but of moral rectitude. The Security Council in resolution after resolution has not hesitated in pointing out that under chapter VII of the Charter, it has the primary responsibility for enforcement action to restore and maintain international peace and security. There will continue to be aberrations like the Russian action in Georgia to protect the ethnic Russians in Abkhazia. But only the United Nations has the right of intervention. For the avoidance of doubt, it should be pointed out that intervention does not cover cases where the legitimate and recognized government invites a third party, whether another state or a regional organization to come to its aid in confronting domestic insurrection. This was precisely the case of the Gulf troops which went into Bahrain to help restore peace and order in 2011. But it is absolutely clear that this can only take place before the Security Council becomes seized of the situation. Once the issue has gone onto the Security Council agenda, it is my considered view that such actions would come close to illegality.

The final issue is who determines when the right of intervention ceases. If the possessor of the right is the Security

Council, it is only logical to assume that the power to make a determination that the objectives which necessitated the activation of the right of humanitarian intervention had been achieved. This conclusion is derived from the following Security Council resolutions: Resolution 1923 (2010) on Chad, the Central African Republic and the sub-region; Res. 1956 (2010) Iraq; Res. 1957 (2010) on Iraq; Res. 1959 (2010) on Burundi; Res. 1961 (2010) on Liberia and West Africa; and Res. 1969 (2011) on Timor-Leste, to pick a representative sample. Each of this terminating resolution lays the ground by welcoming and taking note of progress on the earlier benchmarks which had triggered off the intervention in the first place. For example, in the case of Timor-Leste it was “taking note of general stability through further improvements in the political and security situation, and welcoming efforts by the Government to promote cooperation and dialogue between local and national authorities, including...” In the case of Liberia and West Africa, Res 1961 (2010), the Security Council welcomed “the sustained progress made ...in rebuilding Liberia, ... welcoming the Government of Liberia’s participation and leadership ... in the Kimberley Process”. In the case of Burundi, Res 1959 (2010), the Security Council took “note with appreciation of the successful holding of five consecutive elections,... welcomed the progress that Burundi has made towards peace, stability and development,... supported the renewed commitment of Burundi to ‘zero tolerance’ for corruption”. In the case of Iraq, in Res. 1957 (2010), the Security Council “recalled the statement of its President...welcoming Iraq’s progress on compliance with non-proliferation and disarmament commitments,...welcomed the letter sent by the Minister of Foreign Affairs of Iraq on 18 January 2010 which confirms that the Government of Iraq supports the international non-proliferation regime and complies with disarmament treaties.

International humanitarian interventionist regime enumerates bench marks by which it judges the attainability status of its objectives. In other words, it is not a unilateral decision of either the target state or any other state but a collective decision of the organization that imposed the sanctions in the first place.

The problem posed by the whole issue of this right of international humanitarian intervention is the unevenness in its application or better phrased as the role of politics in the interpretation of the right. No case has thrown this up in its stark reality as the Libyan conflict. The pertinent question is in what material ways are the issues in Libya different from the issues thrown up in the conflicts in Yemen, Bahrain and Syria, in the conflicts in Russia *vis-à-vis* Chechnya and the various conflicts in China between the Han majority and the non-Han minorities? One should also ask for why the allegations of a nuclear programme leveled against Iran had not led to its being invaded in the same way that Iraq under Saddam Hussein was invaded on the pretext that Iraq possessed weapons of mass destruction.

One can immediately dismiss the cases of Russia and China. Not only do they possess the veto power in the Security Council which makes any discussion of possible action against either country purely academic, but any military action will lead to nuclear suicide.

The question of Iran calls to mind the illegality of the second Iraq war fought by the United States and the United Kingdom without the authorization of the Security Council. Military action against Iran will not secure authorization from the Security Council. Even though Russia and China are uneasy about nuclear non-proliferation, a substantial number of members of the Security Council including India, South Africa and Germany do not share the United States obsession with Iran, an obsession that they believe is driven more by United

States relationship with Israel. Besides, the Iranian army is not as degraded as Iraqi army was under Sadaam Hussien. Iran could probably inflict sufficient casualties on an invading army for it not to be worth the cost.

As regards Yemen, she is of no strategic value to the West beyond containing the Al-Sheba-al-Qaeda insurgency group based there. Besides, the government in Yemen and the insurgents are playing a cat and mouse game dominated more by skirmishes than a systemic and frontal assault on civilians. In addition, there is no oil.

Bahrain's assault on civilians by the government security forces was vicious enough to have crossed the threshold of intervention, but Bahrain is the home of the United States naval fleet in the Gulf and Saudi Arabia, the closest ally of the United States in that area ensured that the stakes were raised through an engineered military assistance intervention by the regional Gulf organization to effectively suppressed the insurrection.

In the case of Syria, some would suggest that the situation as of now is worse than where the situation was in Libya when the Security Council authorized military intervention. However, Syria differs from Libya in several ways. Firstly, like Iran, Syria has a powerful military establishment that has not been degraded. Secondly, just as Bahrain has a powerful ally in Saudi Arabia, Syria has a powerful ally in Iran. Finally, several members of the Security Council felt that they were conned by NATO members into supporting Resolution 1973 (2011), and that the military action undertaken by NATO went beyond their understanding of what they were authorizing. Therefore such countries as the Soviet Union, China, South Africa, India and West Germany and others had dug in their heels on Syria.

Muammar Ghaddafi of Libya did not help matters. Not only had his erratic behavior left him without a major ally whether in the region or anywhere in the world but his utterances and behaviour all through the crisis was just short of lunacy, going

on air and threatening to hunt down the demonstrators town by town, street by street and house by house provided the ammunition used against him in the Security Council debate. Whatever may be the similarities in the Syrian, Bahraini and Libyan cases, there was one major difference, President Bashar al-Assad of Syria and King Hammad bin Isa al-Khalifa of Bahrain were always conciliatory in their public appearances irrespective of their private dispositions.

A troubling aspect of this issue is better phrased as a question: Is regime change a legitimate objective of the right of international humanitarian intervention? In none of the resolutions of the United Nations does the phrase occur. But what other interpretation can one put on referring Presidents by name to the International Criminal Court? What other interpretation can one put on indictments and warrants of arrest issued against sitting Presidents? This is an ominous development that does not portend well for the third world.

Apart from these political inconsistencies, there is the problem with the legal obstacle posed by section 8 (3) of the Rome Statute which states “nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.” Does this not constitute a legal defence for President Assad of Syria, King al-Khalifa of Bahrain and Muammar Ghaddafi of Libya?

There is also the issue of the criminal prosecution or indictment of mainly Third World leaders whether in the former Yugoslavia or in Africa. We have the case of Charles Taylor, former President of Liberia who is on trial before the special court on Sierra Leone, we have criminal indictments issued by the International Criminal Court against President Omar Hassan al-Bashir of Sudan, Muammar Ghadaffi and some other prominent Libyans. In the view of some observers, there is no

justification for this selectiveness in indictment. War crimes were committed in Vietnam including the merciless carpet bombing of the Haiphong harbor on Christmas day and the use of the chemical agent orange which up till now is still responsible for defective births both among human beings and animals. Yet no one has been prosecuted for this. Atrocities have been committed in the wars in Afghanistan and Iraq by all sides and atrocities have been committed in the Middle East against the Palestinians. Yet no one from the level of a colonel upwards not to talk of a cabinet minister or a President has been put on trial. Yet African leaders are being committed to international tribunals for offences amounting to crimes against humanity.

Nothing justifies or excuses the horrendous crimes that African leaders commit against their people but they are not the only ones who should be held accountable before the International Criminal Court for acts of this kind. The selectiveness is leading to the stigmatization of a whole race and a whole continent.

On another level, these indictments have a dysfunctional impact. They came often in the midst of either on going negotiations or at difficult times in the conflict. When Huntington wrote about a clash of civilizations within another context,<sup>15</sup> he might as well have this in mind. African-Christian values emphasize reconciliation and forgiveness while the Judeo-Mediterranean values emphasize vendetta, an eye for an eye and revenge. This partly explains the coolness of African leaders to executing the warrants against the targets. Africans have to fight for evenness in interpreting and enforcing international law or the law will get discredited as people

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15. See Samuel Huntington: The Clash of Civilizations, *Foreign Affairs*, September 1993.

perceive it to be more of politics and less of law deserving of respect and acceptance.

It is rather ironic that the following countries the United States, China, Russia and Israel had not signed the Rome Treaty setting up the International Criminal Court. While this is no barrier to a case being referred to the Court by the Security Council as has been shown in the case of Libya, the veto power wielded by the permanent members effectively protects them from this happening to them. The Third world needs to be careful that the right of humanitarian intervention and the International Criminal Court do not become the avenues for the 21<sup>st</sup> century version of the Black Man's Burden.<sup>16</sup> The power given to the prosecutor and a handful of judges to indict a sitting President should never have been conceded. Third World members of the Security Council are advised to seek to build a blocking coalition in the Council against referring sitting Presidents to the Court.

### **Terrorism and State Response**

The last major issue that should be covered or else this review will not be complete, is the issue of terrorism and state response to it. Terrorism is of two categories, state sponsored terrorism and terrorism by non-state actors. The first category involves a state using its intelligence and security services or mercenaries to destabilize another state.<sup>17</sup> State sponsored terrorism can take the form of sponsored coups such as in Chile under Allende and Ghana under Nkrumah or assassinations in the Congo under Lumumba and mysterious deaths in several Third World

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16. See Rudyard Kiplin: "The White Man's Burden; The United States and the Phillipines Islands", Poem, 1899.

17. See John Perkins: *Confessions of an Economic Hit Man*, (Berrett-Koeller Publishers, 2004) and *The Secret History of the American Empire* ,(Plume, 2008).

countries. The other type of terrorism is the series of violence acts by non-state actors. It could be of two types: one by a totally home-grown group and the other by a group which is under the control of elements based in another country. A classic example of the latter is the attacks that had been carried out in the United States, Nigeria and Europe by the constellation of forces known as Al-Qaeda. It is the latter we will deal with.

There had been running confrontations between the United States and Al-Qaeda which had resulted in Al-Qaeda bombing American embassies in Kenya and Tanzania and an American warship in the Middle-East. Each episode had been followed by United States bombing of targets in countries where Al-Qaeda targets existed. The cat and mouse between the United States and Al-Qaeda finally culminated in the September 11, 2001 bombing of the twin towers of the World Trade Centre in New York. What followed was full scale war declared by the United States on Iraq and Afghanistan.

How has the international community dealt with this situation? In others what is the position of international community on terrorism by non-state actors? Customary international law was stated clearly in Article 51 of the U. N. Charter: “nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.” Does Article 51 apply to attack by non-state actors? The answer is definitely yes. The *Caroline* case in 1837 which is regarded as the classic on customary international law involved a reaction to attacks by non-state actors. This view is reinforced by the reaction of the Security Council to the 9/11 bombings as Resolutions 1368 (2001) and 1373 (2001) made specific reference to the right of self-defence. The United States and other governments invoked this right to invade Afghanistan. But the International Court of

Justice in an advisory opinion in 2005 on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, took the position that the armed attack must be “attributable” to a state.

In Resolution 1624 (2005), the Security Council adopted a special resolution on TERRORISM which sought to create a balance between fighting terrorism and preserving human rights. Perhaps nothing in recent times has confronted legal experts, policy practitioners and international institutions with such soul wrenching conundrum as finding the right balance between fighting terrorism and still preserving human rights. Obviously, the United Nations also wrestled with this problem as is evident in Resolution 1624 (2005) adopted on 14 September 2005. In the resolution it started off by reaffirming its six previous resolutions declaring acts of terrorism as a threat to international peace and security. Then it reaffirmed “the imperative to combat terrorism in all its forms and manifestations by all means...” But it immediately qualified it by not only adding “in accordance with the Charter of the United Nations” but also “stressing that states must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law.” The third issue stressed in this nineteen paragraph resolution was “reaffirming the primary responsibility of the Security Council for the maintenance of international peace and security under the charter of the United Nations”.

There was no difficulty reaching unanimity in the condemnation of terrorism as all the permanent members of the Security Council were battling terrorists and terrorism on their soil. The Russians were combating terrorism in Chechnya, the Chinese were combating violent restiveness in its Asiatic parts,

the Western alliance of course combating Al-Qaeda. Before the Al-Qaeda phenomenon reared its head, it is doubtful whether the United States and the United Kingdom would have readily signed on to a wholesome condemnation of terrorism as they often saw so called terrorists as fighters against communism and oppression.

It is now an established fact that after 9/11 the United States officially adopted such severe methods of interrogation such as water boarding, rendition etc that not only the human rights community all over the world but some of the intelligence communities in the United States and especially Britain felt alarmed. Obviously, the United Nations was reflecting this uneasiness in emphasizing that the war against terrorism cannot be at the expense of human rights. The debate still rages on with some insisting that vigorous and most certainly unethical and illegal methods of interrogation often yields information that prevents further terrorist acts thus saving human lives, and others insisting that the interrogatory methods are so barbaric that nothing justifies the methods. What is certain is that if the United States had not been at the receiving end of 9/11, she would most certainly have been among those loudest in condemning the same methods she herself was to adopt.

In 2010, the Security Council revisited the issue in Res. 1963 (2010), and its conclusions have matured after witnessing the futility of the Afghanistan and Iraq wars. While still “reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomever committed ...” still recognized “ that terrorism will not be defeated by military force, law enforcement measures, intelligence operations alone, and underlining the need to address the conditions conducive to the spread of terrorism...including, but not limited to, the need to strengthen

efforts for the successful prevention and peaceful resolution of prolonged conflict, and the need to promote the rule of law, the protection of human rights and fundamental freedoms, good governance, tolerance, inclusiveness to offer a viable alternative to those who could be susceptible to terrorist recruitment and to radicalization leading to violence”. In that quoted passage are shades of our own going debate between those who advocate a military solution to Boko Haram and those who advocate dialogue.

To a legal audience that may feel that this text is not legal enough, let me make reference to the judgment of the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, where the court recognized that the rules contained in the Geneva Conventions emanated from “elementary considerations of humanity...and hence were applicable to all armed conflicts”. At the end of the day, “elementary considerations of humanity” are the foundational elements of law and diplomacy.

## APPENDIX I



### **2011**

- [S/RES/2003 \(2011\)](#) Reports of the Secretary-General on the Sudan
- [S/RES/2002 \(2011\)](#) The situation in Somalia
- [S/RES/2001 \(2011\)](#) The situation concerning Iraq
- [S/RES/2000 \(2011\)](#) The situation in Côte d'Ivoire
- [S/RES/1999 \(2011\)](#) Admission of new Members
- [S/RES/1998 \(2011\)](#) Children and armed conflict
- [S/RES/1997 \(2011\)](#) Reports of the Secretary-General on the Sudan
- [S/RES/1996 \(2011\)](#) Reports of the Secretary-General on the Sudan
- [S/RES/1995 \(2011\)](#) International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994
- [S/RES/1994 \(2011\)](#) The situation in the Middle East
- [S/RES/1993 \(2011\)](#) International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former

	Yugoslavia since 1991
<a href="#">S/RES/1992 (2011)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1991 (2011)</a>	The situation concerning the Democratic Republic of the Congo
<a href="#">S/RES/1990 (2011)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1989 (2011)</a>	Threats to international peace and security caused by terrorist acts
<a href="#">S/RES/1988 (2011)</a>	Threats to international peace and security caused by terrorist acts
<a href="#">S/RES/1987 (2011)</a>	Recommendation for the appointment of the Secretary-General of the United Nations
<a href="#">S/RES/1986 (2011)</a>	The situation in Cyprus
<a href="#">S/RES/1985 (2011)</a>	Non-proliferation/Democratic People's Republic of Korea
<a href="#">S/RES/1984 (2011)</a>	Non-proliferation
<a href="#">S/RES/1983 (2011)</a>	Maintenance of international peace and security
<a href="#">S/RES/1982 (2011)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1981 (2011)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1980 (2011)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1979 (2011)</a>	The situation concerning Western Sahara
<a href="#">S/RES/1978 (2011)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1977 (2011)</a>	Non-proliferation of weapons of mass destruction
<a href="#">S/RES/1976 (2011)</a>	The situation in Somalia
<a href="#">S/RES/1975 (2011)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1974 (2011)</a>	The situation in Afghanistan
<a href="#">S/RES/1973 (2011)</a>	The situation in Libya
<a href="#">S/RES/1972 (2011)</a>	The situation in Somalia
<a href="#">S/RES/1971 (2011)</a>	The situation in Liberia
<a href="#">S/RES/1970 (2011)</a>	Peace and security in Africa
<a href="#">S/RES/1969 (2011)</a>	The situation in Timor-Leste
<a href="#">S/RES/1968 (2011)</a>	The situation in Côte d'Ivoire

[S/RES/1967 \(2011\)](#) The situation in Côte d'Ivoire

**2010**

[S/RES/1966 \(2010\)](#) International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

[S/RES/1965 \(2010\)](#) The situation in the Middle East

[S/RES/1964 \(2010\)](#) The situation in Somalia

[S/RES/1963 \(2010\)](#) Threats to international peace and security caused by terrorist acts

[S/RES/1962 \(2010\)](#) The situation in Côte d'Ivoire

[S/RES/1961 \(2010\)](#) The situation in Liberia

[S/RES/1960 \(2010\)](#) Women and peace and security

[S/RES/1959 \(2010\)](#) The situation in Burundi

[S/RES/1958 \(2010\)](#) The situation concerning Iraq

[S/RES/1957 \(2010\)](#) The situation concerning Iraq

[S/RES/1956 \(2010\)](#) The situation concerning Iraq

[S/RES/1955 \(2010\)](#) International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

<a href="#">S/RES/1954 (2010)</a>	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
<a href="#">S/RES/1953 (2010)</a>	The situation in Cyprus
<a href="#">S/RES/1952 (2010)</a>	The situation concerning the Democratic Republic of the Congo
<a href="#">S/RES/1951 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1950 (2010)</a>	The situation in Somalia
<a href="#">S/RES/1949 (2010)</a>	The situation in Guinea-Bissau
<a href="#">S/RES/1948 (2010)</a>	The situation in Bosnia and Herzegovina
<a href="#">S/RES/1947 (2010)</a>	Post-conflict Peace Building
<a href="#">S/RES/1946 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1945 (2010)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1944 (2010)</a>	The question concerning Haiti
<a href="#">S/RES/1943 (2010)</a>	The situation in Afghanistan
<a href="#">S/RES/1942 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1941 (2010)</a>	The situation in Sierra Leone
<a href="#">S/RES/1940 (2010)</a>	The situation in Sierra Leone
<a href="#">S/RES/1939 (2010)</a>	Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)
<a href="#">S/RES/1938 (2010)</a>	The situation in Liberia
<a href="#">S/RES/1937 (2010)</a>	The situation in the Middle East
<a href="#">S/RES/1936 (2010)</a>	The situation concerning Iraq
<a href="#">S/RES/1935 (2010)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1934 (2010)</a>	The situation in the Middle East
<a href="#">S/RES/1933 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1932 (2010)</a>	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed

<a href="#">S/RES/1931 (2010)</a>	in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
<a href="#">S/RES/1930 (2010)</a>	The situation in Cyprus
<a href="#">S/RES/1929 (2010)</a>	Non-proliferation
<a href="#">S/RES/1928 (2010)</a>	Non-proliferation/Democratic People's Republic of Korea
<a href="#">S/RES/1927 (2010)</a>	The question concerning Haiti
<a href="#">S/RES/1926 (2010)</a>	Date of election to fill a vacancy in the International Court of Justice (S/2010/255)
<a href="#">S/RES/1925 (2010)</a>	The situation concerning the Democratic Republic of the Congo
<a href="#">S/RES/1924 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1923 (2010)</a>	The situation in Chad, the Central African Republic and the subregion
<a href="#">S/RES/1922 (2010)</a>	The situation in Chad, the Central African Republic and the subregion
<a href="#">S/RES/1921 (2010)</a>	Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)
<a href="#">S/RES/1920 (2010)</a>	The situation concerning Western Sahara
<a href="#">S/RES/1919 (2010)</a>	Reports of the Secretary-General on the Sudan
<a href="#">S/RES/1918 (2010)</a>	The situation in Somalia
<a href="#">S/RES/1917 (2010)</a>	The situation in Afghanistan
<a href="#">S/RES/1916 (2010)</a>	The situation in Somalia
<a href="#">S/RES/1915 (2010)</a>	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law

	Committed in the Territory of the Former Yugoslavia since 1991
<a href="#">S/RES/1914 (2010)</a>	Date of election to fill a vacancy in the International Court of Justice
<a href="#">S/RES/1913 (2010)</a>	The situation in Chad, the Central African Republic and the subregion
<a href="#">S/RES/1912 (2010)</a>	The situation in Timor-Leste
<a href="#">S/RES/1911 (2010)</a>	The situation in Côte d'Ivoire
<a href="#">S/RES/1910 (2010)</a>	The situation in Somalia
<a href="#">S/RES/1909 (2010)</a>	Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)
<a href="#">S/RES/1908 (2010)</a>	The question concerning Haiti
<b>2008</b>	
<a href="#">S/RES/1859 (2008)</a>	The situation concerning Iraq
<a href="#">S/RES/1858 (2008)</a>	The Situation in Burundi
<a href="#">S/RES/1857 (2008)</a>	The situation concerning the Democratic Republic of the Congo
<a href="#">S/RES/1856 (2008)</a>	The situation concerning the Democratic Republic of the Congo
<a href="#">S/RES/1855 (2008)</a>	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994
<a href="#">S/RES/1854 (2008)</a>	The situation in Liberia
<a href="#">S/RES/1853 (2008)</a>	The situation in Somalia
<a href="#">S/RES/1852 (2008)</a>	The situation in the Middle East
<a href="#">S/RES/1851 (2008)</a>	The situation in Somalia
<a href="#">S/RES/1850 (2008)</a>	The situation in the Middle East, including

<a href="#"><u>S/RES/1849 (2008)</u></a>	the Palestinian question International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
<a href="#"><u>S/RES/1848 (2008)</u></a>	The situation in the Middle East
<a href="#"><u>S/RES/1847 (2008)</u></a>	The situation in Cyprus
<a href="#"><u>S/RES/1846 (2008)</u></a>	The situation in Somalia
<a href="#"><u>S/RES/1845 (2008)</u></a>	The situation in Bosnia and Herzegovina
<a href="#"><u>S/RES/1844 (2008)</u></a>	The situation in Somalia
<a href="#"><u>S/RES/1843 (2008)</u></a>	The situation concerning the Democratic Republic of the Congo
<a href="#"><u>S/RES/1842 (2008)</u></a>	The situation in Côte d'Ivoire
<a href="#"><u>S/RES/1841 (2008)</u></a>	Reports of the Secretary-General on the Sudan
<a href="#"><u>S/RES/1840 (2008)</u></a>	The situation concerning Haiti
<a href="#"><u>S/RES/1839 (2008)</u></a>	The situation in Georgia
<a href="#"><u>S/RES/1838 (2008)</u></a>	The situation in Somalia
<a href="#"><u>S/RES/1837 (2008)</u></a>	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
<a href="#"><u>S/RES/1836 (2008)</u></a>	The situation in Liberia
<a href="#"><u>S/RES/1835 (2008)</u></a>	Non-proliferation
<a href="#"><u>S/RES/1834 (2008)</u></a>	The situation in Chad, the Central African Republic and the subregion
<a href="#"><u>S/RES/1833 (2008)</u></a>	The situation in Afghanistan
<a href="#"><u>S/RES/1832 (2008)</u></a>	The situation in the Middle East
<a href="#"><u>S/RES/1831 (2008)</u></a>	The situation in Somalia
<a href="#"><u>S/RES/1830 (2008)</u></a>	The situation concerning Iraq
<a href="#"><u>S/RES/1829 (2008)</u></a>	The situation in Sierra Leone
<a href="#"><u>S/RES/1828 (2008)</u></a>	Reports of the Secretary-General on the Sudan
<a href="#"><u>S/RES/1827 (2008)</u></a>	The situation between Eritrea and Ethiopia
<a href="#"><u>S/RES/1826 (2008)</u></a>	The situation in Côte d'Ivoire

<a href="#"><u>S/RES/1825 (2008)</u></a>	Letter dated 22 November, 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)
<a href="#"><u>S/RES/1824 (2008)</u></a>	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994
<a href="#"><u>S/RES/1823 (2008)</u></a>	The situation concerning Rwanda
<a href="#"><u>S/RES/1822 (2008)</u></a>	Threats to international peace and security caused by terrorist acts
<a href="#"><u>S/RES/1821 (2008)</u></a>	The situation in the Middle East
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## **APPENDIX 2**

### **THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

#### **PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW**

##### **Article 5**

Crimes within the jurisdiction of the Court:

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

#### **Article 6**

##### **Genocide**

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

#### **Article 7**

##### ***Crimes against Humanity***

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;

- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
  - (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
  - (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
  - (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
  - (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering

arising only from, inherent in or incidental to, lawful sanctions;

- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
  - (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
  - (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
  - (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the

context of society. The term "gender" does not indicate any meaning different from the above.

## **Article 8**

### **War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) Wilful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;
    - (iii) Wilfully causing great suffering, or serious injury to body or health;
    - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
    - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
    - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

- (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or

seriously endanger the health of such person or persons;

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard

envelope which does not entirely cover the core or is pierced with incisions;

- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus, does not apply to

situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded

are collected, provided they are not military objectives;

- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death

to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### **APPENDIX 3**

United Nations S/RES/1625 (2005)  
Security Council Distr.: General  
14 September, 2005  
05-51064 (E)

Resolution 1625 (2005) Adopted by the Security Council at its 5261st meeting, on 14 September, 2005 The Security Council, Decides to adopt the attached declaration on strengthening the effectiveness of the Security Council's role in conflict prevention, particularly in Africa.

#### **Annex**

The Security Council,  
Meeting on 14 September 2005 at the level of Heads of State and Government to discuss how to strengthen the effectiveness of the Security Council's role in the prevention of armed conflict, particularly in Africa, Reaffirming its commitment to the Purposes and Principles of the Charter of the United Nations, Bearing in mind its primary responsibility for the

maintenance of international peace and security, Deeply concerned by the high human cost and material losses caused by armed conflicts and recognizing that peace, security and development are mutually reinforcing, including in the prevention of armed conflict, Reaffirming the importance of adhering to the principles of refraining, in international relations, from the threat or the use of force in any manner inconsistent with the Purposes of the United Nations, and of peaceful settlement of international disputes, Reaffirming the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict and political and social crises in a comprehensive manner, including by promoting sustainable development, poverty eradication, national reconciliation, good governance, democracy, gender equality, the rule of law and respect for and protection of human rights, recognizing the need to strengthen the important role of the United Nations in the prevention of violent conflicts, and to develop effective partnerships between the Council and regional organizations, in particular the African Union and its 2 S/RES/1625 (2005) sub-regional organizations, in order to enable early responses to disputes and emerging crises; recalling the Constitutive Act of the African Union, the Protocol relating to the establishment of the Peace and Security Council of the African Union, and the African Union Non-Aggression and Common Defence Pact adopted in Abuja on 31 January 2005, as well as the African Union position on unconstitutional changes of governments, as stated in the 1999 Algiers Declaration and the 2000 Lomé Declaration; recognizing the important supporting roles played by civil society, men and women, in conflict prevention, and the need to take into account all possible contributions from civil society:

1. Expresses its determination to enhance the effectiveness of the United Nations in preventing armed conflicts and to monitor closely situations of potential armed conflict;
2. Affirms its determination to strengthen United Nations conflict prevention capacities by:
  - (a) assessing regularly the developments in regions at risk of armed conflict and encouraging the Secretary-General to provide information to the Council on such developments pursuant to Article 99 of the Charter;
  - (b) promoting the follow-up of preventive-diplomacy initiatives of the Secretary-General;
  - (c) supporting regional mediation initiatives in close consultation with regional and sub-regional organizations concerned;
  - (d) supporting regional and sub-regional capacities for early warning to help them in working out appropriate mechanisms to enable prompt action in reaction to early warning indicators;
  - (e) requesting as necessary and appropriate information and assistance from the Economic and Social Council in accordance with Article 65 of the United Nations Charter;
  - (f) taking measures to contribute to combating illicit trade of arms in all its aspects and the use of mercenaries;

(g) helping to enhance durable institutions conducive to peace, stability and sustainable development;

(h) supporting efforts of African States to build independent and reliable national judicial institutions;

3. Requests the Secretary-General to:

(a) provide to the Council regular reports and analysis of developments in regions of potential armed conflicts, particularly in Africa, and as appropriate a presentation of ongoing preventive-diplomacy initiatives;

(b) assist countries at risk of armed conflict in performing strategic conflict risk assessments, in implementing the measures agreed by the concerned countries, in enhancing national dispute management capacities, and in addressing the root causes of armed conflict;

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(c) promote coordination with regional conflict management machinery in Africa which would provide the Security Council with additional reliable and timely information to facilitate rapid decision-making;

4. Stresses the importance of establishing effective comprehensive strategies of conflict prevention, focused on averting negative developments in the security, economic, social and humanitarian sectors and in the field of governance and human rights in countries which are facing crises, with special attention to:

- (a) developing quick win activities to prevent conflicts arising from competition for economic resources and to monitoring tension arising from economic and social issues;
  - (b) encouraging United Nations regional offices to facilitate the implementation of strategies aimed at curbing illicit cross-border activities;
  - (c) strengthening the capacities of civil society groups, including women's groups, working to promote a culture of peace, and to mobilize donors to support these efforts;
  - (d) developing policy measures to foster good governance and the protection of human rights in order to strengthen weakened or collapsed governance mechanisms and to end the culture of impunity;
  - (e) promoting the fairness and transparency of electoral processes;
5. Stresses the critical importance of a regional approach to conflict prevention, particularly to programmes of disarmament, demobilization and reintegration, as well as the effective and sustainable reintegration of excombatants;
6. Reaffirms its determination to take action against illegal exploitation and trafficking of natural resources and high-value commodities in areas where it contributes to the outbreak, escalation or continuation of armed conflict;
7. Calls for the strengthening of cooperation and communication between the United Nations and regional or sub-regional

organizations or arrangements, in accordance with Chapter VIII of the Charter, particularly with respect to mediation initiatives;

8. Encourages all African States to adhere to the African Union Non-Aggression and Common Defence Pact adopted in Abuja on 31 January, 2005, and to sign where appropriate sub-regional pacts on peace, security, democracy, good governance and development, and calls on the United Nations system and the international community to support the implementation of the Pacts;
9. Encourages also African countries to continue to work closely with the United Nations Secretariat and United Nations regional offices in the implementation of measures aimed at securing peace, security, stability, democracy and sustainable development consistent with the objectives of the New Partnership for Africa's Development;
10. Urges the international community including the United Nations system and International Financial Institutions to support African countries in their efforts to achieve the above objectives and in this respect welcomes the decisions taken by the G-8 Summit held in Gleneagles, 6-8 July, 2005, for combating poverty in Africa;

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11. Urges all African States and the international community to fully cooperate in developing the capacities of African regional and sub-regional organizations to deploy both civilian and military assets quickly when needed, including the development of the African Union's African Standby Force; welcomes bilateral and multilateral programmes developed to this end, and expresses its support for the

Secretary-General's proposal to establish a ten-year capacity building programme for the African Union;

12. Decides to remain seized of the matter.

United Nations S/RES/1624 (2005)

Security Council Distr.: General

14 September, 2005, 05-51052 (E)

Resolution 1624 (2005)

Adopted by the Security Council at its 5261st meeting, on 14 September, 2005

The Security Council,

Reaffirming its resolutions 1267 (1999) of 15 October, 1999, 1373 (2001) of 28 September, 2001, 1535 (2004) of 26 March, 2004, 1540 (2004) of 28 April, 2004, 1566 (2004) of 8 October, 2004, and 1617 (2005) of 29 July, 2005, the declaration annexed to its resolution 1456 (2003) of 20 January, 2003, as well as its other resolutions concerning threats to international peace and security caused by acts of terrorism, reaffirming also the imperative to combat terrorism in all its forms and manifestations by all means, in accordance with the Charter of the United Nations, and also stressing that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law, condemning in the strongest terms all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security, and reaffirming the primary responsibility of the Security Council for the maintenance of international peace and security under the Charter of the United Nations,

Condemning also in the strongest terms the incitement of terrorist acts and repudiating attempts at the justification or glorification (apologie) of terrorist acts that may incite further terrorist acts,

Deeply concerned that incitement of terrorist acts motivated by extremism and intolerance poses a serious and growing danger to the enjoyment of human rights, threatens the social and economic development of all States, undermines global stability and prosperity, and must be addressed urgently and proactively by the United Nations and all States, and emphasizing the need to take all necessary and appropriate measures in accordance with international law at the national and international level to protect the right to life, recalling the right to freedom of expression reflected in Article 19 of the Universal Declaration of Human Rights adopted by the General Assembly in 1948 (“the Universal Declaration”), and recalling also the right to freedom of expression.

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In Article 19 of the International Covenant on Civil and Political Rights adopted by the General Assembly in 1966 (“ICCPR”) and that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of Article 19 of the ICCPR.

Recalling in addition, the right to seek and enjoy asylum reflected in Article 14 of the Universal Declaration and the non-refoulement obligation of States under the Convention relating to the Status of Refugees adopted on 28 July, 1951, together with its Protocol adopted on 31 January, 1967 (“the Refugees Convention and its Protocol”), and also recalling that the

protections afforded by the Refugees Convention and its Protocol shall not extend to any person with respect to whom there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations, reaffirming that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations, deeply concerned by the increasing number of victims, especially among civilians of diverse nationalities and beliefs, caused by terrorism motivated by intolerance or extremism in various regions of the world, reaffirming its profound solidarity with the victims of terrorism and their families, and stressing the importance of assisting victims of terrorism and providing them and their families with support to cope with their loss and grief.

Recognizing the essential role of the United Nations in the global effort to combat terrorism and welcoming the Secretary-General's identification of elements of a counter-terrorism strategy to be considered and developed by the General Assembly without delay with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses at the national, regional and international level to counter terrorism, stressing its call upon all States to become party, as a matter of urgency, to the international counter-terrorism Conventions and Protocols whether or not they are party to regional Conventions on the matter, and to give priority consideration to signing the International Convention for the Suppression of Nuclear Terrorism adopted by the General Assembly on 13 April, 2005.

Re-emphasizing that continuing international efforts to enhance dialogue and broaden understanding among civilizations, in an

effort to prevent the indiscriminate targeting of different religions and cultures, and addressing unresolved regional conflicts and the full range of global issues, including development issues, will contribute to strengthening the international fight against terrorism, stressing the importance of the role of the media, civil and religious society, the business community and educational institutions in those efforts to enhance dialogue and broaden understanding, and in promoting tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism,

Recognizing the importance that, in an increasingly globalized world, States act cooperatively to prevent terrorists from exploiting sophisticated technology, communications and resources to incite support for criminal acts.

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Recalling that all States must cooperate fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens.

1. Calls upon all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to:

(a) Prohibit by law incitement to commit a terrorist act or acts;

(b) Prevent such conduct;

- (c) Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct;
2. Calls upon all States to cooperate, *inter alia*, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of the conduct in paragraph 1 (a) from entering their territory.
  3. Calls upon all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters;
  4. Stresses that States must ensure that any measures taken to implement paragraphs 1, 2 and 3 of this resolution comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law;
  5. Calls upon all States to report to the Counter-Terrorism Committee, as part of their ongoing dialogue, on the steps they have taken to implement this resolution;
  6. Directs the Counter-Terrorism Committee to:

- (a) Include in its dialogue with member States their efforts to implement this resolution;
- (b) Work with member States to help build capacity, including through spreading best legal practice and promoting exchange of information in this regard;
- (c) Report back to the Council in twelve months on the implementation of this resolution.

7. Decides to remain actively seized of the matter.

United Nations S/RES/1963 (2010)\*

Security Council Distr.: General

20 December, 2010

10-70223\* (E)

Resolution 1963 (2010)

Adopted by the Security Council at its 6459th meeting, on 20 December, 2010 The Security Council reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed and remaining determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level, reaffirming also that terrorism cannot and should not be associated with any religion, nationality, civilization or group, noting with concern that terrorism continues to pose a serious threat to international peace and security, the enjoyment of human rights, the social and economic development of all member States, and undermines global stability and prosperity, that this threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those

motivated by intolerance or extremism, expressing its determination to combat this threat, and stressing the need to ensure that counter-terrorism remains a priority on the international agenda.

Recognizing that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and underlining the need to address the conditions conducive to the spread of terrorism, as outlined in Pillar I of the UN Global Counter-Terrorism Strategy (A/RES/60/288) including, but not limited to, the need to strengthen efforts for the successful prevention and peaceful resolution of prolonged conflict, and the need to promote the rule of law, the protection of human rights and fundamental freedoms, good governance, tolerance, inclusiveness to offer a viable alternative to those who could be susceptible to terrorist recruitment and to radicalization leading to violence.

Expressing concern at the increase in incidents of kidnapping and hostage taking committed by terrorist groups, in some areas of the world with a specific political context, with the aim of raising funds or gaining political concessions.

\*Reissued for technical reasons.

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Reiterating the obligation of member States to prevent and suppress the financing of terrorist acts, and criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

Reaffirming the obligation of the member States to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities, reaffirming further the obligation of the Member States to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

Reiterating further the obligation of member States to prevent the movement of terrorist groups by, *inter alia*, effective border controls, and, in this context, to exchange information expeditiously, improve cooperation amongst competent authorities to prevent the movement of terrorists and terrorist groups to and from their territories, the supply of weapons for terrorists and financing that would support terrorists, Underlining that safe havens provided to terrorists continue to be a significant concern and that all member States must cooperate fully in the fight against terrorism in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the

financing, planning, preparation or commission of terrorist acts or provides safe havens, recognizing that development, peace and security, and human rights are interlinked and mutually reinforcing, and underlining the international effort to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all, emphasizing that continuing international efforts to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures, can help counter the forces that fuel polarization and extremism, and will contribute to strengthening the international fight against terrorism, and, in this respect, appreciating the positive role of the Alliance of Civilizations and other similar initiatives.

Reaffirming that member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law, reaffirming its call upon all States to become party to the international counter-terrorism Conventions and Protocols as soon as possible, whether or not they S/RES/1963 (2010) 10-70223 3 are a party to regional Conventions on the matter, and to fully implement their obligations under those which they are a party, reiterating its call upon member States to enhance their cooperation and solidarity, particularly through bilateral and multilateral arrangements and agreements to prevent and suppress terrorist attacks and encourages Member States to strengthen cooperation at the regional and sub-regional level, expressing concern at the increased use, in a globalized society, by terrorists of new information and communication technologies, in particular the Internet, for the purposes of the recruitment and incitement as well as for the financing, planning and preparation of their activities, recognizing the importance that member States act cooperatively to prevent terrorists from exploiting technology, communications and resources to incite support for

terrorist acts, recognizing the importance of the support of local communities, private sector, civil society and media for increasing awareness about the threats of terrorism and more effectively tackling them, expressing its profound solidarity with the victims of terrorism and their families, stresses the importance of assisting victims of terrorism, and providing them and their families with support to cope with their loss and grief, recognizes the important role that victims and survivor networks play in countering terrorism, including by bravely speaking out against violent and extremist ideologies, and in this regard, welcomes and encourages the efforts and activities of member States and the UN system, including the Counter-Terrorism Implementation Task Force (CTITF) in this field”.

Recalling Resolution 1373 (2001) of 28 September, 2001, which established the Counter-Terrorism Committee (CTC), and recalling also Resolution 1624 (2005) and its other resolutions concerning threats to international peace and security caused by terrorist acts, recalling, in particular, resolution 1535 (2004) of 26 March, 2004, resolution 1787 (2007) of 10 December, 2007, and resolution 1805 (2008) of 20 March, 2008, which pertain to the Counter-Terrorism Committee Executive Directorate (CTED).

Welcoming the CTC’s efforts to pursue a more strategic and transparent approach to its work, to seek to raise the visibility of its work within the wider United Nations and counter-terrorism community, and to streamline its working methods, all of which have led to increased effectiveness; and urging that these efforts be intensified. Noting with appreciation CTED’s continuing emphasis on the guiding principles of cooperation, transparency, and even-handedness, and welcoming CTED’s increased regional and sub-regional approaches to and thematic focus in

its work, including in identifying and addressing technical assistance needs, as it continues to intensify its outreach efforts,

Underscoring the central role of the United Nations in the global fight against terrorism and welcoming the adoption by the General Assembly of the United Nations Global Counter-Terrorism Strategy (A/RES/60/288) of 8 September, 2006, the institutionalization of the Counter-Terrorism Implementation Task Force  
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(CTITF) in accordance with General Assembly Resolution 64/235 of 24 December, 2009, which will further enhance the CTITF's efforts to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system, including in the field, and the call for enhanced engagement of Member States with the work of the CTITF (A/64/297):

1. Underlines that the overarching goal of the CTC is to ensure the full implementation of Resolution 1373 (2001) and recalls CTED's crucial role in supporting the Committee in the fulfillment of its mandate;
2. Decides that CTED will continue to operate as a special political mission under the policy guidance of the CTC for the period ending 31 December, 2013 and further decides to conduct an interim review by 30 June, 2012;
3. Welcomes and endorses the recommendations contained in the "Report of the Counter-Terrorism Committee to the Security Council for its Comprehensive Consideration of the Work of the Counter-Terrorism Executive Directorate";

4. Urges CTED to continue to strengthen its role in facilitating technical assistance for implementation of Resolution 1373 (2001) aimed at increasing the capabilities of member States and regions in the fight against terrorism by addressing their counter-terrorism needs, in close cooperation with CTITF, as well as with bilateral and multilateral assistance providers, and welcomes the focused and regional approach of CTED to this work;
5. Encourages CTED, in close cooperation within the CTITF and its relevant Working Groups, to focus increased attention on Resolution 1624 (2005) in its dialogue with member States to develop, in accordance with their obligations under international law, strategies which include countering incitement of terrorist acts motivated by extremism and intolerance and in facilitating technical assistance for its implementation, as called for in Resolution 1624 (2005) and the United Nations Global Counter-Terrorism Strategy;
6. Encourages CTED to arrange meetings with Member States in various formats, with their consent, including for the purpose of considering advising, as appropriate, on the development of comprehensive and integrated national counterterrorism strategies and the mechanisms to implement them that include attention to the factors that lead to terrorist activities, in accordance with their obligations under international law, and in close cooperation within the CTITF and its Working Groups, with a view to ensuring coherence and complementarity of efforts and to avoid any duplication;
7. Encourages CTED to interact, as appropriate and in consultation with the CTC and relevant member States, with

civil society and other relevant non-government actors in the context of its efforts to support the CTC's efforts to monitor the implementation of Resolutions 1373 (2001) and 1624 (2005);

8. Stresses the importance of a tailored dialogue among CTED, the CTC, and member States, and encourages the CTC and CTED to continue to arrange meetings involving counter-terrorism officials from Member States and relevant international, regional, and sub-regional organizations, with a thematic or regional focus relevant to the implementation of resolutions 1373 (2001) and 1624 (2005);
9. Urges CTED also to intensify cooperation with relevant international, regional, and sub-regional organizations with a view to enhance Member States'

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Capacity to fully implement Resolution 1373 (2001) and resolution 1624 (2005) and to facilitate the provision of technical assistance;

10. Reminds that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort, notes the importance of respect for the rule of law so as to effectively combat terrorism, and thus encourages CTED to further develop its activities in this area, to ensure that all human rights issues relevant to the implementation of Resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly including, as appropriate, on country visits that are organized with the consent of the visited member State;

11. Highlights the importance of the CTC/CTED work program and in this context looks forward to a special meeting open to the wider membership, to commemorate the 10th anniversary of the adoption of Resolution 1373 (2001) and the establishment of the Committee;
12. Directs CTED to produce an updated Global Implementation Survey of resolution 1373 (2001) by 30 June, 2011 and in advance of the above mentioned meeting that *inter alia*:
  - assesses the evolution of risks and threats, and the impact of the implementation;
  - identifies gaps in the implementation;
  - proposes new practical ways to implement the resolution;
13. Directs CTED to produce a Global Implementation Survey of resolution 1624 (2005) by 31 December, 2011, that *inter alia*:
  - assesses the evolution of risks and threats, and the impact of the implementation;
  - identifies gaps in the implementation;
  - proposes new practical ways to implement the resolution;
14. Requests the CTC to report orally, through its Chairman, at least every 180 days to the Council on the overall work of the CTC and CTED, and, as appropriate, in conjunction with the reports of the Chairmen of the Committee established pursuant to resolution 1267 (1999) and the Committee established pursuant to resolution 1540 (2004), and urges the CTC Chairman to continue the practice of

providing informal briefings, including with a regional or thematic focus, for all interested member States;

15. Encourages CTED to continue to report to the Committee, on a regular basis or when the Committee so requests, through oral and/or written briefings on the work of CTED, including its visits to member States, the conduct of workshops and other activities;
16. Reiterates the need to enhance the ongoing cooperation among the CTC, the Committee established pursuant to Resolution 1267 (1999), and the Committee established pursuant to Resolution 1540 (2004), as well as their respective groups of experts, including through, as appropriate, enhanced and systematized information sharing, coordination on visits to countries and participation in workshops, on technical assistance, on relations with international and regional organizations and S/RES/1963 (2010)  
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Agencies, and on other issues of relevance to all three committees, expresses its intention to provide guidance to the committees on areas of common interest in order to better coordinate counter-terrorism efforts, and recalls resolution 1904 (2009) which requests the Secretary-General to make the necessary arrangements for the groups to be co-located as soon as possible;

17. Encourages CTED to continue joint activities, in cooperation with the 1267 Monitoring Team, the 1540 Committee experts and the United Nations Office on Drugs and Crime to assist member States in their efforts to comply with their obligations under the relevant resolutions,

including through organizing regional and sub-regional workshops;

18. Welcomes and encourages CTED's continued active participation in and support of all relevant activities under the United Nations Global Counter-Terrorism Strategy, including within the CTITF and its Working Groups, established to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system.