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First, common Article 3 requires the parties to an armed conflict not of an international character to treat humanely those persons taking no active part in hostilities. Those persons include members of the armed forces who have laid down their arms or have been placed hors de combat by sickness, wounds, or detention, as well as civilians.

Common Article 3 then specifically prohibits the following acts against persons taking no active part in hostilities:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- Taking of hostages;
- Outrages upon personal dignity, in particular humiliating and degrading treatment; and
- The passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court.

It further requires that the wounded and sick must be collected and cared for.

Common Article 3 also permits an impartial humanitarian body, such as the International Committee of the Red Cross, to offer its services to the parties to the conflict, and provides that the parties to the conflict should endeavor to bring into force, by means of special agreements, all or part of the provisions of the Geneva Conventions other than Article 3.

The inclusion of common Article 3 in the Geneva Conventions was a historic moment for humanity. It was the first instance in which non-international armed conflicts were regulated by a multilateral treaty.





provision requires a State to ensure that other entities do not act in violation of common Article 3.

While the United Nations is not formally a party to the Geneva Conventions, the United Nations has played a crucial role in ensuring respect for international humanitarian law, and more specifically the Geneva Conventions and common Article 3.

This is not particularly surprising as in many places where non-international armed conflicts are taking place, the United Nations is present, or a competent organ of the United Nations is seized of the matter.

[United Nations' role in IHL matters]

Before I discuss the United Nations' role in ensuring respect for common Article 3, I would like to say a few words about the role of the United Nations in international humanitarian law matters generally.

The United Nations was established in the aftermath of World War II, which saw violations of international humanitarian law on a massive scale. It is against this backdrop that its core purposes overlap with those of international humanitarian law.

The Charter of the United Nations, in its preamble, contains a solemn declaration of a determination “to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”.





Article





Subsequently, in 1993 and 1994 respectively, the Security Council established the International Tribunal for the former Yugoslavia, also known as ICTY, and the International Criminal Tribunal for Rwanda, also known as ICTR, by means of resolutions adopted under

Chapter VII of the Charter.

Pursuant to their respective Statutes, ICTR specifically had the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions, and ICTY had the power to prosecute persons violating the laws or customs of war, which included common Article 3 pursuant to its established jurisprudence.

During their existence, the two Tribunals made an extraordinary contribution to ensuring respect for common Article 3.

At the most fundamental level, these Tribunals clarified the circumstances in which





ICTY rejected this argument and concluded that even combatants are entitled to humane treatment as soon as they cease to take part in hostilities, such as due to detention.

The Karadzic case was also a case where ICTY examined an incident in which over 200 military personnel of the United Nations Protection Force were taken hostage in Bosnia and Herzegovina in 1995.

The ICTY in this case concluded that these military personnel were “persons taking no active part in hostilities” and were afforded the protection of common Article 3, which prohibits taking of hostages.

Furthermore, the ICTR, in the Bagosora case, examined the incident in which 10 Belgian military personnel of the United Nations Assistance Mission for Rwanda were beaten to death by members of the Rwandan army in April 1994 during a non-international armed conflict in Rwanda.

In this case, the Trial Chamber concluded that the Belgian military personnel “were not taking active part in the hostilities” and found the accused guilty of serious violations of common Article 3, as well as of Additional Protocol II, for committing violence to life against the Belgian military personnel.

These cases clearly indicate that UN peacekeeping personnel, including military personnel, fall within the scope of common Article 3. This is of particular interest to the United Nations as there are a number of peacekeeping operations that are deployed to situations of non-international armed conflict, and the protection of their personnel is of particular concern.





The International Residual Mechanism for Criminal Tribunals, which was established in 2010 to carry out residual functions of ICTY and ICTR, continues the material jurisdiction of the two Tribunals, and, therefore, continues to have jurisdiction over serious violations of common Article 3.

[Special Court for Sierra Leone]

Subsequent to the establishment of ICTY and ICTR, the Special Court for Sierra Leone was established in 2002 pursuant to an agreement between the United Nations and Sierra Leone.

The Statute of this Special Court also specifically gave the Court the power to prosecute persons who committed or ordered the commission of serious violations of common Article 3.

From the United Nations point of view, the Sesay case is of particular interest, as the Special Court examined a number of incidents that occurred in 2000, in which the Revolutionary United Front, an armed group in Sierra Leone, attacked, captured, ill-treated, or killed a number of military personnel of the United Nations Mission in Sierra Leone.

In this particular instance, the Court found that the personnel of the Mission were not taking a direct part in hostilities at the relevant time. On that basis, the accused was convicted for murdering several personnel of the mission in violation of common Article 3 as well as Additional Protocol II.

[International Criminal Court]





Shortly after the Special Court for Sierra Leone was established, the International Criminal Court was established after its Statute entered into force on 1 July 2002.

Among other crimes, the Court has jurisdiction over war crimes committed in non-international armed conflicts. Those war crimes include serious violations of common Article 3, namely the provisions therein concerning the humane treatment of persons taking no active part in hostilities.

The Statute also codified the two criteria that are required to determine the existence of a non-international armed conflict, which I referred to earlier. The Statute, therefore, provides that non-international armed conflicts are “armed conflicts that take place in the territory of a State when there is protracted armed conflict between





Apart from international tribunals, other United Nations entities have also played an active role in ensuring respect for common Article 3.

In this regard, a number of commissions of inquiry and similar bodies have been established to date to investigate, among other things, alleged violations of international humanitarian law. They have often been established with respect to situations in which non-international armed conflicts were taking place. Therefore, common Article 3 played a central role in those commissions of inquiry.

For example, the Security Council requested the Secretary-General to establish a commission of experts on Rwanda in 1994 which, among other things, concluded that serious breaches of common Article 3 were perpetrated during the conflict in Rwanda in 1994. This formed a basis to specifically authorize ICTR to prosecute persons committing, or ordering to be committed, serious violations of common Article 3.

More recently, the Security Council requested the Secretary-General to establish a commission of inquiry on the Central African Republic in 2013 to, among other things, investigate reports of violations of international humanitarian law in that State and to compile information to help identify the perpetrators. The commission found possible violations of common Article 3 based on alleged executions of specific civilians and alleged ill-treatment and torture of detained persons.

The Human Rights Council has also established a number of commissions of inquiry to investigate, among others, alleged violations of international humanitarian law, including common Article 3. Recent instances are the Independent International Commission of Inquiry on the Syrian Arab Republic and the Commission on Human Rights in South Sudan.

In recent years, several mechanisms that are different in nature from commissions of inquiry have also been established.





[Concluding remarks]

In this brief address, I have tried to illustrate the role of the United Nations in ensuring respect for Article 3 common to the four Geneva Conventions.

I believe that the 70th anniversary of the Geneva Conventions is an excellent opportunity to renew our attention to the role of common Article 3 in contemporary armed conflicts.

I encourage all participants in this seminar to also reflect upon how Member States could collectively work towards ensuring respect for common Article 3 and more generally, the Geneva Conventions and international humanitarian law, through the competent organs of the United Nations.

Thank you.

