Chapter 8
Year in Review

Louise Arimatsu and Mohbuba Choudhury

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8.1 Major Developments in IHL in 2010

2010 was characterised by incidents that raised age-old questions pertaining to IHL, albeit in different guises. The increase in the use of unmanned weapon systems, or drones, triggered heated debate on the interplay between *jus ad bellum* and *jus in bello* as well as between IHR and IHL.[1] This raised a host of further questions including: under what conditions does IHL come into operation? Which normative regime—international or non-international—governs the particular armed engagement? And, what is the geographical scope of IHL?

As the armed conflict in Afghanistan continued into its tenth year, questions continued to surface on the characterisation of the conflicts and the different legal regimes that may apply concurrently in complex multi-national operations.[2] In particular, the scope and applicability of IHR in armed conflict has continued to generate debate not least in respect of the conduct of hostilities and detention.[3]

During the first half of the year, international pressure on Israel mounted as the humanitarian situation in Gaza deteriorated, in part as a consequence of Israel's blockade. But it was the Mavi Marmara Incident in May which galvanised the legal community to re-examine the nature of the conflict and to ask, once more, what legal regime and rules apply in the hostilities between Israel and Hamas.[4]

Amidst the armed conflicts that continue to be waged on the DRC's territory and the endemic sexual violence against women for which the DRC has become notorious, the Office of the High Commission for Human Rights released a Mapping Report documenting the most serious violations of IHR and IHL perpetrated during the armed conflicts that raged in the Congo between 1993 and 2003. The Mapping Report serves both as a poignant reminder of the progress that has been made since the maxim *inter arma enim silent leges* was popularised but also of the huge challenges that confront the international community.

8.1.1 Israel's blockade of Gaza and the Mavi Marmara incident

One of the major issues that occupied the international community in 2010 concerned Israel's blockade of Gaza and the subsequent Mavi Marmara incident. Israel's naval blockade of Gaza began in January 2009 after Hamas took office following the legislative elections in the Gaza Strip in 2006. The blockade prevented Gaza from exporting goods and severely restricted imports into the territory. In May 2010 the Free Gaza Movement and the Turkish Humanitarian

[1] See Schmitt, this volume pp 311–326; and Chesney, this volume pp 3–60; Henderson, this volume pp 133–174.

[2] De Cock, this volume pp 97–132.

[3] McLaughlin, this volume pp 213–244.

[4] See Focus topic: Kraska, this volume pp 367–396 and Sanger, this volume pp 397–448.

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Relief Fund organized a six-ship flotilla, with 700 persons on board, to deliver humanitarian aid to Gaza in order to break Israel's blockade.

On 30 May 2010 Israel offered to unload the cargo in the port of Ashdod in order for the cargo to be inspected; this was offer was refused. On 31 May 2010, the Israeli Navy intercepted the ships in international waters. Five ships were intercepted without incident but a violent confrontation aboard the Mavi Marmara between the IDF forces and passengers led to the death of nine Turkish nationals as well as the wounding of a further fifty-five passengers and nine IDF soldiers.

On 1 June 2010, the President of the Security Council released a statement[5] condemning the acts that had resulted in the loss of civilians and requested the immediate release of the ships and the civilians held by Israel. The Security Council further called for 'a prompt, impartial, credible and transparent investigation conforming to international standards' and reiterated its grave concern at the humanitarian situation in Gaza, stressing the need for sustained and regular flow of goods and people to Gaza as well as unimpeded provision and distribution of humanitarian assistance throughout Gaza.

The Human Rights Council also condemned in the strongest terms the 'outrageous attack' by the Israeli forces against the humanitarian flotilla of ships in resolution 14/1.[6] The resolution expressed grave concern at the deepening humanitarian crisis and called on Israel to immediately lift the siege on Gaza and other occupied territories. The Human Rights Council also decided to dispatch an independent, international fact-finding mission to investigate violations of international humanitarian and human rights law.[7] The fact-finding mission was established in July 2010 with the mandate 'to investigate violations of international law, including international humanitarian law and human rights law, resulting from the interception by the Israeli forces of the humanitarian aid flotilla bound for Gaza on 31 May 2010'.[8] Judge Karl Hudson-Phillips QC, former judge of the International Criminal Court and former Attorney General of Trinidad and Tobago, headed the mission. The other appointed members of the mission included Sir Desmond de Silva QC of the United Kingdom, former Chief Prosecutor of the Special Court for Sierra Leone and Mary Shanthi Dairiam of Malaysia, founding member of the Board of Directors of the International Women's Rights Action Watch Asia Pacific and former member of the Committee on the Elimination of Discrimination Against Women.

The Report of the international fact-finding mission on the Israeli attacks on the flotilla of ships was released in September 2010. Evidence was collated from different sources including eyewitness accounts, forensic reports and interviews with medical and forensic personnel in Turkey, as well as written statements, video

[5] UN Doc. S/PRST/2010/9, 1 June 2010.

[6] HRC Res. 14/1, 23 June 2010, para 1.

[7] Ibid., para 8.

[8] UN Doc. A/HRC/15/21, 27 September 2010.

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film footage and other photographic material relating to the incident. However, the Mission was hampered by Israel's decision not to co-operate.[9]

The Report discussed the permissibility of a blockade under the laws of armed conflict. Referring to the San Remo Manual the report stated that a blockade was illegal if its sole purpose was to starve the civilian population or where the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade. In evaluating the evidence submitted to the Mission, the Report concluded that it was satisfied that the blockade was inflicting disproportionate damage upon the civilian population in the Gaza Strip. As such, the interception in international waters could not be justified and therefore was illegal.[10] The Report also determined that the passengers on board the Mavi Marmara were 'protected persons' under Article 4 of the Fourth Geneva Convention. The conduct of the Israeli military towards the passengers was not only disproportionate but demonstrated levels of totally 'unnecessary and incredible violence'.[11] In its concluding paragraphs the Report declared that there was clear evidence to support prosecutions for the following crimes within the terms of Article 147 of the Fourth Geneva Convention: wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health. The Report also found that Israel was in violation of a number of its obligations under international human rights law.

On 14 June, Israel established an independent public Commission to examine various aspects of the actions taken by State of Israel to prevent the ships from reaching the Gaza Strip coast. Supreme Court Justice Emeritus Jacob Turkel was appointed to chair the Commission; two foreign experts were also appointed to act as observes. The Turkel Commission Report was published on 23 January 2011.[12]

In August, the UN Secretary General announced the establishment of a separate inquiry into the Mavi Marmara incident, headed by Geoffrey Palmer, the former Prime Minister of New Zealand.

8.1.2 Resolution 13/9 (Tomuschat) Committee

Following the release in October 2009 of the UN Fact-Finding Mission on the Gaza Conflict Report (*Goldstone Report*), the General Assembly adopted resolution 64/10 (1 December 2009) endorsing the report and requested the Secretary-General to transmit it to the Security Council and called upon both the Government of Israel and the Palestinian authorities to take appropriate steps to

[9] Ibid., para 16.

[10] UN Doc. A/HRC/15/21, 27 September 2010, para 53.

[11] Ibid., para 264.

[12] The Turkel Commission Report will be examined in further detail in 2011 YIHL Vol 14.

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investigate the serious violations of international humanitarian and international human rights law documented in the report.

On 4 February the Secretary-General submitted a report attaching a paper produced by the government of Israel entitled 'Gaza operation investigations: an update'.[13] The paper, which supplemented and updated an earlier publication, 'The Operation in Gaza: Factual and Legal Aspects', described Israel's procedures for investigating the alleged violations of the law of armed conflict in respect of Operation Cast Lead (27 December 2008–18 January 2009). According to the paper, of the 150 separate incidents investigated by Israel, 36 had been referred for criminal investigation. The paper also noted that of the 34 incidents recorded in the *Goldstone Report*, 22 were already under investigation; the additional 12 were referred to the Military Advocate General's office for further consideration. The vast majority of investigations remained on-going.

As it was not until the 25 January 2010 that Mahmoud Abbas (President of the Palestinian National Authority) authorised the creation of an Independent Investigative Commission (IIC) by Presidential Decree, a report by the Palestinian authorities was not produced until late summer. Meanwhile in March, the General Assembly adopted resolution 64/254 reiterating its call on Israel and Palestine to conduct independent, credible investigations into the serious international law violations perpetrated during the Gaza conflict. In April the UN Human Rights Council adopted resolution 13/9 establishing a committee of independent experts chaired by Professor Christian Tomuschat to monitor and assess any domestic, legal or other proceedings undertaken by both Israel and the Palestinian authorities.

In August the IIC report, together with an update paper from Israel, was submitted with the Secretary-General's second report to the General Assembly.[14]

The Tomuschat Committee released its report in September 2010.[15] The Committee cited Israel's 'lack of cooperation' as having hampered its assessment of the latter's response to conduct investigations that were 'independent, credible and in conformity with international standards'. Consequently it was unable to reach a definitive assessment. While the Committee acknowledged the existence of various mechanisms within the Israeli legal order to investigate allegations of war crimes, concerns were raised as to whether the system was impartial. Further concerns were raised as to the transparency of the process and whether victims were able to access justice. The Committee concluded that Israel had failed to meet its duty to investigate under the ICCPR and CAT; nor had it investigated the actions of those at the highest level of decision-making and whether such actors were complicit in violations of IHL and IHRL. In contrast, the Committee found that the IIC was independent in form and the investigation conducted by it had conformed to international standards. Nonetheless, the IIC's work was hampered

[13] A/64/651.

[14] A/64/890.

[15] A/HRC/15/50.

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by difficulties in accessing the Gaza Strip and consequently it was unable to investigate the allegations of serious violations of IHL and IHRL in Gaza.

8.1.3 Drones

In March the American Civil Liberties Union filed a lawsuit seeking to enforce a Freedom of Information Act request to the US Defense, State and Justice departments for information regarding the US government's use of armed drones to target individuals in Afghanistan and Pakistan.[16] Under mounting criticism that the use of drones was unlawful, the Legal Advisor to the State Department, Harold Koh, countered each of four main concerns that had been raised in respect of US policy.[17]

Refuting the suggestion that the very *act of targeting particular leaders* of an enemy force in an armed conflict violated the laws of war, Koh referred to US practice during WWII to argue that individuals who are part of such an armed group are belligerents and therefore lawful targets under international law. Koh's argument would have been strengthened had he cited an example of targeting within the context of a non-international armed conflict (NIAC) as both Afghanistan and Iraq are widely accepted as non-international in character. In response to the criticism that the *use of advanced weapons systems* was unlawful, Koh rightly maintained that there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict so long as they are employed in conformity with the applicable laws of war. The third criticism—that the use of drones amounts to *unlawful extrajudicial killing*—was dismissed on the grounds that a state which is engaged in an armed conflict or in legitimate self-defense is governed by the laws of war and the principles of distinction and proportionality. Finally, that targeting practice violates domestic law insofar as there is a *ban on assassinations* was rejected as inapplicable since the US was engaged in an armed conflict and it was international law that applied. Clearly, each of these counter-arguments relies on the assumption that all such targeted killings have been executed exclusively in the context of an armed conflict. The predominant concern is whether this assumption is sustainable in all situations.

In May, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, presented his 'Study on targeted killings' to the Human Rights Council pursuant to Human Rights Council resolution 8/3.[18] Failure on the part of states to specify the legal justification for their policies, to disclose the safeguards in place to ensure that targeted killings are in fact legal and accurate, or to provide accountability mechanisms for violations were cited as reasons for concern

[16] Available at www.aclu.org.

[17] Available at www.state.gov/s/l/releases/remarks/139119.htm.

[18] A/HRC/14/24/Add.6.

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warranting such a report. The Study considers in some detail the applicable legal framework and basic rules that apply to such practice and addresses, *inter alia*: who may lawfully be targeted, when and on what basis; who may conduct a targeted killing; the use of less-than-lethal measures; the use of drones; and the requirement of transparency and accountability.

The Study identifies three potential legal frameworks that may apply. It observes that in the context of armed conflict, IHL applies and targeted killings are lawful when the target is a 'combatant' or 'fighter' or, in the case of a civilian, only for such time as the person 'directly participates in hostilities'. In other words, subject to certain conditions, IHL permits such practice. However, it maintains that regardless of whether the conflict is international or non-international in character, 'the killing must be militarily necessary, the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity, and everything feasible must be done to prevent mistakes and minimize harm to civilians'.

Outside the context of armed conflict, the legality of a killing is governed by human rights standards. According to the Study, a state killing is legal 'only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or non-lethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force use, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture.' It follows that under human rights law, a targeted killing is unlawful since it is never permissible for killing to be the *sole objective* of an operation.

The third legal framework is described as 'the use of inter-state force' and targeted killings in the territory of other states raise issues pertaining to sovereignty. The Study suggests that 'when a State conducts a targeted killing in the territory of another State with which it is not in armed conflict, whether the first State violates the sovereignty of the second is determined by the law applicable to the use of inter-state force while the question of whether the specific killing of the particular individual(s) is legal is governed by IHL and/or human rights law'. The sovereignty of the territorial state is not violated if either (a) it consents, or (b) the targeting state has the right under international law to use force in self-defence under Article 51 of the UN Charter because (i) the territorial state is responsible for an armed attack against the targeting state or (ii) the territorial state is unwilling or unable to stop armed attacks against the targeting state launched from its territory. In such a case, international law permits the use of lethal force in self-defence in response to an 'armed attack' as long as that force is necessary and proportionate. The Study suggests that while the basic rules are not disputed, 'the question of which framework applies, and the interpretation of aspects of the rules have been the subject of significant debate'.

The study concludes with a list of recommendations including the need for states to publicly identify the rules they consider to provide a basis for any targeted

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killings they undertake; the procedural safeguards that govern such practice and where a targeted killing is exercised in the territory of another state, the territorial state should publicly indicate whether it gave consent and on what basis.

8.1.4 *Report of the UN High Commissioner for Human Rights mapping human rights violations in the Democratic Republic of the Congo 1993–2003*

On 1 October, a Mapping Report documenting the most serious violations of human rights and international humanitarian law perpetrated in the Democratic Republic of the Congo (DRC) during the decade spanning 1993–2003 was published by the Office of the UN High Commissioner for Human Rights (OHCHR). The report had been prompted by the discovery of three mass graves in the eastern part of the DRC in 2005. In May 2007 the UN Secretary-General approved the terms of reference of the mapping exercise led by the Office of the UN High Commissioner for Human Rights.[19] The exercise had three objectives: (1) to document the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003; (2) assess the existing capacities within the national justice system to deal appropriately with the violations uncovered; and (3) formulate a series of options aimed at assisting the government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of the violations.

The Report is presented chronologically and is sub-divided into four key periods of violence in the DRC. The first period deals with the internal violence that broke out in the east during the final years of President Mobutu's rule; the second period concerns the armed violence that engulfed the DRC during the First Congo War (1996–1998); the third period covers the Second Congo War and the outbreak of multiple international and non-international armed conflict; and the final 'transition' period focuses on the multiple internal conflicts that continue to persist. Taking each period separately, the Report asks whether the situation amounted to an armed conflict such that IHL applied and from the evidence collated, whether the conflict was international or non-international in scope. The Report concludes that war crimes, crimes against humanity and genocide were perpetrated by the parties to the conflicts during the period under review and, in particular, identifies acts of violence committed against women and sexual violence, violence committed against children, and violence linked to the exploitation of natural resources.

In the third section of the Report, the DRC's justice system is considered in some depth. In concluding that the existing Congolese justice system is unable to deal adequately with the scale of the crimes documented, the Report considers

[19] SCR 1794 (2007).

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other options, namely, transitional justice mechanisms that could help to combat impunity. These would include: (a) the creation of a hybrid judicial mechanism; (b) the creation of a Truth and Reconciliation Commission; (c) reparation programmes; and (d) reforms of both the legal sector and the security forces.

On its release, the Report was dismissed by Rwanda which had been directly implicated in the mass atrocities.[20] In contrast, it was welcomed by the DRC.

8.2 Protected Persons

8.2.1 Women

In February 2010, the Secretary-General announced the appointment of Margot Wallström of Sweden as the Special Representative on Sexual Violence in Conflict as mandated under SCR 1888 (2009). In her first statement to the Council the Special Representative drew the Council's attention to the situation in the eastern provinces of the Democratic Republic of the Congo and in doing so announced a five-point priority agenda: ending impunity; empowering women; mobilizing political leadership; increasing recognition of rape as a tactic and consequence of conflict; and ensuring a more coherent response from the UN system.[21]

In April 2010, pursuant to a request by the Security Council (SCR 1889 of 2009), the Secretary General issued a report on *Women*, *Peace and Security* detailing a set of indicators for use at the global level to track the implementation of resolution 1325 (2000).[22] The request was made in response to a concern that 10 years since its adoption, the implementation of SCR 1325 remained slow. Moreover, the lack of 'baseline data and specific, measurable, achievable, relevant and time-bound indicators' was seen as hampering progress. An Inter-Agency Tasks Force was established which, after a comprehensive consultative process, identified 26 indicators. Each of the indicators fall under one of the four thematic areas of the 2008–2009 *UN System-wide Action Plan on implementing SCR1325*: prevention, participation, protection and relief and recovery. In the case of some indicators, the requisite information is already being collated. An example of this is the percentage of reported cases of sexual exploitation and abuse allegedly perpetrated by uniformed and civilian peacekeepers and humanitarian workers that are referred, investigated and acted upon (indicator 4). In contrast, other indicators require the introduction of data collection processes and the development of specialized technical and conceptual tools. An example of this includes documenting the incidence of sexual violence in conflict-affected countries (indicator 1).

[20] See press statement issued by the Rwanda Ministry of Foreign Affairs and Cooperation on 27 August 2010 on the leaked draft Report.

[21] S/2010/173.

[22] Ibid.

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The Secretary-General recommended that the Council urge UN organisations and member states to introduce pilot schemes in order to establish a global system that would facilitate effective tracking of progress and improve decision-making.

In September 2010, the Secretary-General issued the tenth annual report on the implementation of SCR1325.[23] The report includes information on measures taken to improve the capacity of Member States to implement the resolution, a review of the System-wide Action Plan and an update on progress in respect of piloting programmes to take account of the indicators identified in the Secretary-General's April report.

Insofar as implementation by the Council was concerned, it was noted that most reports on peacekeeping missions now include information on actions taken to ensure the participation of women in peace and security and the consequences of armed conflict for women and girls. At the national level, implementation had resulted in a number of states (Canada, Columbia, the Netherlands, Azerbaijan) setting up working groups and task forces while some governments had actively sought to create partnerships with women's organisations (Philippines, Australia, Canada, Sri Lanka). A total of 19 states had developed and adopted national action plans. Civil society organisations at local, regional and international level had been very active over the last 10 years not least in Liberia, Sierra Leone, Sri Lanka, Burundi, and the Gaza Strip.

Given the volume and scattered nature of the activities, the need for a more effective and coordinated implementation programme became evident resulting in the updated *2008–2009 UN System-wide Action Plan* based on five thematic pillars. A central approach under the prevention pillar was to increase the numbers of women police officers and/or to provide gender sensitivity training. As a result, the Department of Peacekeeping Operations (DPKO) had deployed greater numbers of female police officers while the United Nations Population Fund (UNFPA) had supported national police efforts to address and prevent gender-based violence more effectively. UNDP developed a countrywide response in 18 countries to address prevention by ensuring access to legal aid for women, legal information centres, legal aid networks and train female judges, lawyers and prosecutors. UNIFEM prioritised community capacity-building to prevent sexual violence by enabling women's groups in Afghanistan, Haiti, Liberia, Rwanda, Timor-Leste and Uganda to work with the police and judiciary to improve investigation and prosecution outcomes. DPKO developed gender guidelines for police and military peacekeepers on preventing sexual violence.

Following a two day sitting of the Security Council (S/PV.6411) convened to consider the Report of the Secretary-General, the Council requested the Secretary General to propose a strategic framework to guide the UN's implementation over the next decade and, in particular, to recommend policy and institutional reforms to facilitate improved response by the UN to women and peace and security issues.[24]

[23] S/2010/498.

[24] S/PRST/2010/22.

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8.2.2 Children

In April, the Secretary-General's annual report on Children and Armed Conflict covering the period from January to December 2009 was issued.[25] The Secretary General reported on the measures undertaken by parties to end all violations and abuses committed against children in armed conflict. The measures included action plans signed to end the recruitment and use of child soldiers by a number of groups. The report also provided an update on the implementation of the monitoring and reporting mechanism established by the SCR 1612 as well as information on grave violations committed against children in armed conflicts.

The report listed 59 parties, including 16 persistent violators that recruit or use children, kill or maim children and/or commit rape and other forms of sexual violence against children in situations of armed conflict.[26] In his recommendations the Secretary General called on the Security Council to weigh more vigorous measures against persistent violators for grave violations against children. The report also recommends state parties to the Convention on the Rights of the Child to strengthen national and international measures for the prevention of recruitment of children into armed forces and their use in hostilities.

On 16 June the President of the Security Council issued a statement on children and armed conflict. Taking note of the report of the Secretary General, the President condemned the violations of international law, including humanitarian law, human rights law and refugee law committed against children in situations of armed conflict. The statement expressed the Security Council's readiness to adopt targeted and graduated measures against persistent perpetrators and called on states to take decisive and immediate action through national and international justice mechanisms, with a view to ending impunity for those committing crimes against children.[27]

The Secretary General also issued four country-specific reports on children and armed conflict, concerning Nepal,[28] the Democratic Republic of Congo,[29] Somalia[30] and the Philippines.[31]

[25] UN Doc. S/2010/181, 13 April 2010.

[26] Ibid., Annex I and II.

[27] UN Doc. S/PRST/2010/10, 16 June 2010.

[28] UN Doc. S/2010/183, 13 April 2010.

[29] UN Doc. S/2010/369, 9 July 2010.

[30] UN Doc. S/2010/577, 9 November 2010.

[31] UN Doc. S/2010/36, 21 January 2010.

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8.3 The United Nations

8.3.1 The Security Council[32]

8.3.1.1 Afghanistan

The Security Council passed two resolutions on Afghanistan in 2010. SCR 1917 extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) for another year until 23 March 2011.[33] The resolution condemned all attacks including the use of improvised explosive devices, suicide attacks, abductions, the targeting of civilians and the use of civilians as human shields by the Taliban and other extremist groups. The resolution also expressed strong concern about the recruitment and use of children by Taliban forces in violation of international law. The Security Council also welcomed the progress made by Afghan and international forces in reducing civilian casualties and reiterated its call for all feasible steps to be taken to ensure the protection of civilians and compliance with international humanitarian and human rights law.

The second meeting on Afghanistan resulted in the adoption of SCR 1943 which extended the mandate of the ISAF force for 1 year until 13 October 2011.[34] In its preamble the resolution expressed serious concern with the high number of civilian casualties and called upon all parties to comply with their obligations under international humanitarian and human rights law. Further, that all appropriate measures be taken to ensure the protection of civilians.

8.3.1.2 Central African Republic and Chad

The Security Council passed three resolutions on the Central African Republic and Chad in 2010, all of which concerned the UN Mission in the Central African Republic and Chad (MINURCAT). On 15 January 2010 the Government of Chad provided a note verbale informing the Secretary General that it wished MINURCAT to withdraw from Chad, this was followed by a letter by the Permanent Representative of Chad stating that it had reconsidered an earlier request for the Mission's withdrawal.[35] SCR 1913 indicated that the discussion of the future of MINURCAT was ongoing and determined that the situation in Chad and surrounding region continued to constitute a threat to international peace and security.

[32] This Year in Review only discusses those situations where the Security Council refers to international humanitarian law.

[33] UN Doc. S/Res. 1917 (2010), 22 March 2010.

[34] UN Doc. S/Res. 1943 (2010), 13 October 2010.

[35] UN Doc. S/2010/115, 3 March 2010.

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In its operative paragraph the Security Council agreed to extend the mandate of MINURCAT as set out in SCR 1861 (2009)[36] until 15 May 2010.[37]

Subsequently a report produced by the Secretary General on MINURCAT provided recommendations for a revised mandate for the Mission.[38] The need for a thorough examination of these recommendations was taken into consideration by the Security Council in Resolution 1922 which further extended the mandate of MINURCAT until 26 May 2010.[39]

The Security Council convened again on 25 May 2010 and adopted SCR 1923.[40] The preamble determined that the situation in the region of the border between Sudan, Chad and the Central African Republic constitutes a threat to international peace and security and that, as a result, MINURCAT's mandate would be extended until 31 December 2010. The resolution authorised the military component of MINURCAT to be reduced from 5,200 to 2,200 military personnel (1,900 in Chad and 300 in Central African Republic) and called upon the Secretary General to withdraw all troops, uniformed and civilian components of MINURCAT by 31 December 2010. It also decided that prior to withdrawal of military personnel, MINUCRAT shall be authorised to respond to imminent threats of violence to civilians, provide protection to United Nations personnel and facilities, execute operations to extract United Nations personnel and humanitarian workers in danger. The resolution reaffirmed the obligation of all parties to implement fully the rules and principles of humanitarian law, particularly those regarding humanitarian personnel. It also encouraged MINURCAT and the United Nations country team to continue to assist the Government to prevent the recruitment of refugees and children by armed groups.

8.3.1.3 Côte d'Ivoire

The Security Council met on several occasions to discuss the situation in Côte d'Ivoire. There were a total of five Resolutions adopted during 2010, which expressed concern about continued violations of international humanitarian law. SCR 1911 noted with concern that in spite of the improvements in the overall human rights situation, the persistence of human rights and humanitarian law violations against civilians in different parts of the country, including numerous acts of sexual violence, necessitated that the perpetrators be brought to justice.[41] Acting under Chapter VII the resolution renewed the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) (and French forces which support

[36] UN Doc. S/Res. 1861 (2009), 14 January 2009.
[37] UN Doc. S/Res. 1913 (2010), 12 March 2010.
[38] UN Doc. S/2010/217, 29 April 2010.
[39] UN Doc. S/Res. 1922 (2010), 12 May 2010.
[40] UN Doc. S/Res 1923 (2010) 25 May 2010.
[41] UN Doc. S/Res. 1911 (2010), 28 January 2010, preamble.

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UNOCI) until 31 May 2010, in particular to support the organisation in Côte d'Ivoire of a free, fair, open and transparent election. The Resolution also requests the UNOCI to provide technical and logistical support to the Independent Electoral Commission for the preparation and holding of the elections, to continue to support disarmament and dismantling of militias and to continue to contribute to the promotion and protection of human rights.

In its subsequent resolution,[42] adopted on 27 May 2010, the Security Council refers to the need to examine thoroughly the recommendations for a revised mandate of UNOCI included in the report of the Secretary General.[43] The resolution further determined that the situation in Côte d'Ivoire continues to pose a threat to international peace and security in the region and extended both the mandate of UNOCI and the French forces until 30 June 2010.

On 30 June 2010, the Security Council repeated its concerns over the continued human rights violations against civilians and reiterated its firm condemnation of all violations of human rights and humanitarian law in SCR 1933.[44] In addition, the resolution provided a specific mandate for UNOCI until 31 December 2010 in order to support the parties to implement the Ouagadougou Political Agreement. The mandate requires UNOCI to monitor armed groups, to protect civilians, to monitor the arms embargo, to contribute to the promotion and protection of human rights with special attention to violations committed against children and women with a view to ending impunity, to provide support for humanitarian assistance and to support the organisation of fair and transparent elections. The Security Council also requested the Secretary-General to continue to take the necessary measures to ensure full compliance by UNOCI with the United Nations zero tolerance policy on sexual exploitation and abuses; to keep the Council informed and to urge troop contributing countries to take appropriate preventative action and action to ensure full accountability in cases involving their personnel.

The fourth resolution adopted by the Security Council provided a temporary increase in the level of military and police personnel of UNOCI from 8,650 to 9,150 for a period of up to 6 months.[45] The fifth resolution was passed in October 2010.[46] SCR 1946 once more noted with concern the persistent reports of human rights and humanitarian law violations against civilians. The Security Council decided to renew the measures found in SCR 1572[47] which requires states to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire of arms or related materials until 30 April 2011.[48] The resolution makes unambiguous, the Security Council's determination that it is fully prepared to impose targeted

[42] UN Doc. S/Res. 1924 (2010), 27 May 2010.
[43] UN Doc. S/2010/245, 20 May 2010.
[44] UN Doc. S/Res. 1933 (2010), 30 June 2010.
[45] UN Doc. S/Res. 1942 (2010), 29 September 2010.
[46] UN Doc. S/Res. 1946 (2010), 15 October 2010.
[47] UN Doc. S/Res. 1572 (2004), 15 November 2004, para 7.
[48] UN Doc. S/Res. 1946 (2010), 15 October 2010, para 1.

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measures against persons responsible for attacking or obstructing the work of UNOCI and those responsible for serious violations of human rights and international humanitarian law.

8.3.1.4 Democratic Republic of Congo

The Security Council met several times to consider the long-standing armed conflict taking place in the Democratic Republic of Congo. In April, the Special Representative for the DRC and the head of the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC), Alan Dross, briefed the Council on the progress made by the Mission. He stated that progress had been made in protecting the civilian population, disarmament, repatriation and reintegration of armed Congolese and foreign groups, although not consistently across all areas.[49]

In May, the Security Council adopted Resolution 1925[50] expressing great concern for the humanitarian and human rights situation and condemned the targeted attacks against the civilian population, widespread sexual violence and recruitment and use of child soldiers. It stressed the urgent need for the Government of the DRC to end violations of human rights and international humanitarian law, fight impunity and bring the perpetrators to justice. The Security Council also considered the report of the Secretary General[51] and agreed that the DRC was entering a new phase of its transition towards peace consolidation. In its operative paragraph the Council, acting under Chapter VII, decided to extend the mandate of MONUC until 30 June 2010[52] and further decided that in view of the new phase which has been reached, that MONUC would now bear the new title of the United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The resolution provides that MONUSCO would be deployed until 30 June 2011 with a mandate to protect civilians under imminent threat of physical violence emanating from any of the parties engaged in the conflict and is required to take the leading role in stabilisation and peace consolidation.

A further briefing was provided to the Security Council by the Assistant Secretary-General for Peacekeeping (Atul Khare) and the Special Representative on Sexual Violence (Margot Wallstrom) following the mass rapes in North Kivu.[53] Margot Wallstrom reported that the rapes seemed planned and part of a concerted military operation and urged the Council to impose targeted sanctions against the commanders of the armed groups responsible for the gross violations. The

[49] UN Doc. S/PV.6297, 13 April 2010.
[50] UN Doc. S/Res. 1925, 28 May 2010.
[51] UN Doc. S/2010/164, 30 March 2010.
[52] UN Doc. S/Res. 1925, 28 May 2010, para 1.
[53] UN Doc. S/PV.6378, 7 September 2010.

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President of the Security Council issued a statement in September reiterating its strong condemnation of the rapes and called upon the Government of the DRC to condemn the atrocities and put an end to impunity.[54]

The second resolution adopted by the Council condemned the continuing illicit flow of weapons within and into the DRC.[55] Acting under Chapter VII the Security Council renewed the arms embargo imposed by SCR 1807[56] until November 2011.

8.3.1.5 Iraq

The Security Council adopted one resolution in respect to Iraq that referred to international humanitarian law. Resolution 1936 extended the mandate of the United Nations Assistance Mission for Iraq (UNAMI) until July 2011.[57] The Council also urged all those concerned, as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by humanitarian personnel to all people in need of assistance, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security, and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets.

8.3.1.6 Somalia

Given the continuing instability in Somalia, there was significant activity on the part of the Security Council. The first[58] of four resolutions was adopted on 28 January which, in its preamble reiterated its serious concern at the fighting in Somalia and expressed its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in violation of international humanitarian law and human rights law. In its operative paragraphs the Council decided to authorise the Member States of the African Union (AU) to maintain the African Union Mission to Somalia (AMISOM) until January 2011.[59] It also requested the AU to increase its force strength with a view to achieving the originally mandated strength of 8,000 troops.

The second resolution was unanimously adopted in March. In SCR 1916[60] the Council condemned the continuing flow of weapons and ammunition supplies to

[54] UN Doc. S/PRST/2010/17, 17 September 2010.
[55] UN Doc. S/Res. 1952, 29 November 2010.
[56] UN Doc. S/Res. 1807, 31 March 2008.
[57] UN Doc. S/Res. 1936, 5 August 2010.
[58] UN Doc. S/Res. 1910, 28 January 2010.
[59] Ibid., para 1.
[60] UN Doc. S/Res. 1916, 19 March 2010.

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and through Somalia and Eritrea in violation of the arms embargo.[61] The resolution called on all states to comply fully with the arms embargo and extended by 12 months the mandate of the group monitoring those measures. In addition, the mandate of the Monitoring Group was expanded and a further three experts were provided.[62]

The two remaining resolutions adopted by the Security Council concern the piracy situation off the Somali coast. In SCR 1918[63] the Council stated that it continued to be gravely concerned by the threat of piracy and armed robbery at sea against vessels. As a result it called on all states to criminalise piracy under their domestic law and consider the prosecution and imprisonment of convicted pirates apprehended off the coast of Somalia. In August, the President of the Security Council issued a statement[64] in which it welcomed the report[65] of the Secretary-General on possible options to further the aim of prosecuting and imprisoning those responsible for acts of piracy and also welcomed the intention of the Secretary-General to appoint a Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia. In Resolution 1950,[66] the Council once again renewed its call upon states and regional organisations to take part in the fight against piracy.

8.3.1.7 Sudan

The Security Council adopted three resolutions on Sudan in 2010. On 29 April, SCR 1919[67] was adopted extending the mandate of the UN Mission in Sudan (UNMIS) for a further year. The resolution deplored the persistent localised conflict and violence and its effect on civilians, especially within Southern Sudan and called on UNMIS to make full use of its authority to provide improved security to the civilian population.

A further resolution[68] was adopted on 30 July 2010, which expressed deep concern at the deterioration in the security situation in Darfur and demanded that all parties immediately end violence, attacks on civilians, peacekeepers, humanitarian personnel and comply with their obligations under human rights and international humanitarian law. The resolution extended the mandate of the UN Assistance Mission in Darfur (UNAMID) for a further twelve months until 31 July 2011.

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[61] First imposed in UN Doc. S/Res 733, 23 January 1992.

[62] UN Doc. S/Res. 1916, 19 March 2010, para 6.

[63] UN Doc. S/Res. 1918, 27 April 2010.

[64] UN Doc. S/PRST/2010/16, 25 August 2010.

[65] UN Doc (S/2010/394).

[66] UN Doc. S/Res. 1950, 23 November 2010.

[67] UN Doc. S/Res. 1919, 29 April 2010.

[68] UN Doc. S/Res. 1935, 30 July 2010.

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The final resolution was passed in October 2010.[69] The Security Council once again demanded an immediate and complete cessation of all acts of sexual violence against civilians, recruitment and use of children and indiscriminate attacks on civilians by all parties to the armed conflict. Resolution 1945 also extended the mandate of the Panel of Experts to 19 October 2011 in order to continue monitoring the arms embargo and sanctions on those who impede peace in Sudan.

8.3.1.8 Peacekeeping operations and missions

There are currently 15 UN peacekeeping operations across the world, the majority of which had their mandate extended by Security Council Resolutions in 2010.[70]

Peacekeeping operations have been on the agenda for both the Security Council and the General Assembly. In June 2010 the General Assembly held a thematic debate entitled 'UN Peacekeeping—Looking into the future' to mark the tenth anniversary of the Brahimi Report. The debate addressed the political dimensions of peacekeeping as well as the nexus between security and development to peacebuilding.[71]

In August 2010 the Security Council was briefed by force commanders from missions in Liberia, Sudan, Haiti, the DRC and the Head of the Truce Supervision organisation. The Force Commanders provided a survey of development on their respective missions and stressed to the Security Council the need to address the gap between mandated activity and available resources.[72]

In January, the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS) issued its Interim Standard Operating Procedures on Detention in United Nations Peace Operations. The purpose of the Interim SOPs is to ensure that that persons detained by UN personnel in UN peace operations are handled humanely and in a manner that is consistent with applicable international human right, humanitarian and refugee law, norms and standards. The SOPs is due to be reviewed in January 2011.

DPKO and DFS also issued its first update paper entitled '*The New Horizon Initiative; Progress Report No. 1*' in October. The New Horizon initiative was launched in order to assess the major policy and strategy dilemmas faced by UN Peacekeeping operations and to reinvigorate dialogue with stakeholders. The paper provides an overview of the principal outcomes of the peacekeeping dialogue and implementation efforts in the context of the New Horizon process, as well as ongoing efforts to improve the effectiveness of United Nations peacekeeping.[73]

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[69] UN Doc. S/Res. 1945, 14 October 2010.

[70] UN Doc. S/Res. 1912 (UNMIT), UN Doc. S/Res. 1941 (UNIPSIL), UN Doc. S/Res. 1927 (MINUSTAH), UN Doc. S/Res. 1937 (UNIFIL), UN Doc. S/Res 1938 (UNMIL).

[71] GA, 64th Meeting, 22 June 2010.

[72] SC, 6370th Meeting, 6 August 2010.

[73] The New Horizon Initiative; Progress Report No. 1, October 2010.

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8.3.2 Human Rights Council

In February a joint Study on global practices in relation to secret detention in the context of countering terrorism was released by the Special Rapporteur on the promotion of and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on arbitrary detention and the Working Group on enforced or involuntary disappearances.[74] The aim of the Study was to examine policy and legal decisions taken by states and 'to illustrate what it means to be secretly detained, how secret detention can facilitate the practice of torture or inhuman and degrading treatment, and how the practice of secret detention has left an indelible mark on the victims and on their families'. The Study concludes that such practice is 'irreconcilably in violation of international human rights law, including during state of emergency and armed conflict'.

In conceding that the right to detain is significantly broader in IHL than IHR, the Study nevertheless observes that the entire system of detention provided for by the Geneva Conventions is founded on the notion that detainees must be registered and held in officially recognized places of detention. Article 70 of the Third Geneva Convention requires that prisoners of war are documented and their whereabouts and health conditions made available to family members and to the country of origin within 1 week. Similarly, Article 106 of the Fourth Geneva Convention establishes near identical procedures for documentation and disclosure of information concerning civilian detainees. However, Article 5 of the Convention permits the detaining power to deny to persons these rights and privileges 'where absolute military security so requires' when an individual found physically in the state's own territory is 'definitely suspected of or engaged in activities hostile to the security of the State' or when an individual in occupied territory is 'detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power'. Citing the ICRC, the Study emphasizes the exceptional nature of Article 5 which may only be applied on a case by case basis.

8.3.3 The International Criminal Court

On 12 July, the ICC issued a second arrest warrant for President Omar al-Bashir of Sudan on three counts of genocide committed in Darfur.[75] This warrant followed an initial warrant filed against al-Bashir in March 2009, on two counts of war crimes and five counts of crimes against humanity, which made al-Bashir the first sitting head of state to be charged by the ICC. The second warrant is similarly

[74] A/HRC/13/42.

[75] Available at www.icc-cpi.int.

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groundbreaking in that it is the first time that the ICC has issued an arrest warrant on a count of genocide. Although Sudan is not party to the Rome Statute, it is nonetheless obligated by SCR 1593 to 'cooperate fully with the Court and Prosecutor, providing them with any necessary assistance'.[76] However, to date, the ICC has been unable to enforce its warrants against al-Bashir.

On 31 March, Pre-Trial Chamber II, by a majority, granted the Prosecutor's request to commence an investigation on crimes against humanity allegedly committed in the Republic of Kenya that took place between 1 June 2005 (the date of entry into force of the statute for Kenya) and 26 November 2009 (the date of the filing of the Request).[77] The evidence presented to the Trial Chamber satisfied the requisite threshold—that it provides a 'reasonable basis' to believe that crimes against humanity have been committed on Kenyan territory.

During the ICC's Review Conference in Kampala (31 May–11 June), the Conference adopted a resolution amending the Rome Statute to include a definition of the crime of aggression and the conditions under which the ICC can exercise jurisdiction over this crime. The actual exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

The definition of aggression agreed by the Conference is based on the UN GAR 3314 of 14 December 1974 and provides:

'1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however, temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
(c) The blockade of the ports or coasts of a State by the armed forces of another State;

[76] S/RES/1593 (2005) of 31 March 2005.

[77] Decision of the Pre-Trial Chamber II Pursuant to Article 15 of the Rome Statute, 31 March 2010, ICC-01/09.

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(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
(g) 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 the acts listed above, or its substantial involvement therein.'

Insofar as the Court's exercise of jurisdiction is concerned, it was agreed that a situation in which an act of aggression appeared to have occurred could be referred to the Court by the Security Council, acting under Chapter VII; alternatively, in the absence of a determination by the Council that a situation amounting to aggression existed, the Prosecutor would be entitled to initiate an investigation or do so upon request from a State Party. However, this would be subject to a prior authorization from the Pre-Trial Chamber. Moreover, the Court would not have jurisdiction in respect to crimes of aggression committed on the territory of non-States Parties or by their nationals or with regard to States Parties that had declared that they did not accept the Court's jurisdiction over the crime of aggression.

The Conference also adopted a resolution by which it amended Article 8 of the Rome Statute to bring under the Court's jurisdiction the war crime of employing certain poisonous weapons and expanding bullets, asphyxiating or poisonous gases, and all analogous liquids, materials and devices, when committed in armed conflicts not of an international character.[78]

8.4 Regional Organizations

8.4.1 Council of Europe

8.4.1.1 The European Court of Human Rights (ECtHR)

During 2010, the ECtHR rendered a number of judgments in relation to the conflict in Chechnya. In *Suleymanova* v *Russia* the ECtHR found for the applicant in holding that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, had been violated despite

[78] Geiβ, this volume pp 337–352.

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the existence of an armed conflict.[79] In rejecting the Government's claim that the use of lethal force 'in the course of a counter-terrorist operation' had been no more than 'absolutely necessary', the Court held that 'the use of lethal force had not been accounted for and therefore the Court was not persuaded that the killings constituted a use of force which was no more than absolutely necessary in pursuit of the aims in Article 2'.

In a series of cases relating to disappearances of civilians in the Chechnya conflict, the Court has found Russia in violation of Articles 2, 3, 5 and 13 which concern the right to life, the prohibition against inhuman or degrading treatment, the right to liberty and security and the right to an effective remedy, respectively.[80] Having regard to the previous cases concerning disappearances in Chechnya in the context of the armed conflict, the Court held that 'when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention this can be regarded as life-threatening'.[81]

8.4.2 Organization of American States

On 8 June, the General Assembly of the Organisation of American States passed a resolution entitled *Promotion of and Respect for International Humanitarian Law*.[82] The Resolution urges member states to honour and fulfil their obligations under international humanitarian law and urges the member states to become parties to the following treaties:

a. The Convention for the Protection of Cultural Property in Time of Armed Conflict (Hague Convention 1954), and its Protocols of 1954 and 1999;
b. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;
c. The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention);
d. The 1977 Protocols I and II Additional to the Geneva Conventions of 1949, as well as Additional Protocol III, of 2005, including the declaration contained in Article 90 of Additional Protocol I;

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[79] *Suleymanova* v *Russia* (9191/06) Judgment 12 May 2010, para 81.

[80] *Guluyeva and Others* v *Russia* (1675/07) Judgment of 11 February; *Dubayev and Bersnukayeva* v *Russia* (30613/05 and 30615/05) Judgments of 11 February; *Suleymanova* v *Russia* (9191/06) Judgment 12 May 2010; *Ilyasova* v *Russia* (26966/06) Judgment 10 June 2010; *Gelayevy* v *Russia* (20216/07) Judgment 15 July 2010; *Akhmatkhanovy* v *Russia* (20147/07) Judgment 22 July 2010; *Dzhabirailova and Dzhabirailova* v *Russia* (15563/06) Judgment 2 December 2010; *Tumayeva and others* v *Russia* (9960/05) Judgment 16 December 2010.
UN Doc. GA/Res. 64/48, 28 October 2009.

[81] *Shakhabova* v *Russia* (39685/06) Judgment 12 May 2010, para 101.

[82] Organisation of American States, AG/RES.2575 (XL-O/10), 8 June 2010.

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e. The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) of 1980, including the amendment to Article 1 thereof, adopted in 2001, and the five protocols thereto;
f. The 1989 Convention on the Rights of the Child and the 2000 Optional Protocol thereto on the involvement of children in armed conflict;
g. The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention);
h. The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention);
i. The 1998 Rome Statute of the International Criminal Court; and
j. The International Convention for the Protection of All Persons from Enforced Disappearance.

It also urges member states to adjust their criminal law in order to meet their obligations under the 1949 Geneva Conventions and, in the case of the states parties to the 1977 Additional Protocol I and the Rome Statute of the International Criminal Court, with respect to the definition of war crimes, universal jurisdiction for these grave breaches, and the responsibility of superiors for the acts of their subordinates, among other pertinent provisions. The resolution further urges member states to adopt all necessary measures to comply with their respective international obligations regarding the recruitment and use of children in armed forces or armed groups and to prevent their participation in hostilities, in accordance with rules and principles of international humanitarian law.

In June, the General Assembly of the Organisation of American States adopted a resolution entitled *Protecting Human Rights and Fundamental Freedoms while Countering Terrorism*[83] which reaffirmed that member states have a duty to ensure that all measures adopted to combat terrorism must be in compliance with international humanitarian law. Further, that states should respect the safeguards concerning the liberty, security, safety and dignity of the person and to treat prisoners in all places of detention in accordance with applicable international law, including human rights law and international humanitarian law.

8.4.3 African Union

The Assembly of the African Union in its decision on the Accession of the African countries to the Convention on banning the use of Certain Conventional Weapons with a traumatic effect or which strike indiscriminately[84] invited African states to

[83] Organisation of American States, AG/RES.2580 (XL-O/10) 8 June 2010.

[84] African Union, Assembly Decision 321 (XV) adopted by the fifteenth ordinary session of the Assembly, 27 July 2010, Kampala, Uganda.

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accede to this Convention in order to strengthen their contribution to the building and consolidation of international humanitarian law.

8.5 Arms Control and Disarmament

8.5.1 Conventional weapons

8.5.1.1 Small arms and light weapons

Important progress was made in 2010 on the General Assembly resolution[85] concerning the Arms Trade Treaty. The first two Arms Trade Treaty Preparatory Committees were held in July 2010 which considered the elements, guiding principles, goals and objectives, scope, implementation and application of the treaty. The Chair of the Preparatory Committee released a series of papers on treaty elements, principles, goals and objectives which will form the basis of further negotiations at the next Preparatory Committee meeting to take place in February 2011.

Another important development in April 2010 was the consensus on the Kinshasa Convention (otherwise known as the Central Africa Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair and Assembly) by the United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC). This fills a void that provides Central Africa with a legally binding instrument combating the proliferation of small arms and light weapons. In November, at the 31st meeting of UNSAC, the Kinshasa Convention was signed by eight Central African nations (Angola, Cameroon, the Democratic Republic of Congo, Chad, Gabon, the Central African Republic, the Republic of Congo and Sao Tome and Principe). The Kinshasa Convention requires six countries to ratify the Convention before it can come into force. The Convention contains a preamble and nine chapters reflecting the latest developments in the regulation of the trade in small arms and light weapons.[86] The main provisions of the Kinshasa Convention include:

- Authorised transfers between States, subjecting them to strict control exercised by the relevant national authorities.
- The possession of light weapons is prohibited to civilians, and the possession of small arms is subject to an authorisation (licence) delivered by the authorities.
- The manufacture of small arms and light weapons is authorised but subject to control.

[85] UN Doc. GA/Res. 64/48, 28 October 2009.

[86] UN Doc. A/65/176, 28 July 2010.

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- National and sub-regional databases must be established and allow for information exchange.
- A tracing mechanism must be established and States are required to limit the number of entry points of weapons on their national territory.[87]

8.5.1.2 Convention on Cluster Munitions

In February the United Nations received the thirtieth instrument of ratification for the Convention on Cluster Munitions. With this step, the Convention entered into force on 1 August 2010, 2 years after its adoption.

8.5.2 Nuclear weapons

8.5.2.1 New Start Treaty and Protocol

In April the United States of America and Russia signed the New Start Treaty which replaces the Strategic Arms Reduction Treaty of 1991. The Treaty commits each party to reduce the number of deployed strategic warheads to 1,550. It also limits the number of deployed delivery vehicles, ballistic missiles and heavy bombers to 700.

8.5.2.2 Review Conference—Treaty on the Non-Proliferation of Nuclear Weapons

In May the States Party to the Treaty on the Non-proliferation of Nuclear Weapons met to review the treaty at the UN Headquarters. A total of 172 states participated in the conference which concluded with a 64 point plan for further action addressing the three pillars of the Treaty, namely; disarmament, non-proliferation and peaceful uses of nuclear energy. The unanimously adopted outcome also contains steps to guide progress on nuclear disarmament, advance non-proliferation and work towards a nuclear-weapon-free zone in the Middle East. The Conference resolved that the nuclear-weapon states commit to further efforts to reduce and eliminate all types of deployed and non-deployed nuclear weapons, including through unilateral, bilateral, regional and multilateral measures. A separate section of the document focused on the Middle East, specifically on implementation of the 1995 Review Conference's resolution on the Middle East.

[87] Kinshasa Convention, 23 November 2010.

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The final document[88] also endorsed the convening of the next review conference in 2012.

8.5.2.3 Iran's nuclear program

Iran's nuclear program was again the subject of discussion at the Security Council. Resolution 1929[89] noted with serious concern that Iran has constructed an enrichment facility at Qom in breach of its obligations to suspend all enrichment-related activities. The Resolution affirmed that Iran has so far failed to meet the requirements of the International Atomic Energy Agency (IAEA) and that it shall take the steps required by IAEA to build confidence in the exclusively peaceful purpose of its nuclear programme. It further decided under Article 41 of Chapter VII that Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons and that states shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities.

[88] UN Doc. NPT/CONF.2010/50 (Vol 1).

[89] UN Doc. S/Res 1929, 9 June 2010.

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