

Statement by Kamallesh Sharma, Permanent Representative on Protection on
Civilian in Armed Conflict at the Security Council on April 23, 2001

Mr. President,

We welcome your initiative in calling this meeting. Because of your wise injunction against prolixity, I shall address only the recommendations in the Secretary General's report: on the supporting arguments, I will only say that we should be wary where we advance the indefensible to protect the defenseless. Having visited this ground twice before in the Council, our tour can be a brisk one.

Recommendation 1 asks the Security Council and the General Assembly to provide "reliable, sufficient and sustained funding" for ad hoc international tribunals and related bodies. This is odd. Firstly, the Secretariat must know that funding is one of the few areas the Council has not as yet appropriated under its broad definition of security. Secondly, the General Assembly has already taken on the costs of the two ad hoc tribunals, splitting them equally between the regular and the peacekeeping budget. What, then, remains to be done?

When the Secretariat asks for more, we should carefully weigh if these tribunals give value for the money they already have. This year, they will cost \$182 million. As an order of comparison, the UN's regular budget will spend \$10 million this year on the International Court of Justice, \$39 million under the budget line "Economic and social development in Africa" and \$21 million on the "Programme of technical cooperation".

Recommendation 2 reflects a continuing confusion over the nature and powers of peacekeeping. If a peace agreement has provided for amnesty, a peacekeeping operation, sent to monitor its implementation, cannot overturn any of its provisions, and start hunting for suspects. That would violate the UN's neutrality and its mandate. The UN can refuse to get involved if it believes an agreement is flawed, but cannot try to either correct or override it through a peacekeeping operation, or through mandates drafted in this Council.

Recommendation 4 is hard to sustain under international law. The Security Council has been given no role in the implementation of the Geneva Conventions. The Conventions do not contain a right of unimpeded access, they acknowledge the exigencies of war. The right which the Secretariat demands violates international humanitarian law, and the Security Council has no power to grant it. Apart from

anything else, the denial of access need not, and usually will not, constitute a threat to international peace and security, the only trigger for Council action.

Recommendation 5 might very well appeal to the Council when New York is snowed in. However, though the Council has selflessly assumed many chores, not given to it by the Charter, it should jib at being turned into a scout for OCHA.

Recommendation 6 seeks to draw general conclusions from exceptional experience. Nor does experience encourage this general conclusion. The Secretariat asks the Council to “further develop the concept of regional approaches to regional and subregional crises”. In the past, the Council has often either sheltered behind regionalism to avoid having to take action, or subcontracted its powers, and abdicated its responsibilities, to some regional organisations. These are concepts that should be abandoned, not developed.

Recommendation 7 encourages the Council to “support the development of clear criteria and procedures for the identification and separation of armed elements” from civilian refugees. Nothing in the supporting arguments gives us an inkling of what the Secretariat has in mind. To our perhaps simplistic way of thinking, a person with arms is an armed element and can be identified as such, unless he or she has hidden the arms away. Separation is a different matter; it goes to the heart of the debate on the knotty question of post-conflict disarmament. The development of criteria, even if it can be done, is unlikely to help.

We note that DPKO and the UNHCR have agreed to deploy joint assessment teams to an “emerging crisis area”. This surprises us. Refugee crises do not necessarily need a peacekeeping operation, and DPKO has no role where there is none. Departments should not overstep their mandates.

Recommendation 8 addresses a need but will not work if the past performance of the Secretariat is a guide. In all peacekeeping operations, the UN’s only interest is to cater to Western journalists, and to a Western audience. The needs of the local population, or of the peacekeeping operation, are not only of marginal interest, they are prone to be sacrificed on the altar of this higher need. If this mindset does not change, this mandate is liable to be used more in search of stories that would attract Western attention; the protection of civilians would be incidental.

Recommendation 9 is well-meaning, but it is clear that the problem has not been thought through. A dialogue can be held with armed elements who have become part of a peace agreement. If, however, there is no agreement, it is difficult to see how the UN as an institution would engage armed groups in a dialogue only on the “provision of humanitarian assistance and protection”.

Recommendation 10 is somewhat too romantic. It is hard to believe that the RUF would have stopped hacking off arms and legs in Sierra Leone, or the Taliban stopped shooting men for forgetting not to shave, if they had known that these indulgences were banned in the Geneva Conventions.

Recommendation 11 We hear the Security Council plans to take fifteen members of ECOSOC into a day-long embrace. The Secretariat wants the General Assembly to be represented, not even by a selection of its members, but by the President. Apart from the fact that the President of the General Assembly does not have the powers attributed to him here, where would he get the information from, on the basis of which he would, as the Secretariat urges, “alert the Council to situations in which action might be required”? The President would have this information, and a mandate, only if the Assembly had adopted a resolution on the issue, urging action by the Council and authorising the President to play a role.

Recommendation 12 urges the “Security Council to continue investigating the linkages between illicit trade in natural resources and the conduct of war”, and to take appropriate action. As with the international tribunals, it is perhaps time to take stock before the Council takes further action. For instance, the Panel of Experts for the DRC has asked that the UN Forum on Forests define, and lay down the parameters for, what they describe as “conflict timber”. If the assumption is that the trade in illicit natural resources is a cause of war or of the violations of the human rights of civilians, it is facile and perhaps misleading. If the Council made mandatory a marking and tracing system for small arms and light weapons, more innocent civilian lives would be saved than through the elaborate controls now being devised for the trade in minerals and natural resources.

Recommendation 13 is too broad in sweep for practical application. It is impossible to predict either that there will be massive violations of human rights in any given conflict, or to anticipate what the instruments used will be. In effect, this recommendation implies a trade embargo being automatically imposed on all parties to a conflict, including on legitimate governments resisting insurrections.

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This being April, Mr. President, we are not surprised that the Annex to the report mixes memory and

desire, but I wonder if we needed to disinter the recommendations of 1999. The exhumation does not add much more of interest.

Recapitulation 1 is on steps to strengthen the UN's capacity to deploy peacekeeping operations. We support this, but believe a well-trained and properly equipped national brigade, committed under the Standby System, would be much more effective than the multinational formation the Secretariat favours. The report fondly highlights the High Readiness Brigade, but in the one mission to which it has deployed so far, it needed two and a half months to get there; it may have been high but it certainly was not ready.

Recapitulation 6 As I said to the Council in 1999, there is no indication here that the consent of a member state is required before international military observers can be deployed. The implication is that, wherever internally displaced persons or refugees are to be found, the Council would automatically act under Chapter VII and order the deployment of international military observers, even over the objections of a member state. Since observers would need protection, an international military presence must necessarily be set up at the same time. The implications of this do not have to be spelt out.

Recapitulation 9 gives its blessings to a Commission on humanitarian intervention set up by a member State, no doubt with the best intentions. Elsewhere, attempts are made, on spuriously religious grounds, to try to sanctify terrorism as holy war, under a false doctrine of religious intervention. Exactly as we would not expect the Secretariat to bless those initiatives, we expect it not to act as publicists for any other State or group of States, or to endorse national preferences.

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To sum up, Mr. President, we do not know if the report has advanced the cause of the protection of civilians in armed conflict. The Council has taken pragmatic steps in recent years to do what it can, through peacekeeping operations, where appropriate, and through other means within its competence, to try to give some protection to civilians affected by armed conflict. We encourage it to continue on that path in this vital and human responsibility.

Mr. President,

In your statement earlier today, you had observed that the Council did not act on many of the recommendations in the Secretary General's report of 1999 as those were outside the Council's mandate and competence, or because of practical difficulties in implementing them. In making its recommendations in the future, the Secretariat will no doubt bear your wise counsel in mind.

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