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Fundamental standards of humanity

Report of the Secretary-General**

* Reissued for technical reasons.

** The present report is submitted late so as to include as much up-to-date information as possible.

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Summary

The present report is submitted pursuant to Human Rights Council decision 2/102 of 6 October 2006, requesting the Secretary-General to "continue with the fulfilment of [his] activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". The present update outlines the progress achieved on the issue of fundamental standards of humanity since the last report to the Commission on Human Rights (E/CN.4/2006/87).

Reports of the Secretary-General on fundamental standards of humanity aim at outlining issues related to securing the practical protection of all individuals in all circumstances and by all actors. Further to the publication of the 2005 Customary International Humanitarian Law study prepared by the International Committee of the Red Cross, the following developments since 2006, inter alia, have contributed to securing the practical respect for existing international human rights and humanitarian law standards in all circumstances and by all actors. The General Assembly adopted the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as well as the International Convention for the Protection of All Persons from Enforced Disappearance and opened it for signature, ratification and accession. The ongoing work of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda has elaborated on the nature and elements of certain war crimes, of genocide and of crimes against humanity.

The work of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia represent a step further into incorporating standards of humanity into the work of hybrid courts. The International Court of Justice, in its decision of 26 February 2007 in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* provided further clarification as to the interpretation of the scope and of certain key notions of the Convention on the Prevention and Punishment of the Crime of Genocide. This decision further clarified the interpretation of the term "ethnic cleansing" and its significance in international law within the scope of crimes against humanity, genocide and war crimes in the context of the responsibility to protect. Finally, the commencement of operations of the International Criminal Court also contributed to efforts to securing the protection of victims and achieving accountability for serious violations of international humanitarian and human rights law.

To build on this substantial progress, the Human Rights Council may wish to keep itself informed of relevant developments, including further international and regional case law, which contribute to the interpretation of existing standards.

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Introduction

1. The present report is submitted pursuant to Human Rights Council decision 2/102 of 6 October 2006, requesting the Secretary-General to "continue with the fulfilment of [his] activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". Previous decisions and resolutions of the Commission on Human Rights have requested the Secretary-General to submit analytical reports covering relevant developments on the issue of fundamental standards of humanity.[1] In this context, this report aims to cover relevant developments on the issue of fundamental standards of humanity, since the most recent analytical report of the Secretary-General, submitted to the Commission on Human Rights on 3 March 2006 (E/CN.4/2006/87). The comments and advice of the International Committee of the Red Cross (ICRC) in the preparation of this report are gratefully acknowledged.

I. OVERVIEW OF FUNDAMENTAL STANDARDS OF HUMANITY

2. The need to identify fundamental standards of humanity initially arose from the premise that most often situations of internal violence pose a particular threat to human dignity and freedom.[2] Previous reports[3] observed that, while there is no apparent need to develop new standards, there is a need to secure practical respect for existing international human rights and humanitarian law standards in all circumstances and by all actors. Progress already achieved in this regard is largely based on the increasingly recognized interplay between international human rights law, international humanitarian law, international criminal law, international refugee law and other bodies of law that may be relevant.

3. During the period from 1998 to 2003, the following developments have contributed to the interpretation and application of the relevant standards: (a) ongoing work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda; (b) ongoing work of regional human rights bodies and courts; (c) adoption by the Human Rights Committee of general comment No. 29 on article 4 of the International Covenant on Civil and Political Rights (ICCPR); (d) adoption by the International Law Commission of the draft articles on State Responsibility for Internationally Wrongful Acts; and (e) increased ratification by States of key international human rights law and international humanitarian instruments. Furthermore, agreements

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[1] See for example Commission on Human Rights decisions 2004/118 and 2002/112 and resolution 2000/69.

[2] See E/CN.4/2002/103, para. 2; E/CN.4/2001/91, para. 4; E/CN.4/2000/94, paras. 7-12; E/CN.4/1999/92, para. 3; and E/CN.4/1998/87, para. 8. See also E/CN.4/2004/90 and E/CN.4/2006/87.

[3] See E/CN.4/2002/103 and E/CN.4/2001/91.

concluded at the country level between humanitarian agencies and both States and non-State entities illustrate the importance of promoting fundamental principles of human rights and international humanitarian law on the ground.

4. In his last report on fundamental standards of humanity to the Commission on Human Rights, the Secretary-General identified the following developments from 2004 to 2005 as contributing to the interpretation and application of existing standards: (a) the Customary International Humanitarian Law study prepared by the International Committee of the Red Cross which, inter alia, significantly contributed to clarifying those international humanitarian law rules applicable in non-international armed conflict; (b) adoption by the Human Rights Committee of general comment No. 31 on article 2 of the ICCPR; and (c) the International Court of Justice's Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and its judgement in the *Case Concerning Armed Activities on the Territory of the Congo*, which reaffirmed the applicability of international human rights law during armed conflict and addressed the relationship between international humanitarian law and international human rights law.

5. The present report focuses on the most recent developments that contributed to securing the practical respect of existing standards in all circumstances and by all actors through the ongoing work of international courts and tribunals, particularly in the light of the publication of the Customary International Humanitarian Law Study. The case law of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda elaborated on the nature and elements of certain war crimes, of genocide and of crimes against humanity. The work of the Special Court for Sierra Leone has further reinforced the elaboration of elements of crimes against humanity and war crimes. It is to be expected that the Extraordinary Chambers in the Courts of Cambodia will continue enriching the development of these crimes. The decision of the International Court of Justice in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* provided further clarification as to the interpretation of the scope and of certain key notions of the Genocide Convention. The commencement of operations of the International Criminal Court also contributed to the process of securing protection of victims and combating impunity for violations of international humanitarian law and international human rights law. The report also notes the analysis provided by the International Court of Justice of the meaning of the term "ethnic cleansing" and its significance in international law in the context of crimes against humanity, genocide and war crimes and within the purview of the responsibility to protect. The report also highlights the adoption by the General Assembly of the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and of the International Convention for the Protection of All Persons from Enforced Disappearance. Finally, the report recalls the principle adopted by the Human Rights Committee in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, which includes the prohibition at all times of deviating from principles of fair trial.

II. RELEVANT DEVELOPMENTS IN INTERNATIONAL LAW

A. International courts and tribunals

1. International Criminal Tribunal for the Former Yugoslavia

6. Some recent rulings of the International Criminal Tribunal for the Former Yugoslavia (ICTY) contribute in important ways to the interpretation and application of certain rules identified in the Customary International Humanitarian Law Study, as well as to the development of international humanitarian law and international criminal law more generally.

(a) War crimes

7. In *The Prosecutor v. Stanislav Galić* (hereafter *Galić*),[4] the Appeals Chamber of the ICTY elaborated on the nature of the crime of "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". The Customary International Humanitarian Law study identified this behaviour, as contained in article 51 (2) of Additional Protocol I and article 13 (2) of Additional Protocol II to the Geneva Conventions of 12 August 1949, as a norm of customary international law applicable in both international and non-international armed conflict.

8. The Appeals Chamber in *Galić* recalled that the judgement only envisages such crime as encompassing the intent to spread terror when committed by combatants in a period of armed conflict and does not envisage any other form of terror. The Appeals Chamber stated that articles 51 (2) of Additional Protocol I and 13 (2) of Additional Protocol II "do not contain new principles but rather codify in a unified manner the prohibition of attacks on the civilian population".[5] The Appeals Chamber added that the principles underlying the prohibition of attacks on civilians, namely the principles of distinction and proportionality "incontrovertibly form the basic foundation of international humanitarian law and constitute 'intransgressible principles of international customary law' ".[6] In this sense, the Appeals Chamber considered that, "at a minimum, articles 51 (1), (2) and (3) of Additional Protocol I and article 13 of Additional Protocol II in its entirety constituted an affirmation of existing customary international law at the time of their adoption".[7]

9. The Appeals Chamber in *Galić* further elaborated on the material element of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population, stating that it can comprise attacks or threats of attacks against the civilian

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[4] Case No. IT-98-29-A.

[5] Ibid., para. 87.

[6] Ibid.

[7] Ibid.

population, including indiscriminate or disproportionate attacks or threats thereof. The actual inflicting of terror on the civilian population is not a required element of this crime. Further, confirming the decision of the Trial Chamber, the Appeals Chamber noted that the mental element of the crime "is composed of the specific intent to spread terror among the civilian population".[8] The Appeals Chamber found that: "a plain reading of article 51 (2) suggests that the purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims".[9] Such intent can be inferred from the circumstances of the acts or threats, that is, from their nature, manner, timing and duration.[10]

(b) Genocide

10. The Appeals Chamber in *The Prosecutor v. Milomir Stakic*[11] (hereafter *Stakic*) dealt, inter alia, with elements of the crime of genocide. The Appeals Chamber reaffirmed the Trial Chamber's conclusion that, based on the etymology of the term "genocide", the drafting history of the Genocide Convention, subsequent discussion by experts and article 4 of the Statute of the ICTY, the target group must be positively defined. Thus, the elements of genocide must be separately considered in relation to Bosnian Muslims and Bosnian Croats.

(c) Crimes against humanity

11. In *Stakic*, the Appeals Chamber outlined the *actus reus* and the *mens rea* requirements for deportation as a crime against humanity, consistent with the jurisprudence of the ICTY to date.[12] The Appeals Chamber surveyed relevant international law and authority and concluded that the *actus reus* of deportation as a crime against humanity consists of the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, and requires that individuals be transferred across a de jure State border.[13] In certain circumstances, the crime of deportation can consist of transfers across de facto borders, provided there is support for such under customary international law. The Appeals Chamber held that constantly changing frontlines do not amount to de facto borders under customary

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[8] Ibid., para. 104.

[9] Ibid.

[10] Ibid.

[11] Case No. IT-97-24-A.

[12] Ibid., paras. 265 *et seq*.

[13] Ibid., paras. 278, 289.

international law. As such, deportations across constantly changing frontlines are insufficient under customary international law to ground a conviction for deportation.[14] Further, following a review of ICTY jurisprudence and of relevant legal instruments, including article 49 of the fourth Geneva Convention relative to the protection of civilian persons in time of war, of 12 August 1949, the Appeals Chamber considered that the *mens rea* of the offence does not require an intent that the deportees should not return.[15] The Appeals Chamber added that the participation of an NGO in facilitating displacements does not in and of itself render an otherwise unlawful transfer lawful.[16]

12. Nevertheless, the Appeals Chamber in *Stakić* concluded that "individuals who are displaced within the boundaries of the State or across de facto borders not within the definition of deportation remain protected by the law. Punishment for such forcible transfers may be assured by the adoption of proper pleading practices in the Prosecution's indictments - it need not challenge existing concepts of international law".[17]

(d) Individual criminal responsibility

13. In *Stakic*, the Appeals Chamber reviewed the Trial Chamber's application of "co-perpetratorship",[18] rather than joint criminal enterprise, as a mode of liability of the accused. The Appeals Chamber held that such a mode of liability is new to the jurisprudence of the Tribunal, and the question of whether it is within the jurisdiction of the Tribunal is an issue of general importance warranting the scrutiny of the Appeals Chamber, *proprio motu.* The Appeals Chamber thus intervened to assess whether the mode of liability applied by the Trial Chamber is consistent with the jurisprudence of the Tribunal. The Appeals Chamber found that the Trial Chamber erred in conducting its analysis of the responsibility of the appellant within the framework of "co-perpetratorship", and stated that "this mode of liability, as defined and applied by the Trial Chamber, does not have support in customary international law, or in the settled jurisprudence of the Tribunal".[19] Thus, the Appeals Chamber then applied the correct legal framework - that of joint criminal enterprise - and held that the factual findings of the Trial Chamber support liability of the accused pursuant to the first and third categories of joint criminal enterprise.

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[14] Ibid., para. 303.

[15] Ibid., para. 307.

[16] Ibid., para. 286

[17] Ibid., para. 302.

[18] Ibid., para. 58.

[19] Ibid., para. 62.

(e) Command responsibility

14. In *The Prosecutor v. Enver Hadzihasanovic* (hereafter *Hadzihasanovic*),[20] the Appeals Chamber of the ICTY analysed the different component of the notion of command responsibility. The Appeals Chamber recalled that a commander's de jure power creates a presumption of effective control. However, the prosecution has the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates.

15. The Appeals Chamber further discussed in *Hadzihasanovic* the scope of the "had reason to know" standard and indicated that the commander's responsibility would be engaged if he fails to act in spite of the fact that he possessed sufficiently alarming information about possible violations. The Chamber indicates that "while the superior's knowledge of and failure to punish his subordinates past offences is insufficient, in itself, to conclude that the superior know that similar offences would be committed by the same group of insubordinates, this may … nevertheless constitute sufficiently alarming information to justify further inquiry".[21] Thus, the Appeals Chamber interpreted the "reason to know" standard as requiring an assessment of whether a superior had sufficiently alarming information that would have alerted him of the risk that crimes might be committed by his subordinates.

16. Concerning the causality link in evaluating command responsibility, the Appeals Chamber in *Hadzihasanovic* made it clear that the determination of a causal link between a commander's failure to act and his subordinate's crimes was unnecessary to a finding of superior responsibility. The Chamber recalled the Trial Chamber's conclusion in *The Prosecutor v. Sefer Halilovic* (hereafter *Halilovic)* that "if a causal link were required, this would change the basis of command responsibility for failure to prevent or punish to the extent that it would practically require involvement on the part of the commander in the crime his subordinates committed".[22]

17. The Appeals Chamber in *Halilovic* also discussed the superior's "duty to prevent" and indicated that the general duty of commanders to take the necessary and reasonable measures is well rooted in customary international law and stems from their position of authority. The Appeals Chamber stated that the "necessary" measures are the measures appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish) and "reasonable" measures are those reasonably falling within the material powers of the superior.[23] Thus, the standard is whether the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.[24]

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[20] Case No. IT-01-47-A.

[21] Ibid., para. 30.

[22] Case No. IT-01-48-T, para. 78.

[23] Case No. IT-01-48-A, para. 63.

[24] Ibid., para. 64.

(f) Transfer to national courts

18. On 17 May 2005, the ICTY transferred the case of Radovan Stankovic to the War Crimes Chamber of the State Court of Bosnia and Herzegovina. Stankovic was the first ICTY indictee whose case was transferred to a national court as part of the Tribunal's completion strategy under rule 11 bis of its Rules of Procedure and Evidence. On 14 November 2006, the War Crimes Chamber sentenced Radovan Stankovic to 16 years' imprisonment for crimes against humanity, including rape, in violation of the Criminal Code of Bosnia and Herzegovina. On 22 July 2005, the ICTY also transferred the case of Gojko Jankovic to the Bosnian courts. On 16 February 2007, the Court of Bosnia and Herzegovina found the accused guilty of crimes against humanity and sentenced him to 34 years' imprisonment. On 12 April 2006, the ICTY transferred Paško Ljubičić to Bosnian courts. On 29 April 2008, following the acceptance of a plea agreement by the Bosnian Prosecutor's office, the Court found Paško Ljubičić guilty of war crimes against civilians and sentenced him to 10 years' imprisonment. Finally, on 4 September 2006, the ICTY Appeals Chamber confirmed the referral of Savo Todović to the Court of Bosnia and Herzegovina. On 28 February 2008, the Bosnian Trial Panel found Savo Todović guilty of crimes against humanity. He was sentenced to twelve and a half years' imprisonment.

2. International Criminal Tribunal for Rwanda

19. In the case of *The Prosecutor v. Tharcisse Muvunyi*, the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) elaborated on the various forms of participation in or contribution to the commission of a crime by others, pursuant to article 6 (1) of the Statute of the ICTR, consistent with ICTR jurisprudence.[25] The Trial Chamber further reaffirmed the reasoning in *Akayesu* regarding the constituent elements of the crime of genocide.[26]

20. Further, the Trial Chamber in *Muvunyi* considered the requisite elements of rape as a crime against humanity by making reference to the "chequered history of the definition of rape" in the jurisprudence of the ad hoc Tribunals. The Trial Chamber concluded that previous decisions were not incompatible and reflected the "objective of protecting individual sexual autonomy".[27]

3. International Court of Justice

21. The International Court of Justice (ICJ), in its decision of 26 February 2007 concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, provided further clarification concerning the application scope of the Genocide Convention. The ICJ, based on the ICTY and ICTR

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[25] Case No. ICTR-00-55A-T, paras. 462 *et seq*.

[26] Ibid., paras. 481 *et seq*.

[27] Ibid., para. 522.

jurisprudence, further clarified the interpretation of certain key notions of the Genocide Convention. This was the first case at the ICJ in which a State (Bosnia and Herzegovina) brought proceedings against another (Serbia and Montenegro) for the commission of genocide.

22. In its decision, the ICJ recalled, inter alia, that the commission of genocide requires a *dolus specialis*, or specific intent, that differentiates it from other crimes such as crimes against humanity.[28] This argument is in line with a similar approach proposed by the ICTY argument in the *Kupreskic et al.* case.[29]

23. Further, following the ICTY's reasoning in *Stakic,* the ICJ concluded that, in relationship to the genocide, the target group must be defined positively according to specific distinguishing well-established characteristics.

24. The Court also referred to the notion of ethnic cleansing, which it defined as "rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area".[30] The Court indicated that ethnic cleansing can be a form of genocide only insofar as it falls within one of the categories of acts of genocide. Acts of ethnic cleansing would also need to fulfil the requirement of specific intent (*dolus specialis*) of genocide to be considered as such. The Court further indicated its view that "the term 'ethnic cleansing' has no legal significance of its own".[31] This conclusion clarifies the meaning of the term ethnic cleansing and its subordination to genocide, crimes against humanity and war crimes.

4. International Criminal Court

25. Certain developments at the International Criminal Court (ICC) have also contributed to the process of enforcement of international humanitarian law and human rights law, with the aim of combating impunity and ensuring accountability. In October 2005, the Office of the Prosecutor unsealed five arrest warrants in the context of its investigation of alleged crimes committed in Uganda against five of the most senior commanders of the Lord's Resistance Army (LRA), charging them with crimes against humanity and war crimes (including enslavement and murder).

26. The Office of the Prosecutor also issued an arrest warrant on 10 February 2006 against Thomas Lubanga Dyilo, alleged leader of the Union des patriotes congolais, a non-State armed group operating in the Democratic Republic of the Congo. He is charged with the war crimes of

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[28] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),* decision of 26 February 2007, paras. 187-188.

[29] See IT-95-16-T.

[30] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),* op. cit., para. 190.

[31] Ibid.

conscripting and enlisting children under the age of 15 as soldiers, and using them to participate actively in hostilities. He was arrested on 17 March 2006, and was subsequently transferred to The Hague. The confirmation of charges hearing ended at the end of November 2006. If this case reaches trial, it is likely to be the first to be heard at the ICC, and could contribute to efforts to protecting the rights of children and combating impunity for serious violations of international humanitarian and human rights law.

27. Also concerning the situation in the Democratic Republic of the Congo, on 6 July 2007 the Prosecutor issued an arrest warrant against Germain Katanga, believed to be the leader of the Front des nationalistes et intégrationnistes. Mr. Katanga, who was detained at the Centre pénitentiaire et de rééducation de Kinshasa, was transferred to The Hague on 18 October 2007. The case is currently under proceedings in the Pre-Trial Chamber.

28. In the context of the investigation of the situation in Darfur, on 27 April 2007 the Office of the Prosecutor issued an arrest warrant against Ahmad Muhammad Harun, Minister of State for the Interior of the Government of the Sudan, and Ali Muhammad Al Abd-Al-Rahman, allegedly a senior leader in the tribal hierarchy in the Wadi Salih locality and a member of the Popular Defence Force (PDF) commanding thousands of Janjaweed militias, for the commission of war crimes and crimes against humanity.

5. Application of standards of humanity by special courts

29. The practice of special tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea have contributed to reinforcing the application of standards of humanity in the legal practice of national or hybrid type of jurisdictions.

30. Trial Chamber I of the Special Court for Sierra Leone reaffirmed in its decision on the *CDF* case, inter alia, the role of customary international humanitarian law in the context of internal armed conflict, indicating that current legal developments lead to the conclusion that violations to common article 3 to the Geneva Conventions are crimes prohibited in all conflicts, international and internal.[32] In the *AFRC* case, Trial Chamber II further analysed the elements of crimes against humanity and war crimes in the Statute of the Special Court.[33] The Court's decisions on the *RUF* case and the *Taylor* case could provide further analysis into the application of customary international humanitarian norms in situations of internal armed conflict.

31. Concerning the Extraordinary Chambers in the Courts of Cambodia, the enacting legislation included the crimes of genocide, crimes against humanity and grave breaches of the Geneva conventions as core crimes in the jurisdiction of the Chambers. Up to this date, five high-ranking suspects, including Kaing Guek Eav (alias Duch), have been detained and are awaiting trial. These trials could contribute to end impunity and to attribute responsibility for the grave violations committed in Cambodia from 1975 to 1979.

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[32] Case No. SCSL-04-14-T, paras. 98-99.

[33] Case No. SCLS-04-16-T, paras. 212 ss.

B. World Summit Outcome

32. In late 2005 in the context of asserting the responsibility to protect, the World Summit added "ethnic cleansing" alongside the more legally defined categories of war crimes, crimes against humanity and genocide. Paragraphs 138 and 139 of the World Summit Outcome Document read as follows:

> Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means […]. The international community, through the United Nations, also has the responsibility […] to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[34]

33. Further, Security Council resolution 1674 (2006) of 28 April 2006 on the protection of civilians in armed conflict reaffirmed "the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity".[35]

34. As indicated above,[36] the ICJ, in its decision of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* indicated the strong relationship and subordination of the term ethnic cleansing to genocide, crimes against humanity and war crimes. The ICTY has also addressed the notion of "ethnic cleansing". In *The Prosecutor v. Milomir Stakic*, the Appeals Chamber referred to Security Council resolution 827 (1993) which established the tribunal and which expressed its grave alarm at the continuance of the practice of "ethnic cleansing" in all its forms. In considering the extent to which the Security Council's purpose may be taken into account, the Appeals Chamber noted that:

> The general position is of course that the Tribunal "can only act on the basis of law ... A Court functioning as a court of law can act in no other way". "Ethnic cleansing" refers to a policy. This is not a crime in its own right under customary international law, but the general purpose which it represents can help to draw inferences as to the existence of elements of crimes referred to in the Statute. It is not correct to proceed on the basis that such limited use amounts to the use of policy as a self-sufficient ground of judicial action.[37]

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[34] See General Assembly resolution 60/1, World Summit Outcome, of 15 September 2005, paras. 138-139; see also A/59/565, report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, 2 December 2004, paras. 199-203.

[35] Security Council resolution 1674 (2006), para. 4.

[36] Ibid., para. 20.

[37] Case No. IT-97-27-A, para. 50.

C. Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

35. On 15 December 2005, the General Assembly adopted without a vote resolution 60/147, the annex to which contained the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The General Assembly emphasized in the preambular part of the resolution that the Basic Principles and Guidelines "do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms".

D. International Convention for the Protection of All Persons from Enforced Disappearance

36. On 20 December 2006, the General Assembly adopted without a vote resolution 61/177 and opened for signature, ratification and accession the International Convention for the Protection of All Persons from Enforced Disappearance. The fifth preambular paragraph of the convention notes the awareness of the State parties "of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity".

E. General comment No. 32 of the Human Rights Committee

37. On 23 August 2007, the Human Rights Committee adopted general comment No. 32 on the interpretation of article 14 of the International Covenant on Civil and Political Rights. The Committee reiterated, as it had previously done in paragraph 11 of its general comment No. 29 (2001), that any deviation from fundamental principles of the right to fair trial, including the presumption of innocence, was prohibited at all times.

III. CONCLUSIONS AND RECOMMENDATIONS

38. **Previous reports on fundamental standards of humanity observed that, while there was no apparent need to develop new standards, there was a need to secure respect for existing rules of international law aimed at ensuring the protection of persons in all circumstances and by all actors.**

39. **The recent work of international courts and tribunals and of special courts contributed to the interpretation of existing standards identified in the ICRC's Customary International Humanitarian Law Study, and further elaborated on the elements and application of certain crimes. The General Assembly adopted the Basic**

Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as well as the International Convention for the Protection of All Persons from Enforced Disappearance.

40. **To build on this substantial progress, the Human Rights Council may wish to keep itself informed of relevant developments, including further international and regional case law, which contribute to the process of securing the practical protection of all individuals in all circumstances and by all actors.**
