



General Assembly

Sixty-fifth session

Official Records

Distr.: General
8 December 2010

Original: English

Sixth Committee

Summary record of the 13th meeting

Held at Headquarters, New York, on Monday, 18 October 2010, at 10 a.m.

Chairperson: Ms. Picco (Monaco)

later: Mr. Chull-joo Park (Vice-Chairperson) (Republic of Korea)

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Agenda item 82: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (*continued*)
(A/65/138 and Add.1)

1. **Mr. Delgado-Sánchez** (Cuba) reaffirmed Cuba's unreserved commitment to international humanitarian law and, in particular, the four Geneva Conventions and their Additional Protocols. In that context he said that Cuba was fundamentally opposed to endeavours by certain countries to reinterpret the rules established by those instruments with the aim of evading strict compliance with them. The ethical principles underpinning international humanitarian law were the same principles that united the international community in its quest for sustainable peace across the world and its efforts to combat international terrorism, transnational crime and other affronts against humanity. Consequently, the recourse by some States to armed conflicts as a pretext to set aside the legal precepts of international humanitarian law only paved the way to the further proliferation of such conflicts and the spread of international terrorism and transnational crime.

2. At the current time, it was more important than ever to strengthen the regime governing armed conflicts by promoting its universal acceptance and, to that end, he called on the United Nations to ensure respect for the rules on the protection of civilians in armed conflicts. Lastly, he reviewed Cuba's efforts to raise awareness of international humanitarian law and to conduct training in that area, in particular among the country's armed forces and other State agencies, and also its contribution to such training activities in other countries of the region.

3. **Ms. Gonzenbach** (Switzerland) said that there were three challenges associated with modern armed conflicts. The first was securing and maintaining humanitarian access to areas of armed conflict, which was becoming increasingly difficult. In 2009, Switzerland had initiated a project to develop practical tools to facilitate such access.

4. The growing role of non-state actors posed a second challenge, as war became increasingly privatized on the part of both governments and rebels. An analysis of private military and security companies indicated that they did not differ fundamentally from other actors and that they too were subject to international humanitarian law. To date thirty-five

States had expressed support for the Montreux Document, a text on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, which was the result of a joint initiative by Switzerland and the International Committee of the Red Cross (ICRC). In addition, Switzerland had encouraged the military industry to conclude a global code of conduct which would be signed in November 2010 in Geneva.

5. The third challenge was ensuring the protection of civilians. Battles were no longer being fought on isolated battlefields but instead in areas frequented by civilian populations. An analysis of international law had shown that the failure to implement existing provisions was the main cause, and a national body had been established in late 2009 to remedy that situation.

6. Pointing out that the services of the International Humanitarian Fact-Finding Commission were available to States, she called on all States parties to Protocol I to recognize the competence of the Commission by means of a notification to the depositary. She also welcomed the decision of the Security Council in resolution 1894 (2009) to consider the possibility of using those services.

7. On the occasion of the sixtieth anniversary of the Geneva Conventions in 2009, Switzerland and the ICRC had organized a conference of experts to discuss the future of international humanitarian law, where Switzerland had expressed its willingness to advance the debate. One possibility of so doing would be in the form of periodic meetings.

8. **Ms. Sidek** (Malaysia) said that, while achieving universal adherence to the Geneva Conventions of 1949 and Protocols I and II would be significant, true inroads against impunity for breaches of international humanitarian law, as codified in those documents and customary international law, could be achieved only if the international community stood firm and acted decisively in response.

9. That had been amply demonstrated in the case of the attacks by the Israel Defense Forces on the *Mavi Marmara* and five accompanying vessels in May 2010. Global condemnation of the unprovoked and disproportionate use of armed force against unarmed civilian vessels carrying humanitarian aid had led promptly to the establishment by the Human Rights Council of an international fact-finding mission and by

the Secretary-General of a panel of inquiry. Malaysia looked forward to an elucidation of the facts by the mission and the panel as a basis for an in-depth legal analysis into possible breaches of international humanitarian law arising from the maintenance of the maritime blockade off the coast of Gaza and the May 2010 attacks.

10. The laws of naval warfare incorporated the fundamental principles of international humanitarian law, including necessity and proportionality, which were reflected in such widely used references as the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*. The passengers and crew of the *Mavi Marmara* and its accompanying vessels were also entitled to the protection accorded under the Fourth Geneva Convention and the indiscriminate attacks against them needed to be considered a serious violation of international humanitarian law.

11. Under the established laws of naval blockade, a blockade was prohibited if its sole purpose was to starve the civilian population or to deny that population other objects essential for survival, if the damage was excessive in relation to the anticipated military advantage, or if it was used to prevent the free passage of relief consignments. According to the Helsinki Principles on the Law of Maritime Neutrality, parties to the conflict were required to give due regard to the exercise of the freedom of the high seas by neutral States. Naval forces were also under an obligation to distinguish between civilians and combatants and between civilian and military objectives and limit attacks to military objectives. Clear justification needed to be provided for unprovoked attacks on neutral vessels. Measures short of attack, such as interception, and search, were advocated, while the use of force should be the last resort. Where vessels were captured, the protections provided in the Second and Fourth Geneva Conventions of 1949 and Protocol I continued to apply to the persons on board the vessels.

12. At the domestic level, Malaysia remained committed to ensuring respect and adherence to international humanitarian law. A national committee served as the focal point for the effective implementation of international humanitarian law in Malaysia. The Attorney-General's Chambers was working with ICRC to develop a comprehensive legal framework for the implementation of the Geneva Conventions, in particular the criminalization of grave breaches of the Conventions and other serious

international crimes, and to organize five workshops to disseminate knowledge of international humanitarian law at the inter-agency level, in order for relevant officials to understand their roles in the implementation of international humanitarian law. The Malaysian Ministry of Education, together with ICRC, had incorporated international humanitarian law into the secondary school curriculum.

13. **Mr. Nickles** (United States of America) said that his country was deeply committed to the advancement of international humanitarian law. Where force was necessary, there was a moral and strategic interest in being bound by certain rules of conduct, and his country believed that it must remain a standard-bearer in the conduct of war. As a matter of law, individuals detained by the United States during armed conflict had to be treated humanely. A strong partnership existed between the armed forces and the civilian leadership in their commitment to fulfilling and implementing the common article 3 prohibitions on torture, and on cruel, inhuman and degrading treatment.

14. His country had signed Protocols I and II to the 1949 Geneva Conventions but had not ratified either one. While it continued to have significant concerns about many aspects of Protocol I, it had followed the provisions of the Protocol in certain circumstances in which coalition partners were States parties and the United States was convinced that those provisions reflected its law and practice. Protocol II had been submitted to the United States Senate in 1987 and was still awaiting ratification.

15. In furtherance of its commitment to the Geneva Conventions, his Government had recently taken a number of actions to ensure compliance with humane treatment standards. Thus it had instructed Government personnel to conduct all interrogations in accordance with the United States Army Field Manual, it was working with Congress to reform the law governing military commissions, including barring the admissibility of statements obtained through the use of cruel, inhuman and degrading treatment, and it was providing the detainees held by the United States in Afghanistan with assistance in navigating the detention review process.

16. His Government had reaffirmed its commitment to the development and implementation of international humanitarian law by becoming a party to the 1954

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. A long-time party to the Convention on Certain Conventional Weapons, the United States was now also a party to all its protocols. It remained committed to negotiating a legally binding protocol on cluster munitions within the Convention's framework.

17. **Ms. Taratukhina** (Russian Federation) said that her country was committed to the norms and principles of the Protocols Additional to the Geneva Conventions of 1949 and considered them a very important source of international humanitarian law. It called on all States that were not parties to the Protocols to revisit the matter of adhering to them.

18. Stressing the great potential of the Protocols in protecting vulnerable population categories in situations of armed conflict, she noted that the International Fact-Finding Commission established pursuant to article 90 of Protocol I was an undervalued body which could make useful contributions to post-conflict situations. Further, article 7 of the same Protocol provided for the convening of meetings to consider general problems concerning the application of the Conventions and the Protocol.

19. States bore the primary responsibility for ensuring the observance of international humanitarian law. Accordingly, the Russian Federation had incorporated the latest changes in the field of international humanitarian law and the newest practical experience in crisis management into the instructions provided to its armed forces. It had continued to disseminate knowledge of international humanitarian law in the military through training programmes, curriculum development at universities associated with the Ministry of Defence and training of international humanitarian law instructors and experts. Programmes teaching that branch of law to personnel of the Ministry of Internal Affairs and the Ministry of Emergency Situations were being developed and elective courses on it were available at universities and were in great demand.

20. **Ms. Donsky** (Australia) said that the Protocols Additional to the Geneva Conventions of 1949 played a crucial role in strengthening the existing body of international humanitarian law, extended crucial protections to civilians in a broader range of conflicts and imposed constraints on the way in which military operations could be conducted. Her country welcomed

the entry into force of Protocol III, which provided for an additional protective emblem for humanitarian workers free from any religious or political connotation, and called on all States to become parties to the three Protocols.

21. Australia was a strong supporter of the objectives of the Convention on Cluster Munitions and had provided support to countries affected by cluster munitions under its Mine Action Strategy. It was firmly committed to the aims and objectives of the International Criminal Court and had pledged funds to the Court's Trust Fund for Victims. It regarded ICRC as the guardian of international humanitarian law and welcomed the latter's close collaboration with States in tackling future challenges in armed conflict.

22. **Mr. Adi** (Syrian Arab Republic) said that one of the extraordinary paradoxes of recent decades was that, notwithstanding the development of international humanitarian law, the suffering of civilians in conflict had increased. Stressing the basis for the universality attained by the Geneva Conventions, he outlined the Islamic and European roles played in the centuries-long process that had culminated in the codification of international humanitarian law for the protection of civilians and their property in time of war. The outcome of the international efforts on that score was applicable to the weak and powerful alike, to peoples under occupation and to occupiers.

23. Israel, however, had no scruples about violating international humanitarian law. Since its establishment in 1948, its policy had been to target civilians and infrastructure, replace inhabitants with foreign settlers and destroy places of worship and historic monuments. In addition, it had constructed the apartheid wall in the occupied Palestinian territories and, during its aggressive wars, tortured prisoners and killed or buried alive wounded soldiers. The United Nations Fact-Finding Mission on the Gaza Conflict was but one among numerous United Nations entities to have reported irrefutable evidence of Israel's gross violations of the Charter of the United Nations and international humanitarian law during its ruthless Gaza incursion, violations that were tantamount to war crimes, if not crimes against humanity. For reasons unknown, the Mission's recommendation for the States parties to the Geneva Conventions to meet and discuss those violations had not yet been implemented. What scale did violations of the Geneva Conventions need to reach in order for that to happen?

24. The breaches of the most fundamental principles of international humanitarian law that Israel committed with impunity attested not only to the brutality of its occupation and leadership but also to the feebleness of international efforts to address and end such breaches. Given that continuing impotence, the Israeli occupying forces persistently failed to comply with international legitimacy, as demonstrated by, inter alia, their adamant pursuit of settlement, the blockade of Gaza, the attack on a Turkish humanitarian flotilla in international waters and the shelling of United Nations premises. In an open show of rebellion against the progress achieved in international humanitarian law, Israel was turning back the clock with its condition of the “Jewishness of the State”, a preliminary to yet more racial cleansing and collective punishment — offences which Israel could apparently commit with impunity.

25. In the occupied Syrian Golan, Israel employed the same methods of intimidation and aggression: destroying villages home to thousands of Syrian citizens to make way for illegal settlements, altering the demography, polluting the environment with the burial of nuclear waste and preventing citizens’ access to Syrian natural resources. In the worst of precedents, it had reserved its most lethal munitions for southern Lebanon, on which it had intentionally dropped over one million cluster bombs only two days before hostilities had ceased. The critical test now facing the regime of international humanitarian law, including the Human Rights Council and other human rights bodies of the United Nations, was to establish its capacity for enforcement of the Geneva Conventions and their Additional Protocols.

26. **Mr. Charles** (Trinidad and Tobago) said that his country had become a party to Protocols I and II in July 2001 and it had made a declaration to accept the competence of the International Fact-Finding Commission. It welcomed the General Assembly’s decision to grant observer status to the Commission.

27. To ensure the application of the Protocols, his country had established an inter-ministerial committee charged with promoting respect for and understanding of humanitarian law among military servicemen, members of the police force and students at secondary and tertiary education institutions. That committee was also responsible for examining other humanitarian law treaties with a view to recommending them for ratification. In another step to promote adherence to

international humanitarian law, measures had been put in place for his country to ratify the Cluster Munitions Convention.

28. The Geneva Conventions and their Additional Protocols were an important addition to international humanitarian law. The principles enshrined in them had been supplemented and elaborated ever since their adoption, including by the International Criminal Court. The decision taken at the Review Conference of the Rome Statute of the International Criminal Court to add new war crimes was testimony to the commitment of States parties to prosecute grave breaches of international humanitarian law.

29. Given the paucity of State responses to resolution 63/125, a template identifying the most relevant information to be submitted should be developed. States and the Secretariat might seek support from ICRC in developing guidelines on the subject, and appropriate language should be included in the current draft resolution.

30. *Mr. Chull-joo Park (Republic of Korea), Vice-Chairperson, took the Chair.*

31. **Ms. Blum** (Colombia) said that Colombia was a party to the four Geneva Conventions of 1949 and to Protocols I and II. It was in the process of ratifying Protocol III. In addition, her Government had recently submitted its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which it was a party.

32. At the national level, Colombia had adopted a human rights education plan, which included training on international humanitarian law instruments. The Ministry of Defence continued to implement a comprehensive policy on human rights and international humanitarian law; in cases of infringement, her Government had applied sanctions strictly in accordance with the rule of law. Training in human rights and international humanitarian law for the Colombian armed forces was internationally recognized, including by ICRC, and a standard teaching module had been introduced to ensure respect for the applicable legal frameworks in operational decision-making. In 2009, Colombia had published an operational law handbook, based in part on ICRC recommendations, which gave the armed forces the necessary tools to ensure legality of the operations and set out guidelines for determining the appropriate use

of force when dealing with threats in different environments. Her Government was also developing a reparation programme to benefit victims of violence by illegal armed groups, and the President had recently introduced a bill on the compensation of victims in the Colombian Congress.

33. International cooperation enabled States to better comply with their obligations under international humanitarian law instruments. Colombia fully supported the work of international bodies with specific mandates to monitor and evaluate the implementation of international law norms.

34. **Mr. Appreku** (Ghana) said that his country was a party to a number of treaties that promoted respect for human rights and humanitarian law, including the Convention on Cluster Munitions and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Ghana had become a party to the Geneva Conventions of 1949, one year after gaining its independence, and in 2009 had adopted a legislative act incorporating those instruments and Protocols I and II into domestic law.

35. The Act was binding and provided for jurisdiction over all persons who committed grave breaches of international humanitarian law, including wilful killing, torture, causing serious injury or extensive destruction, and the appropriation of property not justified by military necessity. The Act also provided for subsidiary legislation to ensure the proper identification of persons and places to be protected and the upholding of both fundamental and procedural guarantees during armed conflict as well as to prescribe the form of flags, emblems and military insignia. In conclusion, he acknowledged the assistance provided by ICRC with the work of incorporating the Protocols into domestic law.

36. **Ms. Schonmann** (Israel) said that, as a democratic State, Israel was committed to upholding the tenets of international law, even in respect of its most implacable enemies — terrorists who themselves blatantly flouted that law. Israel's commitment to international humanitarian law was demonstrated by the legal scrutiny to which it subjected all military operations, both before and during the conduct of hostilities, its openness to the conduct of independent investigations into alleged violations of the laws of war, its willingness to share the findings of such investigations with the international community and

the prompt judicial review carried out by its independent judicial system.

37. Recognizing the responsibility borne by the United Nations in promoting compliance with humanitarian norms and principles and commending, in particular, ICRC on its outstanding work in that area, she expressed regret that one of the leading United Nations human rights bodies — the Human Rights Council — had repeatedly betrayed that responsibility by choosing to ignore human rights violations across the world while obsessively challenging the legitimacy of the Israeli State. In that context she deplored the one-sided and politically motivated findings of the United Nations Fact-Finding Mission on the Gaza Conflict, which lacked all credibility and had understandably been rejected by many States.

38. It was unfortunate that certain countries had chosen to exploit the current session to pursue a narrow political agenda unrelated to the promotion of international law. While she chose to refrain from responding to the unfounded allegations made against her country, she noted that its most vocal critics were themselves serial violators of human rights and deplored what she termed their “deafening silence” in response to terrorist attacks against Israeli citizens. In conclusion, she called upon the Committee to remain a dignified forum for the exchange of legal views and to avoid the partisan and degrading language that had been bandied about at the current session.

39. **Mr. Sharifov** (Azerbaijan) said that, though not yet a party to the Protocols Additional to the Geneva Conventions of 1949, his country espoused the principles and norms of international humanitarian law. Owing to its own practical experience with the impact of armed conflict on civilian populations, it was particularly interested in the issues of missing persons, especially children, and the release of women and children taken hostage. Citing paragraph 4 of the report of the Secretary-General on the protection of civilians in armed conflict (S/2009/277), he noted that actions on the ground had not yet matched progress in the development of international norms and standards to protect civilians, including women and children, in situations of armed conflict. Further efforts to strengthen such protection must be an absolute priority for the United Nations.

40. Particular consideration must be given to the impact on the protection of civilians of population displacement, foreign military occupation and attempts to change the demographic balance in occupied territories. United Nations bodies, including the Security Council, must accord greater attention to the practical implementation of the right to return, by which the gains of ethnic cleansing could be categorically rejected and an important measure of justice provided to those displaced from their homes.

41. Accountability for violations of international humanitarian law and human rights law must be ensured for both individual perpetrators and parties to conflict. Ending impunity was essential in the interests not only of establishing individual criminal responsibility for serious crimes but also of achieving sustainable peace and reconciliation and ensuring redress for victims.

42. **Mr. Mwanyula** (Malawi) stressed the importance of respect for international humanitarian law in armed conflicts and, in particular, compliance with the provisions of the Additional Protocols by all parties to conflicts. In that context, he observed that the 1949 Geneva Conventions and Protocols I and II were all part and parcel of the laws of Malawi. In addition, Malawi had taken comprehensive measures to incorporate international humanitarian law into the curriculum and training of its military personnel and had designated such law as a core subject at all levels of the curriculum of its new Centre for Security Studies at Mzuzu University.

43. Malawi's commitment to the promotion of international humanitarian law was demonstrated by its ratification in September 2009 of the Convention on Cluster Munitions and the progress that it had made towards incorporating the Ottawa Convention on Antipersonnel Landmines into its domestic law. Lastly, he reiterated his country's readiness to cooperate with ICRC and the Red Cross societies of other countries in the dissemination and implementation of international humanitarian law at both national and international levels.

44. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that his country, which had suffered heavily from the effects of military aggression, fully recognized the indispensable role of international humanitarian law and, in particular, the provisions of the four Geneva Conventions in minimizing the

negative impact of armed conflicts. While the adoption of the Geneva Conventions was universally recognized as one of the great achievements of civilization, much remained to ensure the full implementation of their provisions.

45. In that context, he conveyed his country's view that accountability for breaches of the Conventions was essential to ensuring respect for their provisions and drew attention to serious violations of international humanitarian law in his region, in particular, in the Occupied Palestinian Territory, where the occupying regime was openly flouting the Conventions in its military aggression against the population, targeting schools, hospitals and even United Nations premises. In addition, that same regime's inhumane blockade of Gaza continued to inflict suffering on the innocent population of the region, and his delegation highlighted the importance of following up the findings of the United Nations Fact-Finding Mission on the Gaza Conflict and the recommendations of the General Assembly in resolutions 64/10 of 5 November 2009 and 64/254 of 26 February 2010. Serious consideration should also be given to the report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance (A/HRC/15/21), submitted to the Human Rights Council at its fifteenth session.

46. He reaffirmed the support by the Islamic Republic of Iran for the definitive prohibition of the production, stockpiling and use of all weapons of mass destruction and deplored the fact that certain countries continued to maintain and improve their nuclear arsenals, the worst category of such weapons.

47. Lastly, he reviewed the extensive efforts mounted by the Islamic Republic of Iran to promote and disseminate knowledge of international humanitarian law, including among the armed forces, and, in that context, also conveyed his delegation's commendation of the outstanding contribution by ICRC to the cause of international humanitarian law.

48. **Mr. Umana** (Nigeria) said that his country had ratified the Geneva Conventions and signed Protocols I and II. Throughout 50 years of involvement in peacekeeping operations, its military had been guided by the fundamental principles enshrined in international humanitarian law, which had been largely integrated

into training programmes for officers and soldiers. The Nigerian military also adhered to the *Guidelines for United Nations forces regarding respect for international humanitarian law*, prepared by ICRC, with which it worked in close collaboration. Nigeria was furthermore a signatory to the new Convention on Cluster Munitions and a High Contracting Party to 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.

49. Situations in which civilian populations, particularly in Africa, had witnessed gross violations of the Geneva Conventions and Protocols I and II were abhorrent. In the belief that more should be done to ensure the protection of civilians, especially women and children, Nigeria had signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

50. **Ms. Loza** (Nicaragua) said that her country was fully committed to international humanitarian law, in evidence of which she cited the existence and operation, since 1999, of a national commission entrusted with ensuring the promotion and application of such law and the conduct of associated training and awareness-raising activities. In addition, an entire chapter on offences against the international order had been added to the country's new criminal code, covering war crimes and other serious violations of international humanitarian law. Nicaragua had also adopted a military criminal code, covering, among other areas, offences identified by the Geneva Conventions. In that context she expressed her delegation's appreciation for the work of ICRC and its support for the idea of developing a procedure to guide States and the Secretariat in its work.

51. Turning to the issue of the laws of war, she observed that modern armed conflicts were no longer a matter of clashes between conventional armies but were increasingly characterized by methods of warfare that were unacceptable in terms of ethics, legality and human rights. Added to which, the vast military budgets of certain countries, which exceeded their expenditure on social welfare, took the issue of military preparations beyond the strictly legal domain, raising essentially ethical issues and posing a threat to human survival itself. Accordingly, Nicaragua not only campaigned for total and complete disarmament, including conventional weapons of mass destruction,

but also fervently advocated the settlement of disputes through peaceful means.

52. **Mr. Young** (Observer for the International Committee of the Red Cross (ICRC)) welcomed the sustained progress in accession of States to the Additional Protocols, which constituted the very foundation of international humanitarian law, and urged States which had not yet done so to ratify the Protocols as soon as possible with a view to enhancing the protection of victims of armed conflict wherever they might be. The recent adoption and entry into force of the Convention on Cluster Munitions illustrated the adaptability of international humanitarian law to the practical realities on the ground.

53. A comprehensive study conducted by ICRC over two years had concluded that there were four areas of particular concern with respect to the current state of international humanitarian law: the protection of persons deprived of liberty, especially in non-international armed conflicts; control mechanisms to ensure respect for international humanitarian law and reparations to victims of violations; the protection of internally displaced persons; and the protection of the natural environment. ICRC invited States and other interested parties to engage in a dialogue on the follow-up to those conclusions.

54. Having witnessed how the increasing involvement of civilians in military operations blurred the distinction between legitimate military targets and persons who must be protected against military attack, ICRC had recently published interpretive guidance on direct participation in hostilities. While not legally binding, it could be used by States, non-State armed groups, practitioners and academics to help protect the civilian population from the dangers of warfare. A similar initiative was the 2008 Montreux Document, which reaffirmed the obligation of States to ensure that private military and security companies operating in armed conflicts complied with international humanitarian and human rights law.

55. Humanitarian law could only meet its objective of protecting victims of armed conflict when there was a political will to apply it: lack of respect for its rules was the principal cause of suffering during armed conflicts. Under various treaties, States had the obligation to harmonize their domestic legal framework and practice with humanitarian law. States parties to Protocol I Additional to the Geneva

Conventions should make the declaration under its article 90 and, where appropriate, use the services of the International Humanitarian Fact-Finding Commission. Lastly, the greatest possible number of States should submit reports in accordance with General Assembly resolution 63/125.

56. **Ms. Campbell** (Observer for the International Humanitarian Fact-Finding Commission) said that, as an impartial body for the investigation of alleged violations of international humanitarian law, the Commission needed a specific mandate from the parties to a conflict or a competent United Nations organ. The General Assembly had repeatedly asked States to make use of the Commission's services in appropriate cases, and the Security Council, in its resolution 1894 (2009), had indicated its intention to consider making use of the Commission.

57. Fact-finding was an indispensable ingredient in modern crisis management, particularly in situations of armed conflict, but when more than one fact-finding mission had been established in relation to the same event, the mandates and findings had sometimes lacked consistency and created controversy. Coherence could be strengthened if the competent treaty body was tasked with undertaking the necessary inquiry for any allegation of violations of international humanitarian law.

Agenda item 83: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/65/112 and Add.1)

58. **Mr. Janssens de Bisthoven** (Belgium), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that the European Union was deeply concerned by continuing attacks on diplomatic and consular missions and their staff, as evidenced by the Secretary-General's report (A/65/112). It condemned in the strongest possible terms any attacks that deliberately targeted diplomatic and consular missions and representatives of international organizations, for which the punishment must be extremely severe and against which Member States must take all possible measures. If such attacks nevertheless took place,

energetic investigation and prosecution must follow, and to that end a dialogue should be established between Member States and diplomatic missions accredited in their territories. The reporting process outlined in General Assembly resolution 63/126 should be adopted by Member States, as it would facilitate the exchange of information and consciousness-raising, something that could help to prevent future attacks against diplomatic and consular missions.

59. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries, noted that the obligation to protect foreign emissaries had long been part of the legal systems of all cultures. Today, however, such protection must also be extended to representatives of international and intergovernmental organizations. Historically speaking, the underlying principle of diplomatic and consular protection had been to secure the channels of communication between States, yet that in no way detracted from the obligation of diplomatic and consular representatives to observe the laws and regulations of the receiving State.

60. Acts of violence against diplomatic and consular missions or representatives of international or intergovernmental organizations must not go unpunished: hence the need for close cooperation and information-sharing among countries. Welcoming the fact that four new States had become participants in the instruments pertaining to the protection, security and safety of diplomatic and consular missions and representatives, the Nordic countries appealed to all States that had not yet done so to do the same. The reporting procedures outlined in General Assembly resolution 63/126 should be adhered to in order to raise awareness worldwide about violations of the safety and security of diplomatic and consular premises and personnel.

61. **Ms. Zhou Lulu** (China) noted that diplomatic and consular missions and their personnel shouldered the important responsibility of promoting interchange among States and played a vital role in maintaining normal international relations. The continuing attacks against missions and their personnel were regrettable and were condemned by China.

62. According to the Vienna Conventions on Diplomatic Relations and on Consular Relations, the foremost responsibility of the receiving State was the responsibility to protect. It must take preventive measures and promote the exchange of information to

forestall acts that might compromise the safety and security of diplomatic and consular personnel. It must criminalize harmful acts against diplomatic and consular missions and their personnel under its domestic law and establish and improve its system for investigation and prosecution of such acts to ensure that their perpetrators were duly punished. Lastly, it must be held duly accountable for failing to fulfil its obligations, especially that of prevention, under the two Conventions just cited.

63. **Mr. Delgado-Sánchez** (Cuba), after unequivocally condemning the continued encroachments on the safety of diplomatic missions and their staff, noted that Cuba's Permanent Mission to the United Nations had itself been the target of numerous attacks which had jeopardized the safety of its staff. He called on all States to comply with their obligations under the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and outlined the legislative and other measures taken by Cuba to punish and prevent such offences and to ensure that all diplomats in that country enjoyed a calm and safe climate for the performance of their functions. In conclusion, he expressed support for the maintenance of the item on the Committee's agenda, for consideration on a biennial basis.

64. **Mr. Cheah** (Malaysia) said that his country had always emphasized the responsibility of host countries to accord appropriate safety and protection to diplomatic and consular missions and their representatives. During the past year, it had fortunately been able to rely on the host countries to provide the necessary assistance to its diplomats and staff in the two of its missions at which incidents had occurred. In each case, the matter had been satisfactorily settled through bilateral discussions in a spirit of goodwill and cooperation without the need for intervention by the international community.

65. For its part, the Malaysian Government reiterated its commitment to safeguarding in its territory the security and safety of diplomatic and consular missions and representatives, as well as of missions and representatives with diplomatic status to international intergovernmental organizations. It would continue to deploy its best efforts to provide the necessary

protection for that purpose and to ensure that any violations were dealt with in accordance with its laws.

66. **Ms. Al Hell** (Qatar) said that, in addition to relevant international conventions, constructive cooperation and mutual respect were fundamental to the facilitation of good relations among States. The security of diplomatic and consular representatives, together with that of their families and property, was key to the successful performance of their functions. It was therefore vital to consider ways of addressing and preventing any potential threats.

67. Qatar condemned all acts of violence against diplomatic and consular representatives and missions and was concerned by failures to respect their inviolability. It would be helpful if more States were to submit information and views on the subject of diplomatic and consular protection, and security. Qatar, which had ratified all the international instruments listed in part IV of the report (A/65/112) and had adopted all necessary measures and arrangements to ensure the safety of missions and their personnel, was pleased to say that no violations of that safety had occurred on its territory during the reporting period. States were duty-bound to take all appropriate safety and protection measures under international law and to bring criminal perpetrators to justice. Her hope was that the Committee's ongoing consultations on the current item would produce effective recommendations for stabilizing and strengthening amicable relations and cooperation among States.

Agenda item 84: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
(A/65/33, A/65/214 and A/65/217)

68. **Mr. Sorreta** (Philippines), Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, introducing the report of the Committee (A/65/33) on its 2010 session, said that the issues debated by the Committee had included implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions; the strengthening of certain principles concerning the impact and the application of sanctions; the strengthening of the role of the Organization; a request for an advisory opinion of the International Court of Justice; and the working methods of the Committee.

69. The Committee had agreed on recommendations, set out in paragraph 45 of its report, on the basis of its consideration of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. The Committee had also discussed two new proposals entitled, respectively, “Principles and practical measures/mechanism for strengthening and ensuring more effective cooperation between the United Nations and regional organizations on the maintenance of international peace and security in areas of conflict prevention and resolution and post-conflict peacebuilding and peacekeeping, consistent with Chapter VIII of the Charter of the United Nations” and “Special mechanism for the study on the functional relationship of the General Assembly, the Economic and Social Council, with the Security Council”.

70. **Mr. Mikulka** (Secretary of the Committee), speaking as the Director of the Codification Division and summarizing the progress made on publication of the *Repertory*, said that an updated chart had been distributed showing the status of the *Repertory*. In 2010, volume IV of Supplement No. 9 had been finalized and submitted for translation and publication. Additional studies relating to volume II of Supplements Nos. 7, 8 and 9 and volume VI of Supplement No. 9 had been completed. In all, 28 volumes had been published, 8 had been finalized and submitted for translation and publication, and 14 had still to be completed, 11 of which were at different stages of preparation. No study had been produced for volume III of Supplements Nos. 7 to 10.

71. Furthermore, work had begun on Supplement No. 10, which covered the period from 2000 to 2009. In the light of the experience acquired through the preparation of previous Supplements, it had been decided that the extension of the time period to 10 years would allow for further streamlining of the studies and would increase the usefulness of the *Repertory* for Member States, academics and practitioners, by bringing the studies closer to the present time. A total of 11 studies had been completed and several others were in preparation.

72. Studies from 37 completed volumes and studies on individual Articles of the Charter were available on the United Nations website for the *Repertory*. Three studies, on Articles 2 and 62 of the Charter, intended for volumes I and IV of Supplement No. 10, had been completed through cooperation with Columbia

University Law School. A group of students was currently involved in the preparation of four other studies to be included in volume IV of Supplement No. 10. Continued collaboration with French-speaking academic institutions had led to the completion of three additional studies for volume II of Supplement No. 9 and one additional study for volume VI of Supplement No. 9. Cooperation with academic institutions had been extended to the University of Ottawa and a team of advanced students supervised by a law professor was currently working on a number of studies pertaining to volumes I and II of Supplement No. 10. While the Secretariat intended to continue involving academic institutions in the preparation of *Repertory* studies, the Secretariat bore the ultimate responsibility for the quality and final preparation of all the studies.

73. A note verbale had been sent to all permanent missions to the United Nations, reminding them of the appeal by the General Assembly for voluntary contributions to the trust fund established pursuant to resolution 59/44, in order to eliminate the backlog in the *Repertory*. Contributions had been received over the past year from the Governments of Chile, Luxembourg and Turkey. The amount currently available in the trust fund was approximately \$58,000. Some of the available funds had financed the work of two consultants in connection with the production of three studies for inclusion in volume II of Supplements Nos. 7, 8 and 9, making it possible to complete volume II of Supplement No. 7, which would soon be submitted for translation and publication. It was expected that the completion, within a few months, of the two remaining studies would enable the Secretariat to finalize volume II of Supplements Nos. 8 and 9 as well.

74. **Mr. Boventer** (Security Council Practices and Charter Research Branch, Department of Political Affairs), updating the Committee on the status of the *Repertoire*, said that the Branch had been working simultaneously on the preparation of the fourteenth and fifteenth Supplements, covering the period from 2000 to 2007, and the sixteenth Supplement, covering the years 2008 and 2009. It had also laid the groundwork for preparing the seventeenth Supplement, which would cover the years 2010 and 2011.

75. The fourteenth Supplement (2000-2003), had been completed and was available in the advance version on the *Repertoire* website. All the procedural and constitutional chapters of the fifteenth Supplement

had also been completed and were available in the advance version on the *Repertoire* website. Most of the sections from the final chapter in that Supplement, providing a chronological record of the Security Council's consideration of items on its agenda, had also been posted, and the rest of the chapter would be completed by the end of the year.

76. The first studies from the sixteenth Supplement were expected to be posted shortly, partly as a result of the efficiency-enhancing initiatives implemented since 2007. The Branch had also been laying the groundwork for preparation of the seventeenth Supplement (2010-2011) by tracking and recording the most recent practice of the Security Council in internal databases.

77. The eleventh Supplement (1989-1992) was currently accessible in all the official languages, with the exception of Arabic, which was to be printed the following week. The twelfth Supplement (1993-1999) was expected to be published in English by the end of the year, with the other languages to follow, and it was hoped that the English version of the thirteenth Supplement would be available by the end of 2011. The Branch continued to work with the Department for General Assembly and Conference Management to further shorten the time lag between the completion of a Supplement and its publication in all six official languages.

78. New chapters and case studies were regularly being posted on the *Repertoire* website, which was being completely redesigned to allow quicker access to information and enable users to access data more readily across different periods and Supplements. The overhauled website should be available in a beta version in English by the end of 2010. The Branch continued to receive a significant number of requests via the *Repertoire* website for information about the practice of the Security Council and had recently set up a dedicated e-mail account to process such queries.

79. He expressed gratitude to those Member States which had supported the work of the Branch by contributing to the trust fund for the updating of the *Repertoire*, including the Congo, Ireland, the Libyan Arab Jamahiriya, Luxembourg, Mexico, Singapore and Turkey. The Secretariat was also grateful to Germany and Norway for their sponsorship of associate experts.

80. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) expressed concern at the lack of progress made with regard to volume III of Supplements Nos. 7 to 10

of the *Repertory* and enquired as to the Secretariat's plans to address that backlog.

81. **Mr. Mikulka** (Secretary of the Committee) said it was indeed his understanding that no studies had been undertaken with regard to volume III of Supplements Nos. 7 to 10.

82. **Mr. Boventer** (Security Council Practices and Charter Research Branch, Department of Political Affairs) said that while the Branch was aware of the backlog in question, the decision had been taken some years ago by the then Under-Secretary-General for Political Affairs that, given the paucity of the resources available, attention should focus on advancing the *Repertoire*.

The meeting rose at 1.05 p.m.