RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Comments by Governments on the reports of the Secretary-General

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General

It is with great interest that the Netherlands Government has studied the above reports (A/7720 and A/8052), which it considers to be of a high standard of scholarship and to contain many constructive ideas worthy of the international community's close attention.

The Netherlands Government fully endorses the view that the fundamental human rights should be respected in both peacetime and during armed conflicts. Reference is rightly made in this context to the relation between the law of human rights and the law of armed conflicts and, more particularly, to the close relation between article 4 of the International Covenant on Civil and Political Rights and article 3 of the Geneva Conventions of 1949. In paragraph 2 of article 4 of the Covenant a number of fundamental human rights are enumerated which are not subject to derogation. Article 3 of the Geneva Conventions gives minimum fundamental humanitarian norms to be observed in non-international armed conflicts. The Netherlands Government is of the opinion that the competent international bodies, notably those operating within the framework of the United Nations and the International Committee of the Red Cross, have complementary responsibilities as regards the international implementation of these fundamental rights and norms.

It will be clear from the above that the Netherlands believes that close co-operation between the United Nations and the ICRC is of the utmost importance. A certain division of work between the two organizations being implicit. For instance, discussions and negotiations on the control, limitation and eventual prohibition of certain weapons of mass destruction such as nuclear, biological and chemical weapons, should be conducted in the United Nations and other forums specifically concerned with arms control and disarmament. At the same time, however, the ICRC is the appropriate organization to work out and further elaborate rules for the protection of civilian populations against the dangers of hostilities, including rules governing prohibited methods and means of warfare not dealt with in the discussions and negotiations held in the forums referred to above.
The Secretary-General's reports deal with a multiplicity of interesting subjects, each of which is worthy of comment. For practical reasons, however, only a few points to which the Netherlands Government wishes to draw particular attention will be discussed in the following.

1. **Fact-finding as a method of supervising the application of humanitarian rules relating to armed conflicts**

   The Netherlands Government has repeatedly stressed the importance of methods of fact-finding. In the present context it views fact-finding as being primarily directed toward two objectives: determining whether the situation is in fact one of armed conflict requiring as a consequence the application of the relevant humanitarian rules, and secondly, determining whether those rules are indeed being observed. The fact-finding agency should report its conclusions to the parties in the conflict and, as the case may be, to the body which appointed it. The Netherlands Government is of the opinion that fact-finding activities should at all times be divorced from decision-making functions.

   The Netherlands Government believes that fact-finding should be conducted under the auspices of that particular body or organization which in the circumstances is best fitted to commission it, with the confidence placed by the parties in the conflict in a specific body or organization constituting the decisive factor. Fact-finding could thus be carried out under the auspices of a United Nations organ, a regional intergovernmental organization, the ICRC or an ad hoc body agreed to by the parties concerned. The United Nations should devote renewed attention to the possibility of utilizing existing machinery, such as the "Panel for Inquiry and Conciliation" instituted by General Assembly resolution 268 D (III) and the "Register of Experts in Legal and Other Fields" compiled in accordance with General Assembly resolution 2329 (XXII) on "Question of methods of fact-finding". It is important that military expertise would also be used in supervising the application of humanitarian rules in armed conflicts.

2. **Combatants in non-international armed conflicts**

   In the development of humanitarian law applicable to non-international armed conflicts the ideological, political or social objectives envisaged by the combatants are not, in the opinion of the Netherlands, of primary relevance, no
matter how admirable or objectionable those aims in themselves may be considered to be.

With respect to captured combatants it is of importance that they be regarded not as criminals but as combatants who are entitled as far as possible to be treated in accordance with the provisions of the Third Geneva Convention of 1949. The Netherlands Government would draw attention here to the question of capital punishment. It supports the principles contained in Economic and Social Council resolution 1574 (L) of 20 May 1971 on capital punishment, which should apply not only to criminal law in times of peace but also to the law in force in emergency situations.

In view of this principle, and of the consideration that combatants in non-international armed conflicts should be accorded wherever possible the same humanitarian treatment as combatants in international armed conflicts, death sentences should not be passed for the mere fact of participation in non-international conflicts.

3. Political prisoners

Fundamental human rights should be respected under all circumstances, irrespective of whether normal peace conditions obtain, whether there is an armed conflict or internal disturbances or tensions are manifest. One such fundamental human right is the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No derogation from this right is permitted (see inter alia, articles 4 and 7 of the International Covenant on Civil and Political Rights). Political prisoners, however, are often the victims of violations of fundamental human rights.

In specific instances the plight of political prisoners has been the subject of investigations conducted by United Nations bodies or regional and other organizations concerned with the protection of human rights. The International Committee of the Red Cross has visited many political detainees as part of its statutory humanitarian task. The Netherlands Government is in favour of increased humanitarian supervision of the treatment accorded to political prisoners, while taking into account the special part played by the ICRC in this sphere. It also recommends that the obligation of applying to political prisoners fundamental
humanitarian norms, such as the prohibition of torture, be reaffirmed. In addition, special emphasis should be placed on the fact that the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in its resolution 663 C (XXIV) apply with equal force in respect of political prisoners.

4. **Incendiary weapons, including napalm**

The Netherlands Government agrees to the suggestion of the Secretary-General that experts undertake a study of the use of napalm and, in particular, of its effects on civilian populations, it being understood that such a study should be extended to include all incendiary weapons.

5. **The establishment of refuges or sanctuaries for the protection of civilians**

Though the principle of distinguishing between civilian populations and combatants finds general recognition in international law, the distinction appears difficult to maintain in actual situations of armed conflict, both from the functional and territorial points of view. This being the case, the Netherlands Government is appreciative of the Secretary-General's suggestion that civilian refuges or sanctuaries be established in peacetime as a means of extending and furthering the territorial separation of civilians and combatants.

The Netherlands Government doubt, however, whether the establishment of such refuges or sanctuaries would prove feasible, particularly in those countries whose small territory, high population density and intensive industrialization would present considerable practical problems. It would scarcely be possible to take this factor into account in over-all physical planning policies in addition to the many other factors, such as environmental conditions, which already have to be considered. A further doubt arises from the consideration that the establishment of refuges or sanctuaries may have as a consequence that civilians who are not sheltered in them might, during armed conflicts, receive less general protection than that to which they are entitled under international law.