



May 2, 2011

Patricia O'Brien
Under-Secretary-General for Legal Affairs and United Nations Legal Counsel
United Nations Headquarters
760 United Nations Plaza, Room No. M-13047
New York, NY 10017

By Fax (212.963.5528) and Mail

RE: Parsing the Disconnect Between UN Implementation of Security Council Resolutions and UN Enforcement of International Humanitarian Law

Dear Ms. O'Brien,

Let me introduce myself. I am the President of the Global Justice Center (GJC), a human rights legal organization whose mission is to advance a global, equality based rule of law, through the aggressive enforcement of human rights and humanitarian law.

One of the central priorities of the GJC is to ensure that all UN bodies, whether in the context of implementing Security Council resolutions, peacekeeping, or delivering humanitarian aid for victims of armed conflict, fully comport with applicable international humanitarian law (IHL). This is increasingly important because over the last fifteen years the Security Council has radically enhanced the role of the UN in the enforcement of IHL.

The Security Council's seismic shift in making "ensuring respect" for IHL central to its mandate has resulted in resolutions such as 1325, 1612, 1674, 1820, 1882, 1888, 1889 and 1960. These include, for example, calls for: (1) enhanced protections of civilians during armed conflict; (2) an absolute end to impunity for gross violations of international humanitarian law, including the use of rape as a weapon of war; and (3) affirmative measures to ensure non-discriminatory treatment of women under IHL.

These measures signal an enormous advance in the rule of law (on paper). The difficulties arise in UN implementation plans which you have the ability to influence through your legal expertise. Your mandate to contribute to the progressive development and codification of international public law gives you unique access to provide guidance to the UN on matters of the responsibility of international organizations and further the UN's role in IHL enforcement and compliance.

I agree totally with the points you so eloquently made about IHL enforcement in your Alpbach retreat speech in 2009, "The UN Security Council and the Protection of Civilians," including the statement that "some of the most powerful tools to ensure compliance with the law are to be found in the law itself." Ironically, it is precisely those tools that are routinely omitted from UN implementation plans.

Existing UN guidelines, monitoring and reporting on sexual violence against women fail to mention, much less seek to enforce, the immediate and absolute duties of states and of the UN, under IHL and the

customary laws of state responsibility, to take certain actions in response to gross violations of IHL by a state. No amount of UN reporting, “naming names,” or urging states to stop crimes, can substitute for the clear duties of states and the UN to take “all available measures” in response. This can include the collective sanction of non-recognition, obtaining compensation for victims, and utilizing referrals to the ICC as a mechanism to end impunity during conflicts and in post-conflict situations.

Further, states like Myanmar/Burma, where the UN has little or no access, remain outside the purview of UN monitoring and enforcement measures, despite repeated UN recognition of war crimes in the state, including the use of rape as a weapon of war. This turns IHL on its head. International law puts more, not less, responsibility on the global community to take aggressive action, such as ending impunity by means of a referral to the ICC, in face of ongoing war crimes in states with perpetrators who are impervious to any legal restraints.

UN agencies are being called upon in new ways to ensure that IHL obligations are addressed during conflicts and in post-conflict situations - ways that require familiarity with the non-derogable laws of war. This presents an incredible opportunity to advance the rights of women, children, and other civilians whose lives—and rights—are increasingly the targets during contemporary armed conflicts.

In order to pursue this matter further, I would like to request a meeting with you sometime this month. In particular, I would like to discuss with you some constructive ideas on how UN initiatives enforcing Security Council resolutions can “take all possible measures” to enforce clear existing IHL mandates, including the secondary obligations on states and the UN to aid victims of armed conflict, wherever they reside.

Attached is a copy of my letter to the Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict, Ms. Margot Wallström, in the context of her office’s implementation of SCR 1960. This letter outlines our increasing concerns that UN implementation of Security Council resolutions on women, peace and security has resulted in systems that weaken, not enhance existing IHL mandates. For example certain UN initiatives accord women victims of armed conflict fewer actual rights to accountability during conflict than they already have (on paper at least) as “protected persons” under IHL. I would love to discuss these issues with you in person and I would urge that your office weigh in on the critical issues discussed in the letter to Ms Wallström.

Thank you for your consideration of this matter. I look forward to meeting with you. Please do not hesitate to contact me at jbenshoof@globaljusticecenter.net or via phone at 917.601.6220.

Sincerely yours,



Janet Benshoof, President
Global Justice Center

Enclosures:

1. Letter to Margot Wallström from April 28, 2011.