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Report of the Secretary-General on the protection of civilians in armed conflict

I. Introduction

1. The present report is submitted pursuant to the request contained in the statement of the President of the Security Council of 27 May 2008 (S/PRST/2008/18).
2. The year 2009 marks the tenth anniversary of the consideration by the Security Council of the protection of civilians in armed conflict as a thematic issue. As with most anniversaries, there is cause for celebration but also for a critical review of progress made. The protection of civilians has come to occupy a prominent place on the Council's agenda, as manifested in the biannual open debates and the Secretary-General's periodic reports. Most importantly, the protection of civilians has increasingly permeated the country-specific deliberations and decisions of the Council. This has resulted in concrete proposals and decisions intended to improve the situation of countless men, women, girls and boys affected by the horrors and indignities of war. It has also contributed to the increasing awareness among Member States and the broader international community of the need to respond to protection issues.
3. A decade ago, members of the Security Council questioned whether situations of internal armed conflict constituted a threat to international peace and security, and thus a matter for Council consideration. Currently, based on the experience of conflicts in such places as Afghanistan, Chad, the Central African Republic, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone, Somalia and the Sudan, the regional dimensions and destabilizing effects of internal conflicts have been firmly recognized and the Council is progressively more willing to address the protection needs of civilians in such situations.
4. Nonetheless, further efforts to strengthen the protection of civilians remain crucial. While the last 10 years have seen peace come to some of the world's major conflicts, others have continued to smolder and burn and new ones have broken out. Common to old and new ones alike are persistent and sometimes appalling levels of human suffering owing to the fundamental failure of parties to conflict to fully respect and ensure respect for their obligations to protect civilians. Actions on the ground have not yet matched the progress in words and the development of international norms and standards.
5. This is a failure that demands a reinvigorated commitment by the Security Council, Member States and the United Nations to the protection of civilians and to the promotion of respect for the principles of international humanitarian law, human rights law and refugee law on which the concept is founded. In practical terms, it requires determined action to meet the five core challenges outlined in the present report: enhancing compliance by parties to conflict with international law, in particular in the conduct of hostilities; enhancing compliance with the law by non-State armed groups; enhancing protection through more effective and better resourced peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations of the law.

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III. The five core challenges

26. Ultimately, the enduring need to strengthen the protection of civilians stems from the fundamental, and equally enduring, failure of parties to conflict to comply fully with their legal obligations to protect civilians. It is a failure that demands reinvigorated commitment and determined action so as to meet the following core challenges: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced United Nations peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations.

A. Enhancing compliance

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31. The Israeli offensive in Gaza earlier this year resulted in high numbers of casualties, in particular among children, and the extensive destruction of, and damage to, homes, schools, including those run by the United Nations, and civilian infrastructure, raising extremely grave concerns as to Israel's compliance with international humanitarian law. Concerns also existed as to whether the civilian population was used to render areas immune from attack, as Hamas militants allegedly used residential buildings as bases from which to launch attacks against Israeli forces. Reports also indicate the possible use of schools and hospitals by Hamas militants to shield themselves and their weapons from attack.

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36. While such progress in relation to cluster munitions and anti-personnel mines is welcome, I am increasingly concerned at the humanitarian impact of explosive weapons, in particular when used in densely populated areas. As demonstrated by this year's hostilities in Sri Lanka and Israel's campaign in Gaza, the use in

densely populated environments of explosive weapons that have so-called “area effect” inevitably has an indiscriminate and severe humanitarian impact. First, in terms of the risk to civilians caught in the blast radius or killed or injured by damaged and collapsed buildings. Secondly, in terms of damage to infrastructure vital to the well-being of the civilian population, such as water and sanitation systems. I urge Member States, in consultation with relevant United Nations and other actors, to consider this issue further. I would also call upon States that have not yet done so to ratify Protocol V to the Convention on Certain Conventional Weapons with a view to addressing, in a timely and effective manner, the serious humanitarian problems caused by explosive remnants of war.

37. The Security Council also has a critical role in promoting systematic compliance with the law. In particular, the Council should:

- (a) Use all available opportunities to condemn violations, without exception, and remind parties of, and demand compliance with, their obligations;
- (b) Publicly threaten and, if necessary, apply targeted measures against the leadership of parties that consistently defy the demands of the Security Council and routinely violate their obligations to respect civilians;
- (c) Systematically request reports on violations and consider mandating commissions of inquiry to examine situations where concerns exist regarding serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and prosecuting them at the national level, or referring the situation to the International Criminal Court.

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E. Enhancing accountability

61. Integral to the foregoing challenges is the need to ensure accountability for violations of international humanitarian law and human rights law, both for individual perpetrators and for parties to conflict. In many conflicts, it is to a large degree the absence of accountability and, worse still, the lack in many instances of any expectation thereof, that allows violations to thrive.

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72. Although infrequent, reparations mechanisms have been established at the international and national levels. Such mechanisms include the United Nations Compensation Commission, established by the Security Council in its resolution 687 (1991), and the Eritrea-Ethiopia Claims Commission, established pursuant to the peace agreement of December 2000. The Commission allowed individuals to file claims against States for acts that, inter alia, violated international humanitarian law and human rights law. Reference should also be made to property restitution mechanisms established in Bosnia and Herzegovina, Kosovo and Timor-Leste and, most recently, to the establishment, pursuant to General Assembly resolution ES-10/17, of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, following the Advisory Opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Register is mandated to receive claims from all natural or legal persons who have suffered material damage as a result of the construction of the wall.

73. This dimension of accountability must not be overlooked. I would urge the Security Council to call upon States to establish, or to itself mandate, in relevant contexts, mechanisms to receive claims alleging violations of international humanitarian law and human rights law and to support their establishment.

IV. Conclusions and next steps

74. The last 10 years have provided us with a tantalizing sense of the potential of the protection of civilians agenda. The task before us now is to take the necessary steps to fully realize that potential and meet the five core challenges identified in the present report.

75. The report provides pertinent recommendations to this end, premised on the overriding need to enhance compliance and accountability in conflict, that is to say, compliance by all parties to conflict with the applicable law and the demands and decisions of the Security Council, and accountability for those individuals and parties that fail to comply therewith.

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77. I have asked the Under-Secretary-General for Humanitarian Affairs to consult with members of the Security Council on how to take forward the recommendations in the present report, and any additional recommendations that Council members and other Member States may wish to advance during the open debate on protection of civilians in June 2009. The outcome of these consultations will be presented at the open debate in November 2009.

78. At the open-debate in November, I would urge the Security Council and Member States to seize the opportunity of the tenth anniversary of the protection of civilians to reinvigorate their commitment to this agenda and, above all, to work with the United Nations and other relevant actors in a comprehensive and determined effort to make the protection of civilians more systematically and consistently a reality for all those caught or trapped in the conflicts of today, or those of tomorrow.

Annex

Constraints on humanitarian access

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II. The most severe and prevalent constraints

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2. Restrictions on operations

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16. Restrictions are often applied inconsistently, creating unpredictability in the implementation of activities and crippling the flow of humanitarian aid. The import of humanitarian supplies into Gaza, for example, remains subject to unclear and inconsistent criteria and procedures. Together with restrictions on certain relief materials, limitations are imposed on the transfer of cash for humanitarian activities and permission for humanitarian personnel to enter Gaza is often denied or delayed. The cumulative effect of these restrictions and their unpredictability contribute to the protracted suffering of Gaza's civilian population. Since the end of hostilities in January 2009, the Government of Israel has continued to refuse the entry of essential building materials required for the repair or reconstruction of essential public infrastructure, including water supply, sanitation and private homes. Over 50,000 persons continue to be homeless, some of whom live in tents, while water, electricity and sanitation remain inadequate.

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3. Impediments to the movement of humanitarian personnel and goods

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20. In the occupied Palestinian territories, impediments to the passage of humanitarian personnel and goods are prolific. In the West Bank, in 2008, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) recorded 918 incidents of interference with the passage of personnel and goods, a 210 per cent increase compared to 2007, resulting in the loss of 16,500 staff hours.

21. In Gaza, the restrictions on border crossings that were imposed in June 2007, which currently remain in effect, continue to impede humanitarian operations and early recovery efforts. For example, the requirement of the Government of Israel that humanitarian goods enter via the Kerem Shalom military crossing rather than via the main commercial crossing point of Kami, which has greater capacity to handle large volumes of goods, adds significant travel time and expense. Furthermore, goods must be unloaded, screened and then reloaded on the opposite side of the border, a requirement which the World Food Programme (WFP) and UNRWA estimate adds \$1.5 to \$2 million per year to programme costs. The lack of spare parts for medical equipment at hospitals and clinics has had a serious impact on the health of the population of Gaza, already weakened by inadequate diet and limited access to specialist medical treatment abroad.

B. Intensity of hostilities

22. In contexts such as Afghanistan, the Central African Republic, Chad, Colombia, the Democratic Republic of the Congo, Iraq, the occupied Palestinian territories, Pakistan, Somalia, Sri Lanka and the Sudan, the intensity of hostilities frequently precludes access to affected populations and prevents or interrupts ongoing assistance activities. These problems are often exacerbated by the fact that parties to conflict have failed to establish arrangements to enable aid delivery by humanitarian organizations.

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26. Few humanitarian agencies and only a fraction of the aid required were permitted into Gaza during the three weeks of hostilities that began in late December 2008. Unilateral suspensions in hostilities were observed but were of insufficient duration to allow safe access to medical services and the distribution of sufficient assistance to the affected population, or to address public health problems resulting from the destruction of civilian infrastructure, in particular public water supply and sanitation facilities. A non-governmental organization survey of the conflict-affected population carried out at the end of January 2009 found that 89 per cent of respondents had not received any assistance since the onset of hostilities.

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28. Access problems are not only a result of the inability of humanitarian actors to reach affected populations. Often it is these populations that face difficulties in safely reaching locations where assistance can be provided. During the same hostilities in Gaza, civilians wishing to seek sanctuary in Egypt or Israel to escape the intense aerial bombardment and heavy ground fighting were unable to do so owing to the closure of the border crossing points by the relevant authorities. An estimated one quarter of the population of 1.5 million people was displaced during the fighting, many of whom were obliged to move from one location to another in an effort to find safety. ...

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IV. Considerations for the Security Council

62. While there are, as indicated, certain initiatives that must be pursued by humanitarian and other relevant actors to facilitate and improve access, the Security Council has an important role to play in promoting an environment that is conducive to the facilitation of humanitarian access to those in need. More specifically, as mentioned above, Council should:

- (a) Consistently condemn and call for the immediate removal of impediments to humanitarian access that violate international humanitarian law;
 - (b) Call for strict compliance by parties to conflict and third States with their obligations to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel, and encourage States to promote respect for humanitarian principles;
 - (c) Call upon parties to conflict to allow safe passage for civilians seeking to flee zones of fighting;
 - (d) Call upon parties to conflict to agree to the temporary suspension of hostilities and implement days of tranquillity in order to enable relief actions by humanitarian actors;
 - (e) Call upon parties to conflict to cooperate with humanitarian organizations in the establishment of de-conflicting arrangements in order to facilitate the delivery of assistance during hostilities;
 - (f) Call upon relevant parties to conclude and implement agreements to expedite the deployment of humanitarian personnel and assets. Negotiations could be assisted by the development of a standard moratorium on visa requirements, work and travel permits, and on customs duties and import restrictions on humanitarian goods and equipment;
 - (g) Mandate United Nations peacekeeping and other relevant missions, where appropriate and as requested, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;
 - (h) Apply targeted measures against individuals obstructing access to, or the distribution of, humanitarian assistance;
 - (i) Refer grave and prolonged instances of the wilful impediment of relief supplies to the International Criminal Court.
63. In addition, as mentioned above, considering the frequency and gravity of attacks and other violations against humanitarian workers, the Security Council should:
- (a) Consistently condemn and call for the immediate cessation of all acts of violence and other forms of harassment deliberately targeting humanitarian workers;
 - (b) Call for strict compliance by parties to conflict with international humanitarian law, including the duty to respect and protect relief personnel and installations,

material, units and vehicles involved in humanitarian assistance;

(c) Call upon States affected by armed conflict to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;

(d) Call upon Member States that have not done so to ratify and implement the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol;

(e) Apply targeted measures against individuals responsible for attacks against humanitarian workers and assets;

(f) Refer grave instances of attacks against humanitarian workers to the International Criminal Court.
