

SECURITY COUNCIL FAILS 'PROTECTION OF CIVILIANS' TEST IN THREE COUNTRY CRISES DESPITE MAKING SOME PROGRESS AT THEMATIC LEVEL

OVERVIEW

In 2009 the Security Council made notable progress at the thematic level on the protection of civilians. It passed a resolution addressing a wide range of issues, including ensuring compliance by all parties to armed conflict with international human rights standards, and improving the implementation of the protection mandates of its peacekeeping missions. In addition, the Security Council took some important concrete steps to help combat sexual violence of women and children in armed conflict. The approval of the appointment of a top UN official to lead, coordinate, and engage in advocacy efforts to end conflict-related sexual violence against women and children was a particularly welcome move. Along with other measures taken in two resolutions on women, peace and security and one on children and armed conflict, this signified an increasing commitment on the part of the Security Council to ramp up the fight against impunity in sexual violence.

The decision of the International Criminal Court (ICC) to indict the Sudan's current President for war crimes and crimes against humanity brought the promise of justice a step closer to realisation for victims in the country. Though this milestone was not a consequence of Security

Council action this year, the indictment of a sitting head of State marked a watershed moment for international human rights law and was a direct result of the Security Council's referral of the situation in Darfur to the ICC in 2005. The culmination of that decision lent credibility to the Security Council as a critical player in ensuring accountability of perpetrators at the highest level.

Despite these laudable achievements, 2009 can unfortunately be characterised as yet another tragedy of inaction when it came to Security Council responsiveness to three major crises at the end of 2008 and beginning of 2009. The developments in the Democratic Republic of the Congo (DRC), Gaza, and Sri Lanka all tested the body's political will to translate its work on protecting civilians in armed conflict into practice. However, in all three cases, the Security Council did not act in a timely and decisive manner, and the inadequate response in the face of killings of at least 6,000 civilians at the hands of national authorities and the rebel force in Sri Lanka was a failure of historic proportions. In the DRC, the Security Council met with silence the news that its peacekeeping mission – the UN Organisation Mission in the Democratic Republic of the Congo (MONUC) – was providing support to Congolese military operations commandeered

by known war criminals in the national army's offensive against a rebel group in Eastern DRC. Only in December, through its annual resolution renewing the mission's mandate, did the Security Council finally decide to call on MONUC to immediately withdraw support from those army units that were not in strict compliance with international humanitarian, human rights, and refugee law, and to request that the Secretary-General establish a mechanism to assess the implementation of MONUC policy governing support to the DRC army. Such belated action was little recompense for the civilian victims who were killed or raped. The Security Council also did not play a satisfactory part in breaking the cycle of impunity in the Middle East conflict, with the majority of members deciding to reject taking up substantively the recommendations addressed to it in the UN Fact finding Mission to Gaza, led by Justice Richard Goldstone. The recommendations of the so-called 'Goldstone Report' included important proposals on how the Security Council could help ensure accountability and justice in both sides of the conflict.

1

Security Council Resolution 1265
(17 September 1999).

2

This includes five landmark resolutions, several presidential statements, regular thematic debates, periodic reports of the Secretary-General, and the aide-mémoire on the protection of civilians, as well as the consideration of protection concerns in an increasing number of country-specific resolutions and the mandates of peacekeeping missions.

3

Security Council Resolution 1894
(11 November 2009).

4

In OP1, the Security Council calls for all parties to abide by international humanitarian, human rights and refugee law, as well as Security Council resolutions calling for the protection of civilians.

5

In OP10, the Security Council calls on all States to thoroughly investigate and prosecute persons responsible for egregious human rights abuses, while drawing attention to national and international justice mechanisms.

6

The updated aide-mémoire, first adopted in March 2002, was annexed to the presidential statement (S/PRST/2009/1) following a day-long thematic debate in January on the protection of civilians in armed conflict earlier in the year. The aide-mémoire covers, among other things: access to vulnerable populations; voluntary and dignified return of refugees and internally displaced persons; small arms and mine action; respect for the safety and security of humanitarian workers; accountability for persons suspected of genocide, crimes against humanity, war crimes and serious violations of human rights.

7

S/2007/643 (28 October 2007).

8

As of November, the group had met on mandate renewals for the UN Mission in Côte d'Ivoire (UNOCI), the UN Assistance Mission in Afghanistan (UNAMA), the UN Mission in Sudan (UNMIS), the AU/UN Hybrid Operation in Darfur (UNAMID), and the UN Assistance Mission for Iraq (UNAMI).

9

Security Council Resolution 1906
(23 December 2009).

10

June 2009 is the anniversary of the DRC independence and President Joseph Kabila has indicated that he wants to be able to discuss the mandate again at that time.

the field and the Security Council (which would help the Security Council make more informed decisions in response to developments); training on protection for all personnel in missions; and intensifying the mission's cooperation with the local population. In addition, the Security Council emphasised the need to include progress on protection of civilians in benchmarks measuring implementation of peacekeeping mandates. The Security Council also took steps to develop clear operational guidelines on implementing protection mandates, requesting the Secretary-General to prepare an 'operational concept' that would help clarify peacekeeping missions' tasks and responsibilities. Other key provisions in the resolution relate to ensuring compliance by all parties in armed conflict,⁴ and tackling impunity.⁵

Several other developments also signalled the Security Council's commitment to improving its work on protection. First was the Security Council's adoption in January of an updated version of its landmark 2002 aide-mémoire, which sets out core objectives for providing protection and assistance to conflict-affected civilians and other vulnerable populations.⁶ Secondly the Security Council supported, in line with a two-year old recommendation from the Secretary-General,⁷ the establishment of an informal Expert Group on protection of civilians, which began its work in mid February 2009. The group, convened by the United Kingdom (the UK), will address protection of civilian issues related to existing peacekeeping operations, and will bring together Security Council members for consultation with the Office for the Coordination of Humanitarian Affairs (OCHA) on these concerns. All members of the Security Council have participated in the meetings to date, except China, who has said that it is not in favour of the current informal format of the group.⁸

PROTECTION OF CIVILIANS IN ARMED CONFLICT

On a symbolic level, 2009 was especially significant as the 10th anniversary of the Security Council's first consideration of the protection of civilians in armed conflict as a thematic issue as well as the 60th anniversary of the Geneva Conventions signed in 1949. Since the adoption of that first thematic resolution,¹ the Security Council has made considerable progress in developing the normative framework on the protection of civilians, and the issue is certainly prominent on its agenda.² This year the Security Council indicated its willingness to continue to build on its previous accomplishments and close gaps in the UN's work on the protection of civilians by unanimously adopting its fifth resolution on the issue.³ *Resolution 1894*, while not 'reinventing the wheel', did strengthen several avenues for enhancing the Security Council's capacity to protect civilians in armed conflict, including through efforts to enhance the implementation of protection mandates by peacekeeping missions. The resolution called for improvement in: the quality and flow of information between

The Democratic Republic of The Congo

On 23 December 2009, the Security Council unanimously adopted *Resolution 1906* extending the mandate of MONUC.⁹ Following a request by the DRC's Government to start winding down MONUC by mid-2010, the Security Council extended the mandate for only five months until 31 May 2010, instead of the usual year renewal.¹⁰

The mandate will likely be renewed again for a further 12 months at that time. In the meantime, the Secretary-General is tasked to reconfigure the mandate¹¹ in the light of the Security Council's directive in *Resolution 1906* for MONUC to reprioritise its work to focus on the protection of civilians over all other tasks.¹²

This Security Council action came on the heels of one of the most controversial years yet for the ten-year old UN peacekeeping mission in terms of questions about its ability to interpret and carry out its mandate to protect civilians.¹³ Human rights groups asserted that MONUC's actions during the year, which included providing support¹⁴ to the DRC army's military operation, known as *Kimia II*, against the Rwandan Hutu rebel group, the Democratic Forces for the Liberation of Rwanda (FDLR) in Eastern DRC,¹⁵ led the peacekeeping mission to neglect its core task of protecting civilians from harm in war zones, and at worst, resulted in MONUC's possible complicity in violations of the laws of war. The 2009 offensive resulted in widespread killings and other serious abuses of civilians, including rapes and sexual violence by soldiers of the Congolese army and the FDLR rebels.

The authorisation to undertake joint operations with the DRC army against foreign and Congolese armed rebel groups was grounded in Security Council *Resolution 1856*, adopted in December 2008, which provided that such operations were allowed as long as they were conducted in accordance with international humanitarian, human rights, and refugee law and that effective joint planning had taken place in terms of civilian protection. However MONUC's actions in the operations did not abide by these conditions. In addition to not adequately planning for the protection of civilians during and after the operations, the UN peacekeepers supported units of the national army run by well-known human rights abusers, including Bosco Ntaganda, who is wanted by the ICC, and Lieutenant Colonel Innocent Zimurinda, who has a track record of war crimes and crimes against humanity.

Strong criticism of the *Kimia II* operation was levelled by both UN independent experts and human rights groups throughout 2009. The series of warnings about the terrible consequences for civilians went unheeded at first, with the Security Council remaining silent for

most of the year on the matter. Some States¹⁶ expressed support for the operations, giving the impression that they wanted peace at any cost.

The UN Special Rapporteur on extrajudicial executions, Mr Philip Alston, was one of the first UN officials to publically bring attention to the implications of MONUC's backing of the DRC army's military offensives. After a human rights fact-finding mission to the country in October 2009, Mr Alston reported that the operations had produced 'catastrophic results', from a human rights perspective.¹⁷ He gathered evidence of unlawful killings by all sides in the war zones, and reported that hundreds of thousands were displaced, thousands raped, hundreds of villages burnt to the ground, and at least 1,000 civilians killed. He specifically brought attention to the DRC army's role in the killings and abuses of civilians, committed by 'the very force that is supposed to protect them'. He called on the Security Council to require that MONUC only participate in or support Congolese operations that respect human rights, humanitarian, and refugee law, and urged an end to UN support to Congolese military operations commanded by known war criminals.

During the Security Council debate in November on the protection of civilians,¹⁸ the High Commissioner for Human Rights (the High Commissioner) called for a review of MONUC support for the DRC army whenever there was a risk of violation of humanitarian and human rights law. Earlier in September she had also denounced that Bosco Ntaganda was still at large, following the publication in September 2009 of two UN reports¹⁹ detailing human rights abuses carried out by both government forces and rebels in eastern DRC in 2008, and possible war crimes and crimes against humanity in the country.²⁰

The Security Council's own mechanism, the Group of Experts on the DRC,²¹ in an end of year report²² added to the swell of voices questioning the validity of the military operations. They presented evidence that the offensive to disarm the FDLR rebels in eastern DRC was unsuccessful and had possibly aggravated the humanitarian crisis in the area. The Group also underlined the need for action to suppress the trade in minerals that finances and sustains the armed groups and their capacity to commit atrocities against civilians.²³

11 The Secretary-General is to submit a strategic review of MONUC to the Security Council by April 1.

12 The resolution also calls for MONUC to refocus attention on disarmament, demobilisation of Congolese armed groups and foreign armed groups; and on the reform the security sector, in that order, following the protection of civilians.

13 MONUC has a strong mandate from the Security Council to protect civilians and can use force to do so.

14 This included logistical and operational support such as intelligence and operations planning, fire support, air strikes, transportation, joint patrolling, and medical evacuations.

15 In operations that began in January 2010, the DRC and Rwandan armies, alongside the CNDP militia undertook operations to disarm the FDLR. After the Rwandan army left the DRC at the end of February, MONUC peacekeepers began aiding the DRC military operations in March.

16 The US, the UK, and France.
17 The Special Rapporteur, Mr Philip Alston, released several press releases on the issue/mission, available at www2.ohchr.org/english/issues/executions/index.htm. Mr Alston also reported on the mission to the General Assembly in October 2009. ISHR article available at www.ishr.ch/archive-general-assembly/605-expert-on-extrajudicial-killings-calls-on-human-rights-Security-Council-members-to-accept-visits.

17 The Special Rapporteur released several press releases on the issue/mission, available at www2.ohchr.org/english/issues/executions/index.htm. Mr Alston also reported on the mission to the General Assembly in October 2009. ISHR article available in our online 'News Archive'.

18 The UN press release on the debate is available at www.un.org/News/Press/docs/2009/sc9786.doc.htm.

19 The publications are drafted by MONUC and the Office of the High Commissioner for Human Rights (OHCHR), and cover the period in late 2008 when heavy fighting engulfed North and South Kivu provinces.

20 More information is available at www.un.org/apps/news/story.asp?NewsID=31991&Cr=monuc&Cr1=

MONUC, for its part, belatedly began to respond to the outrage and concerns about its actions late in the year. Some concerns came from its own staff monitoring human rights, but warnings also arose from the UN Office of Legal Affairs (OLA), which argued in an April brief to the head of the UN Peacekeeping Department (DPKO),²⁴ that MONUC should not participate in or support any military operations with the DRC army if there were substantial grounds for believing there was a real risk that Congolese soldiers might abuse human rights. Following discussions with the UN Secretariat and OLA, MONUC began to develop a clearer policy which set out the conditions under which the mission could partner with the DRC army. This policy was transmitted to the DRC Government in November, and the mission ultimately ended support to one commander's unit in November.

In the last month of the year, the Security Council finally decided to respond to some of the criticisms through the unanimous adoption of *Resolution 1906* extending MONUC's mandate. Despite China's reticence to impose a harsh conditionality on MONUC, the French-led resolution reiterated the conditions for MONUC to support the DRC-led military operations against foreign and Congolese armed groups, and called for the DRC army's 'strict compliance with international humanitarian, human rights and refugee law.'²⁵ The Security Council also called on MONUC to immediately withdraw support from any units found to have breached such law, and requested the Secretary-General to establish a mechanism to regularly assess the implementation of MONUC policy governing support to the DRC army.

In other key provisions, the Security Council urged the Government to ensure the full implementation of its 'zero-tolerance policy' with respect to discipline and human rights violations, including sexual and gender-based violence by DRC army elements. Investigation of all reports of such violations should occur, with the support of MONUC. Further, MONUC was requested to extend successful protection measures piloted in North Kivu to other areas, particularly South Kivu.²⁶

Indicating the Security Council's willingness to integrate its thematic work in its country-specific resolutions, it incorporated several important

aspects of *Resolution 1894* on the protection of civilians in the renewal resolution. This included the focus on better coordination of resources to achieve priority for protection of civilians, training programmes for soldiers, as well as increased reporting to the UN. Whilst these moves were important and necessary, it remains to be seen how they will be implemented on the ground.

In response to the Group of Experts report, the Security Council also unanimously passed *Resolution 1896* renewing its arms embargo on groups which has been in place since 2003, for another year.²⁷ The resolution also requested recommendations on due diligence guidelines for the buying and processing of lucrative mineral products.

Though the Kimia II operations came to an end on December 31, the events that unfolded during the year called into question MONUC's very legitimacy. Despite the glaring deficiencies in the mission's actions this year, human rights groups generally remained supportive of the role the peacekeeping operation can, and has played in the protection of civilians during the last decade. MONUC faces major challenges given that it is the UN's largest peacekeeping mission and, in the words of Mr Doss, the head of MONUC, has brought the UN into 'uncharted waters'.²⁸ It is also widely understood that MONUC was never given clear guidelines for the delivery of operational support to the DRC army and faced the contradictory goals of protecting civilians and supporting operations that sometimes targeted them. The lack of resources provided to MONUC has also impaired its ability to protect civilians.

Simultaneously to the operations in the Kivus in eastern DRC in the early part of the year, the DRC army ran a joint operation with the Sudan People's Liberation Army (SPLA), and the Ugandan Peoples Defence Force (UPDF). These operations sought to defeat the cross-border Lord's Resistance Army (LRA) in the northern Oriental region. The three-month operation ended in March of 2009 when the UPDF and SPLA withdrew from the DRC after claiming substantial victories. However it soon became clear that the operation, rather than eradicating the LRA forces, scattered them into small groups in difficult terrain. In addition, the withdrawal of Ugandan and Southern Sudanese troops created a security vacuum that left the civilian population

²¹ The Group of Experts is mandated to monitor the implementation of the arms embargo imposed on non-governmental armed groups operating in eastern DRC, and, in particular, to investigate the financial and material support given to such armed groups.

²² S/2009/603 (23 November 2009).

²³ The report described the FDLR as a criminal network of arms and mineral trafficking funded with profits from the exploitation of the country's gold and tin resources with a diaspora of international support.

²⁴ A copy of the memo is available at <http://documents.nytimes.com/united-nations-correspondence-on-peacekeeping-in-the-democratic-republic-of-the-congo#p=1>.

²⁵ OP22.

²⁶ These measures included the establishment of joint protection teams, early-warning centres, and communications liaisons with local villages.

²⁷ Security Council *Resolution 1896* (2009).

²⁸ International Peace Institute, IPI SRSG Series 'Strengthening the Protection of Civilians in the DRC: The Role of the United Nations', Speaker Alan Doss, 14 December 2009. The transcript is available at www.ipinst.org.

vulnerable to reprisal attacks by the remaining LRA forces.

Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mr John Holmes, briefed the Security Council on 17 February and described the LRA reprisals as 'horrific and unprovoked.' With close to 900 civilian deaths since 2008, and many of the women raped prior to their deaths, Mr Holmes recommended more troops and resources for the area, particularly helicopters to better respond to humanitarian threats in the rugged terrain.²⁹ By April the DRC army had increased its presence in Oriental but still lacked the mobility and fire power to cover such a large area, despite MONUC establishing four operational bases in the area.³⁰

In November, the Security Council issued a press statement³¹ expressing concerns at the 'direct and serious threat the activities of the LRA pose to the civilian population', humanitarian operations, and regional stability. The statement also encouraged missions in the region namely MONUC (DRC), UNMIS (Sudan), and MINURCAT (Central African Republic), to coordinate strategies for, and information on, the protection of civilians in light of the attacks by the LRA. By December 2009, despite an increasing number of LRA combatants having surrendered, the LRA continued to be a significant security threat.

Sri Lanka

The international community's failure to act during the crisis in Sri Lanka³² not only marked 2009 as a dismal year for Security Council actions to protect civilians on the ground, but will also likely be remembered as one of the historic failures of the UN.³³ Ironically, literally days after reacting weakly to the 'blood bath' in Sri Lanka, the 15 Security Council ambassadors were reminded about one other of its greatest failures during a visit to the Rwanda Genocide Memorial on a mission to Africa.³⁴ The tragedy of the international community's inaction was intensified when the Human Rights Security Council at its 11th special session later the same month adopted an extremely weak resolution on Sri Lanka, which failed to establish any follow-up mechanism to the special session or call for accountability of the parties involved.

Though Sri Lanka was not on the agenda of the Security Council, Mexico and Austria pushed for the Security Council to formally take up the situation, a position which was weakly and inconsistently backed up by France, the UK, and the United States (the US). However, China and the Russian Federation maintained that the conflict was an internal matter that did not threaten international peace and security, thereby ensuring the situation was not formally addressed.³⁵ Instead, unofficial briefings were held, which Japan played a role in organising.³⁶ The Security Council eventually released a presidential statement on 13 May,³⁷ which was the first formal, unified position on Sri Lanka. (Before this, the President of the Security Council had only made "informal remarks to the press" on behalf of Security Council members). The presidential statement expressed 'grave concern' over the reports of hundreds of civilian casualties in recent days, and called for urgent action by all parties to ensure the safety of civilians. It also urged the Government of Sri Lanka to extend full cooperation to the United Nations in order to resolve the humanitarian crisis.³⁸

Though a welcome move, the press statement did not demand an immediate humanitarian cease-fire nor did it refer to the need for all parties to the conflict to be accountable for the violations of international human rights and humanitarian law they had committed. Another disappointment was the 'soft' joint statement by the Government of Sri Lanka and the Secretary-General after his visit to Sri Lanka on 23 May, in which the Secretary-General appeared to tread very lightly given the flagrant violations of international humanitarian law that occurred during the fighting. He only highlighted the need for an 'accountability process', rather than specifically calling for an independent enquiry into the deaths.³⁹ Human rights groups hope that the issue will be taken up again after the elections in January 2010. Given the Security Council's failure to act at the height of the crisis, any follow-up steps on accountability in the relatively calm post-conflict period appear unlikely. Should such steps be taken, it will most likely be at the instigation of the UN Secretariat.

²⁹ SC/9596, 17 February 2009, available at www.un.org/News/Press/docs/2009/sc9596.doc.htm.

³⁰ SC/9631, 9 April 2009, available at www.un.org/News/Press/docs/2009/sc9631.doc.htm.

³¹ SC/9791, 17 November 2009, available at www.un.org/News/Press/docs/2009/sc9791.doc.htm.

³² The deaths of thousands of civilians in May 2009 occurred during fighting between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE). The fighting, which ended in May with the death of the LTTE leader, was marked by serious violations of international humanitarian law by both sides. By the end of 2009, 250,000 displaced people who had fled fighting were still being held in detention camps in violation of international refugee law.

³³ According to the UN, more than 7,000 civilians were killed and many more injured since January 2009. However the French newspaper, *Le Monde*, and the British paper, *The Times*, cited a figure of 20,000 civilians killed.

³⁴ Security Council members undertook a mission to Africa from 14 to 21 May, conducting in-depth talks with the African Union and visiting the Great Lakes region, and Liberia.

³⁵ Libya, Vietnam, and Turkey also opposed Security Council engagement. For its part, Sri Lanka actively sought to avoid a formal briefing by lobbying member State capitals.

³⁶ Japan, as one of Sri Lanka's largest donors, was as reluctant as China and the Russian Federation to see the Security Council formally address the issue. As President of the Security Council in February, Japan created an 'any other matters' agenda item to accommodate a briefing to the Security Council on February 27, at which the Under Secretary-General for Humanitarian Affairs, John Holmes briefed the Security Council on the humanitarian situation. In early February, Japan also hosted a breakfast meeting on the issue of Sri Lanka, which involved the Government of Sri Lanka. Other informal briefings were held on 26 March and 30 April when the Security Council held interactive dialogues on Sri Lanka in the basement of the UN with Mr Holmes and the Sri Lankan Permanent Representative participating. On 24 April 2009, members of the Security Council held an informal interactive dialogue with the Sri Lankan Government, Vijay Nambiar, the Secretary-General's Chief of Staff, and Catherine Bragg, the Assistant Secretary-General for Humanitarian Affairs. For a full timeline of official and unofficial developments see www.securitycouncilreport.org/site/c.gKWLeMTIsG/b.5116275/k.40D7/Sri_LankabrHistorical_Chronology.htm.

Gaza

37
The release of this statement was likely aided by meetings of the foreign ministers of the UK, France, and Austria with humanitarian organisations and concerned UN members, including eight Security Council members on May 11.

38
SC/9659, 13 May, available at www.un.org/News/Press/docs/2009/sc9659.doc.htm.

39
SG/2151, 26 May, available at www.un.org/News/Press/docs/2009/sg2151.doc.htm.

40
The stated aim of the attack was to end rocket attacks launched by Hamas on Israeli civilians across the border.

41
UNRWA 'Refugee Stories: Attacks against the UN must be investigated', available at www.un.org/unrwa/refugees/stories/2009/attacks_un_in_gaza_jan09.html.

42
Human Rights Council *Resolution 12/48*. Human Rights in Palestine and other Occupied Arab Territories; Report of the United Nations Fact Finding Mission on the Gaza Conflict, Para. 1969. The Goldstone report is available at www2.ohchr.org/english/bodies/hrSecurityCouncil/docs/12session/A-HRC-12-48.pdf.

43
Austria, Burkina Faso, Costa Rica, Croatia, France, Mexico, the Russian Federation, the UK, and the US appeared to support the Human Rights Council as the main organ to address the report. For more information, see SC/9767, 14 October, available at www.un.org/News/Press/docs/2009/sc9767.doc.htm.

44
On 16 October 2009, the Human Rights Council endorsed the Goldstone report's recommendations in *Resolution S-12/1*, which was adopted by a vote of 25 in favour, six against, and 11 abstentions, and is expected to take it up again at its next session in March. It also referred the matter on to the General Assembly for action at its 64th session.

45
Iran, Jordan, Malaysia, Morocco, Nicaragua, South Africa, the Sudan, Syria (on behalf of the OIC), and Venezuela.

46
SC/9767, 14 October, available at www.un.org/News/Press/docs/2009/sc9767.doc.htm.

47
General Assembly *Resolution 64/10*.

48
Please see the chapter on the General Assembly (pp. 93-113) in the present edition of the Human Rights Monitor for more information on the adoption of the resolution in the General Assembly.

On December 27, 2008 the Israeli forces began aerial bombardments of Gaza, and followed with a ground assault a week later.⁴⁰ During the attack, no international journalists or human rights workers were allowed into the conflict zone, but reports emerged of violations of humanitarian law and well as the rule of war. At first it seemed that the international community was again going to ignore an abrupt rise in the civilian death toll as a result of the fighting, but after days of intense meetings, the Security Council adopted *Resolution 1860*, despite an abstention from the US.

Resolution 1860 expressed grave concern over the civilian casualties and called for an immediate ceasefire and withdrawal of Israeli troops from Gaza. It also addressed humanitarian aid for civilians caught in the cross-fire; illicit trafficking in arms and ammunition; and the re-opening of crossing points on a permanent basis. However the resolution did not deal with allegations of war crimes and other grave violations committed by both sides, and lacked any compliance mechanisms. Israel responded to the resolution by escalating the attacks in Gaza. After three weeks of conflict, the UN reported more than 1,000 civilian casualties. The Israeli attacks mistakenly hit a UN building in Gaza that housed 700 refugees and medical supplies causing great outrage and revealing the indiscriminate nature of attacks in the area.⁴¹ Despite this, the Security Council took no further action during the unfolding conflict.

The road to accountability only began with the release of a report by a UN fact-finding mission on the Gaza conflict led by Justice Richard Goldstone. Presented to the Human Rights Council on 29 September 2009, the report documented war crimes and possible crimes against humanity by both Israel and Hamas. The report proposed that both Israel and Hamas should be given six months to conduct their own 'appropriate investigations that are independent and in conformity with international standards'. Some of the numerous recommendations were directed to the Security Council, including a call to create an independent committee of experts to monitor the domestic investigations undertaken by both sides to the conflict. It also recommended that a failure by either side to investigate

properly should trigger the Security Council to refer the matter to the ICC.⁴²

The Security Council decided not to address the recommendations of the Goldstone report, despite a request submitted by Libya, the only Arab member on the Security Council, to hold a meeting dedicated to the report. A compromise was reached when members agreed to move the regular monthly debate on broader efforts in the Middle East from 20 October to 14 October, and include a general discussion on the report. During that debate, most Security Council members⁴³ preferred that the report be considered by the Human Rights Council.⁴⁴ Libya, supported by some non-Security Council members,⁴⁵ favoured the Security Council adopting the report and inviting the Human Rights Council to discuss it.⁴⁶

In its November resolution on the follow up to the Goldstone report,⁴⁷ the General Assembly also expressed the view that the Security Council should play its role in seeking accountability in the conflict between Israel and Palestine.⁴⁸ Specifically, the resolution requested the Secretary-General to report on implementation of the resolution 'with a view to considering further action' by the Security Council. The General Assembly also requested the Secretary-General to transmit the report of the fact-finding mission to the Security Council, and to present a progress report on the investigations by the parties to the General Assembly in three months time.

The deadline to advise the Secretary-General of progress with their investigations is in early 2010. The way forward is not clear since there is a general concern that the Secretary-General will not produce a robust report. However, given that the five permanent members of the Security Council are unwilling to formally take up the Goldstone report, this effectively rules out the possibility of the Security Council referring the matter on to the ICC to ensure human rights violators can be held accountable.

SEXUAL VIOLENCE IN ARMED CONFLICT

Sexual violence has emerged as a major issue in recent years for the UN due to its systematic use in many of the current conflicts plaguing the international community such as Darfur and the DRC. In June 2008, the Security Council, recognising that sexual violence in conflict situations can be a threat to international peace and security, made the issue the central subject of *Resolution 1820*.⁴⁹ For the first time, this resolution recognises that sexual violence, under certain circumstances, can be a war crime and/or a crime against humanity. As a follow-up, the Security Council requested the Secretary-General to report on the implementation of the resolution in the context of situations which are on the agenda of the Security Council by mid-2009.

The Secretary-General's first report⁵⁰ to the Security Council made a number of concrete recommendations, including a call for the appointment of a high-level official to help coordinate UN system-wide work on the prevention of, and response to, the use of sexual violence in conflict. It also urged that an independent Commission of Inquiry, supported by OHCHR, investigate and report on sexual violence in Chad, the DRC and the Sudan. At the same time, the Secretary-General advised the Security Council on how it could further take sexual violence into account in its work, including through ensuring that its resolutions mandating peacekeeping missions address sexual violence; that its sanctions committees are mandated to address sexual violence; and that other relevant parts of the UN system are able to regularly report to the Security Council.

Some NGOs expressed concern that the report failed to adequately address and follow up on some key issues, including making suggestions on how to help guarantee that country-specific Secretary-General reports to the Security Council contain useful and actionable information. For example, the Secretary-General did not provide comprehensive plans for the collection of data in a systematic, timely, and ethical manner, nor did he include detailed suggestions on benchmarks and indicators to measure progress and evaluate actions. In this respect, the information gap that many NGOs lobbied to close in their advocacy around *Resolution 1820* remains open.⁵¹

One month after the US chaired an open debate on 'Women, Peace and Security' in August, during which States provided their views on the Secretary-General's report,⁵² the Security Council unanimously adopted *Resolution 1888*.⁵³ The text addressed several key recommendations from the report, including approving the appointment of a Special Representative to the Secretary-General (SRSG) to lead, coordinate, and engage in advocacy efforts to end conflict-related sexual violence against women and children. This measure was warmly welcomed by NGOs given their advocacy for such a position over many years. However, the success of the post will be dependent on the Secretary-General appointing a credible person who can raise the visibility of sexual violence in armed conflict and tackle weaknesses in coordination and accountability within the UN system. It is expected that the SRSG will work closely with UN Action Against Sexual Violence in Conflict⁵⁴ as well as other relevant parts of the UN system, including the High Commissioner for Human Rights, to enhance cooperation and the information system on conflict-related sexual violence, particularly in regards to trends, emerging patterns of attack, and early-warning indicators of the use of sexual violence in armed conflict.

The Security Council did not go so far as to authorise an independent Commission of Inquiry, but did call for the deployment of a team of experts to situations where sexual violence is of particular concern. The role of the team includes aiding governments' civilian and military justice systems in addressing impunity, including by drawing attention to the full range of justice mechanisms available. In other provisions, the Security Council asked for 'women's protection advisers' to be identified among existing gender advisers and human rights protection units in relevant peacekeeping missions. It further requested the Secretary-General to provide an annual report on implementation of the resolution. Overall the resolution provided a number of practical tools to move forward on its implementation, including introducing some important mechanisms to improve the UN response to sexual violence that *Resolution 1820* lacked.

Complementing *Resolution 1888* was *Resolution 1889*, which the Security Council adopted in October.⁵⁵ *Resolution 1889* was the fourth resolution to be unanimously adopted on the theme of women, peace and security by the Security

49 Security Council *Resolution 1820* (19 June, 2008).

50 S/2009/362 (15 July 2009).

51 Joint NGO letter to States: Recommendations on the Security Council Open Debate on 'Women, Peace and Security', 27 July 2009, available at http://womenpeacesecurity.org/media/pdf-OpenDebate_Letter_29September09.pdf.

52 A thematic compilation of statements from the open debate is available at www.peacewomen.org/un/sc/Open_Debates/Sexual_Violence09/Thematic_Index.html.

53 Security Council *Resolution 1888* (30 September 2009).

54 UN Action Against Sexual Violence in Conflict (UN Action) website is available at www.stoprapienow.org/index.html. UN Action unites the work of 12 UN entities with the goal of ending sexual violence in conflict. It is a concerted effort by the UN system to improve coordination and accountability, amplify programming and advocacy, and support national efforts to prevent sexual violence and respond effectively to the needs of survivors.

55 Security Council *Resolution 1889* (5 October 2009).

Council since 2001. It focused attention on the implementation of landmark *Resolution 1325*⁵⁶ on women, peace and security in the immediate post-conflict peacebuilding period, and called for the inclusion of provisions on promoting gender equality in peacekeeping mandates and the systematic collection and analysis of data on women's participation and protection. The Secretary-General was asked to submit a set of global indicators to serve as a basis for reporting by UN entities and States. The resolution also called for a report from the Secretary-General on gender and peacebuilding within a year.⁵⁷

The unanimous adoption of *Resolutions 1888* and *1889* signalled significant international support and momentum for addressing sexual violence in conflict and were hailed by human rights organisations as important steps in fighting impunity in sexual violence. However concerns still remains regarding whether the Security Council will follow up, consistently implement, and ensure compliance with its recommendations.

Related to the Security Council's work on sexual violence and women was a decision by the Security Council in *Resolution 1882* to expand the criteria by which parties can be listed by the Secretary-General in his annual reports on children and armed conflict.⁵⁸ The resolution also called upon parties engaged in the killing and maiming of, and sexual violence against, children to prepare concrete, time-bound action plans to halt such violations. Since the Secretary-General reports serve primarily as a "name-and-shame" list for countries and insurgent groups, the Security Council's action must be underpinned by accountability at the national level, including investigation and prosecution of those responsible for grave abuses against children, if the mechanism is to work effectively.

THE SUDAN

In 2009, the most significant development in the continuing crisis in Darfur was the ICC's decision to indict President Al-Bashir for war crimes and crimes against humanity.⁵⁹ This indictment marked the first time a sitting head of State was called to answer to alleged crimes during his tenure as leader. The move by the ICC

was the culmination of years of review after the Security Council referred the situation in Darfur to the ICC in March of 2005⁶⁰ and was a watershed moment in international human rights law. Despite division on the Security Council on whether to defer the indictment, permanent members France, the UK, and the US were able to block attempts by those opposed to the indictment, namely the Russian Federation and China.

Whereas many in the human rights field hailed the decision to indict Al-Bashir as a critical step to tackle impunity, the ICC pronouncement has revealed continuing tensions on many fronts. At the heart of the division in the Security Council is the fear the indictment would provoke a backlash against UN peacekeepers and aid workers and further destabilise the humanitarian situation. Given the lack of mechanisms for compliance and the past disregard by the Sudanese Government for UN rulings, such a fear has been central to the debate. This played out in the Security Council, with Western members generally supporting the indictment and China, the Russian Federation, and members of the Non-Aligned Movement (NAM) expressing concern over political and humanitarian consequences of the indictment and preferring an internal political solution to the conflict.⁶¹ This fear was seized upon by Khartoum by expelling 13 international aid organisations once the indictment was issued. Although only 13 organisations were expelled, the Director for OCHA reported to the Security Council on 6 March 2009 that they provided about half of the distribution and provision of aid, including food, water, and medical care and that their expulsion had ended a mass immunisation campaign.⁶² Furthermore, attacks on aid workers and peacekeepers increased following the indictment of Al-Bashir, creating a greater sense of fear and doubt. Despite divisions, concern was expressed by all Security Council members regarding the fate of the four million civilians in Darfur and they pressed for the Sudanese Government to reverse its decision to expel the aid workers and organisations. The pressure bore some fruit as many organisations that were expelled were allowed to register under new names and re-enter the country.

The security situation in Darfur continued to be an issue throughout 2009, with continued attacks on civilians and aid workers alike. The ongoing harassment of UNAMID workers by

⁵⁶ Security Council *Resolution 1325* (31 October 2000) is the first resolution passed by the Security Council that specifically addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.

⁵⁷ The report will address women's participation and inclusion in peacebuilding and planning in the aftermath of conflict, and will seek input from the Peacebuilding Commission.

⁵⁸ The Secretary-General reports on implementation of *Resolution 1612* (2005), which established a Working Group on children and armed conflict and a monitoring and reporting mechanism to systematically monitor, document, and report on heinous abuses of the rights of children in situations of armed conflict.

⁵⁹ In addition to Al-Bashir, the ICC also issued arrest warrants on 27 April 2007 for Ahmed Haroun, the State Minister for humanitarian affairs, and militia leader Ali Kosheib.

⁶⁰ Security Council *Resolution 1593* (March 2005).

⁶¹ SC/9622, 20 March, available at www.un.org/News/Press/docs/2009/sc9622.doc.htm.

⁶² SC/9622, 20 March, available at www.un.org/News/Press/docs/2009/sc9622.doc.htm.

both government and rebel forces was preceded by the Sudanese Government's hampering of the full deployment of UNAMID staff. This trend continued in 2009, with UNAMID only reaching 20,000 of the fully mandated 26,000 troops, two years after the original deadline for full deployment.⁶³ In response to the attack on the African Union (AU) base in South Darfur that killed 12 peacekeepers and police officers in September 2007, the ICC charged rebel leader Bahar Idriss Abu Garda on 17 May for war crimes. Human rights organisations have called on the Security Council to continue to press the Sudanese Government and other parties to cooperate fully with UNAMID and the ICC.⁶⁴

Other contentious developments spurred by the ICC's decision were the issuance of strong statements condemning the ICC's move and calling on the Security Council to defer the case by the AU and Organisation of Islamic Conference (OIC). These positions were played out in the Security Council by Libya and Bukina Faso, who referred to the AU initiative. The AU's argument was based on the perception that the ICC unfairly targets African nations at the expense of nations in other regions. However this argument ignores the fact that the Governments of Uganda, the DRC and the Central African Republic (CAR) referred their own cases to the ICC.

Despite some cooperation by the Sudanese Government on the humanitarian front, statements made by the Prosecutor of the ICC, Mr Luis Moreno-Ocampo, to the Security Council on 4 December 2009 revealed that the Sudanese Government failed to comply with the ICC's requests and hand over those charged with crimes. The indictment prevented Al-Bashir from travelling to Nigeria for an AU summit on resolving the crisis in Darfur in October, and from attending an OIC meeting in Turkey in November for fear of arrest. Furthermore, Al-Bashir has directed the international community's attention to issues pending with the civil war in the South and away from Darfur and his alleged crimes. Mr Moreno-Ocampo further warned the Security Council, "President Al Bashir will exacerbate such conflict if it can shift your attention from the crimes committed in Darfur".⁶⁵

The Prosecutor's words rang true as the civil war in the South and the Comprehensive Peace

Agreement's (CPA) possible failure played a growing role on the Security Council's agenda in 2009.⁶⁶ This was largely due to the approaching date for a referendum on independence for southern Sudan in 2011. However other factors are involved, including the need for border demarcation, finalising the redeployment of forces, demobilisation and re-integration, and the national elections in 2010.⁶⁷ (A credible election is viewed as crucial in stabilising the conflict in Darfur by bringing the various factions into the political process, including civil society and women groups so as to create a more inclusive peace process).⁶⁸ In his report to the Security Council 11 months before the Prosecutor in February, the Head of the United Nations Mission in the Sudan, Mr Ashraf Jehanqir Qazi, expressed reservations about the impact the impending indictment might have on the CPA.⁶⁹ These tensions were exacerbated by increased ethnic fighting within southern Sudanese groups throughout 2009 and a plethora of human rights violations.⁷⁰ In their December 21 briefing to the Security Council, the Panel of Experts, which was set up in 2005 by the Secretary-General to monitor the implementation of the arms embargo in the Sudan, reported receiving reports of severe human rights violations, involving the harassment, persecution, and torture of those opposed to Government policies, in the aftermath of the issuance of the arrest warrant against Al-Bashir. The Group stressed that the outstanding issues must be negotiated and resolved in Darfur and the South before the February election. In November, the Security Council extended the Panel of Expert's mandate for another year through *Resolution 1881* (2009).⁷¹

MEMBERSHIP

China, France, the Russian Federation, the United Kingdom, and the United States are permanent members. Bosnia and Herzegovina, Brazil, Gabon, Lebanon and Nigeria will begin their two-year terms as non-permanent members starting on 1 January 2010. They replace Burkina Faso, Costa Rica, Croatia, Libya, and Vietnam, which ended their terms on 31 December 2009. Austria, Japan, Mexico, Turkey, and Uganda will continue to serve their terms through 2010.

63 Security Council *Resolution 1769* (2007). This created the UN/AU hybrid force, the first of its kind.

64 The Security Council extended the mandate for UNAMID for one year with Security Council *Resolution 1891* (August 2009).

65 SC/9804, 4 December 2009, available at www.un.org/News/Press/docs/2009/sc9804.doc.

66 Separate to the conflict in Darfur, a civil war has been waging for over 20 years between the mainly Christian South and the Muslim North. In 2005 the Government of the Sudan and the Sudan People's Liberation Movement/Army signed the Comprehensive Peace Agreement with a referendum on independence for the South in 2011.

67 SC/9590, 5 February 2009, available at www.un.org/News/Press/docs/2009/sc9590.doc.

68 SC/9800, 30 November 2009, available at www.un.org/News/Press/docs/2009/sc9800.doc.

69 SC/9590, 5 February 2009, available at www.un.org/News/Press/docs/2009/sc9590.doc.

70 Most notably in Jonglei state where armed civilians from the Lou Nuer and Murle ethnic groups clashed killing an estimated 1,000 men between March and April of 2009. Human Rights Watch, 'Southern Sudan: Improve Response to Ethnic Violence', 21 June 2009, available at www.hrw.org/en/news/2009/06/21/southern-sudan-improve-response-to-ethnic-violence.

71 Security Council *Resolution 1891* (13 October 2009).