



**38th Annual Seminar for Diplomats on
International Humanitarian Law**

**jointly organized by the International Committee of the Red Cross and
New York University School of Law**

Statement

by

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Under-Secretary-General for Legal Affairs and
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9.15 a.m., Wednesday, 14 March 2021

Judge Meron,

Ms. Courtois,

Distinguished delegates and colleagues,

[Opening Remarks]

I would first like to thank the New York University and the International Committee of the Red Cross for, once again, inviting me to this annual seminar.



From my perspective as United Nations Legal Counsel, I was particularly pleased

role in the work of the United Nations.

organization with the legitimacy, convening power and normative impact of the
nted
the power of the United Nations to bring together Member States.

This power is clearly stipulated in the Charter, namely in Article 1, paragraph 4,

tainment of the common ends set out in Article 1. This convening
power of the United Nations has made a significant contribution to the
development of international humanitarian law.

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General will report back to the Assembly later this year with recommendations to
advance the common agenda contained in the declaration, and the future of
international law would be one of the topics to be covered in this landmark report.





While I am not in a position to elaborate on what might be in this report, I would like to craft my presentation around the commitments made in the General

related treaties;

Second, its role in the wider acceptance of IHL treaties and IHL-related treaties;

Third, its role in the interpretation and application of IHL; and

Fourth, its role in ensuring compliance with IHL by United Nations peacekeeping operations.

early years of the United Nations, it was active in the development of international human rights law treaties but was less so with respect to IHL treaties.

While IHL treaties were not directly adopted in the United Nations at the time, the General Assembly, nevertheless, played a crucial role in the development of





Additional Protocols I and II adopted in 1977, which form the core of IHL alongside the Geneva Conventions of 1949.

In particular, the General Assembly adopted a series of resolutions from 1968 onwards, well before the adoption of the Additional Protocols, and declared certain





The Treaty Section of my Office, the Office of Legal Affairs, performs the functions of the depositary on behalf of the Secretary-General, and is responsible





The United Nations has also contributed to the interpretation and application of IHL rules in force.

Among the principal organs of the United Nations, the International Court of Justice has, from time to time, interpreted and applied IHL rules in its judgments and in advisory opinions. When it has done so, it has been in the context of high-profile cases, such as:

The 1986 judgment in the Nicaragua case between Nicaragua and the United States;

The 1996 advisory opinion in the Nuclear Weapons case;

The 2004 advisory opinion in the Wall case; and

The 2005 judgment in the Armed Activities case between the Democratic Republic of the Congo and Uganda.

Another principal organ of the United Nations, the Security Council, has also made a major contribution to the interpretation and application of IHL. While the Security Council itself is a political organ, it has established several judicial organs.

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, inter alia, had the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions, and ICTY, inter alia, had the power to prosecute persons violating the laws or customs of war.

Just as an example, I would like to say a few words about the contribution of these tribunals in the interpretation and application of Article 3 common to the Geneva Conventions which remains the key IHL provision that applies to non-international armed conflicts, and which is perhaps the most frequently applied provision in contemporary armed conflicts, which are mostly non-international in character.

First, it is notable that the International Court of Justice, in the Nicaragua case, declared that common Article 3 reflects elementary considerations of humanity and applies to armed conflicts regardless of their character.

The Court further indicated in its Nuclear Weapons Advisory Opinion that the Geneva Conventions, which includes common Article 3, are fundamental rules to be observed by all States as customary international law.





ICTY and ICTR, on the other hand, contributed to the interpretation of more specific aspects of common Article 3.

At the most fundamental level, these Tribunals clarified the circumstances in which common Article 3 applied. While common Article 3 indicates that it applies to an international character occurring in the territory of one

ICTY, in the Tadic case, elaborated

governmental authorities and organized armed groups or between such groups

This firmly established the two core criteria that should be met to establish the existence of a non-international armed conflict. First, the armed group involved in the hostilities should have some degree of organization, and second, the hostilities between the parties should reach a minimum level of intensity.

The two Tribunals have also clarified the personal scope of application of common Article 3. It is recalled that the provisions concerning humane treatment in





With respect to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, or MONUSCO, the Security Council has specifically mandated it to carry out targeted

MONUSCO was first mandated to carry out targeted offensive operations to neutralize armed groups in 2013, but this mandate continues to be relevant today as armed groups still continue to threaten the security of civilians.

A number of measures have been taken in order to ensure compliance with IHL by MONUSCO, including:

Providing guidance to the mission so that military operations are carried out in accordance with the rules of IHL concerning the conduct of hostilities;

Establishing procedures so that any persons captured by the mission are handled in accordance with international law and standards;

Concluding an agreement with the host country to ensure that persons transferred by the mission to the host country are treated in accordance with its obligations under international law; and





Providing guidance to the mission so that any act by mission personnel that may be contrary to IHL is properly addressed.

My Office will continue to make every effort to ensure that peacekeeping operations comply with IHL where this is applicable.

[Concluding remarks]





I encourage delegates from Member States participating in this seminar to also reflect on the commitments your Heads of State and Government have made on the 21st of September last year, with a particular focus on international humanitarian law.

Thank you.

