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Curing the Humanitarian Crisis: Resolution 1502

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CURING THE HUMANITARIAN CRISIS: RESOLUTION 1502

In Congo it happens all the time. In Uganda it happens all the time. In Africa it happens, and it's tragic . . . In Somalia that happens on a daily basis. UNICEF workers are kidnapped. Grenades are thrown into compounds . . . But now that it's happening in Iraq, people will be looking at it through different eyes.

—Joel Frushone, policy analyst, U.S. Committee of Refugees.¹

We are waiting for the enemy. We sit here like bait, unarmed, waiting for the wave . . . while waiting for the militia to do what they have to do; I will draft the agenda for the meeting tomorrow on Kapang. The aim of the meeting: to examine how we are going to continue this operation. I have to go now. I hear screaming outside.

—Carlos Caceres, one of the three U.N. staff members who were brutally murdered on September 6, 2000 in Atambua, West Timor.²

INTRODUCTION

Humanitarian workers provide support to those who lose their homes to war and poverty, medical attention to those who are injured, food to those who are hungry, and an education and possibility of a future to children who lose everything. However, humanitarian workers are consistently encumbered by the overwhelming problems that confront them daily.³ Wars often operate without rules, without mercy, and without humanity. Civilians are targeted, homes burned, and chaos ensues. In a world where

1. *Humanitarian Protection*, JOURNAL NEWS, Aug. 31, 2003, at 6B, available at 2003 WL 61788726 (last visited Oct. 25, 2004). Hundreds of United Nations and other humanitarian workers have been killed in Angola, Bosnia, Cambodia, Chechnya, Liberia, and Sudan, as well as other countries.

2. Nuchhi Currier, "Protecting the Protectors": *Strengthening Staff Security: Priorities and Challenges*, 2003(2) U.N. CHRON. ONLINE ED. 5, June–Aug. 2003, at <http://www.un.org/Pubs/chronicle/2003/issue2/0203p5.html> (last visited Sept. 15, 2004).

3. See Mani Sheik et al., *Deaths Among Humanitarian Workers*, 321 BRIT. MED. J. 166 (2000). For example, humanitarian workers face violence, motor vehicle accidents, and disease. The authors reported the causes of death of 375 civilian U.N. and non-governmental organization aid workers and peacekeepers who died between 1985 and 1998. The high number of intentional deaths (253) compared to road accident fatalities (64) reflects the increasingly violent conditions that aid workers face on a daily basis. *Id.* at 166.

far too many states are embroiled in internal conflict, humanitarian workers play an indispensable role.⁴

The U.N. Security Council relies on humanitarian workers to help ease human suffering and strife.⁵ Accordingly, humanitarian workers must be able to proceed with their work without being threatened and attacked by those around them.⁶ However, humanitarian workers are increasingly becoming victims in the countries where they lend aid and support.⁷

4. See *infra* note 5.

5. U.N. CHARTER art. 1, para. 1 (defining one of the primary purposes of the United Nations as the maintenance of international peace and security); U.N. CHARTER art. 14 (mandating the General Assembly to “recommend measures for the peaceful adjustment of any situation . . . which it deems likely to impair the general welfare or friendly relations among nations”).

Peacekeeping missions often are described as being “‘born out of necessity’ . . . to stop hostilities or control conflicts by monitoring cease fires and acting as a buffer between disputing parties.” Brian D. Tittmore, *Belligerents in Blue Helmets: Applying International, Humanitarian Law to United Nations Peace Operations*, 33 STAN. J. INT’L L. 61, 76–77 (1997) (citing a number of guidelines that have since emerged with respect to “formation, structure, and operation” of peacekeeping forces). See also David J. Scheffer, *Toward a Modern Doctrine of Humanitarian Intervention*, 23 U. TOL. L. REV. 253, 265 (1992) (defining humanitarian “intervention”).

The purposes of humanitarian “intervention” include:

(1) To rescue or protect citizens abroad and other aliens whose lives are at risk. (2) To protect religious or ethnic minorities from genocide or violent oppression. (3) To end internal aggression or human rights atrocities. (4) To contain mass migration of people, to return large numbers of displaced people to their rightful homes, to repatriate large numbers of refugees and other migrants or to protect refugees and migrants from life-threatening circumstances. (5) To respond to mass human suffering caused by man-made or natural disasters. (6) To support anti-totalitarian rebellions or other movements of self-determination struggling for independence from oppressive regimes that violate human rights on a large scale.

Id.

6. Members of the Security Council stressed the necessity of exploring how the Council could work with other U.N. organs to “evolve mechanisms to ensure that an initial deployment eventually led to a permanent peace.” Press Release, U.N. SCOR., Security Council Discusses Ways to Improve Support for United Nations Peacekeeping Operations (Aug. 28, 2003), 58th Sess., 4818th mtg. at 1, U.N. Doc. SC/7860.

7. Lijeanne Lee, *Aid Workers Fight Other Kinds of War*, CAP. NEWS ONLINE (Apr. 4, 2003), at <http://temagami.carleton.ca/jmc/cnews/04042003/n2.shtml> (last visited Aug. 31, 2004). Secretary-General Kofi Annan explained that

[w]hat is unacceptable and really appalling is that these young men and women who go to these areas to help—to assist—then become targets. They are not at war with anyone. They went because they wanted to help, they went because they have compassion, they went because they understand the human condition and want to do whatever they can to help. It is unforgivable that these human beings would then become targets of either rebels or government forces which are at war with each other.

Id.

The International Community of the Red Cross (ICRC) noted the following trends in the previous nine years:

the number of incidents involving a physical threat to our staff has increased from about 20 a year to over 100 (153 in 1996); banditry and threats of various kinds were involved in 10% of incidents in 1990 and as many as 50% in 1996; and cases in which the ICRC has been deliberately targeted have increased steadily, from 3% to 20%.

Despite the legal protections afforded by international agreements, such as the Geneva Conventions on the Law of War (Geneva Conventions),⁸ the 1994 Convention on the Safety of United Nations and Associated Personnel (Safety Convention),⁹ and the Rome Statute of the International Criminal Court (Rome Statute),¹⁰ the perpetrators of violence against humanitarian workers are rarely prosecuted.¹¹ For example, from January 1992 to April 2003, 220 civilian U.N. staff members were killed, but only twenty-two offenders have been brought to justice as of June 2003.¹² In response, on August 26, 2003, with the passage of Security Council Resolution 1502, the United Nations attempted to strike a balance between maintaining humanitarian organizations' neutrality in the eyes of the world and ensuring their safety while in the field.¹³

After the August 19, 2003 bombing of the U.N. mission headquarters in Baghdad, Iraq,¹⁴ the fifteen-member Security Council unanimously

See Paul Grossrieder, *Protecting the Protectors*, International Committee of the Red Cross Delegation to the United Nations and New York University School of Law, 15th Annual Seminar for Diplomats on International Humanitarian Law (Jan. 28, 1998), at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JP2C> (last visited Sept. 7, 2004).

Significantly, between January 1994 and October 2002, seventy-four incidents involving hostage-taking or kidnapping involved 262 humanitarian workers and as of October 2002, thirty-nine U.N. personnel were still in detention at various locations throughout the world. *See* Currier, *supra* note 2.

8. *See* Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3361, 75 U.N.T.S. 135 [hereinafter Third Geneva Convention].

9. *See* Convention on the Safety of United Nations and Associated Personnel, Dec. 9, 1994, 34 I.L.M. 482, available at <http://www.un.org/law/cod/safety.htm> [hereinafter Safety Convention].

10. *See* Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, Annex II, UN Doc. A/CONF.183/9 [hereinafter Rome Statute].

11. Initially, attacks on humanitarian workers were considered domestic crimes and the perpetrators were presumably prosecuted under the criminal laws of the host state. However, this was problematic, because the "law enforcement capabilities of a state requiring outside forces for internal stability are generally insufficient to investigate, try, and prosecute persons for such crimes." Siobhan Wills, *The Need for Effective Protection of United Nations Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel*, 10(2) HUM. RTS. BRIEF 1, 3 (2003), available at http://www.wcl.american.edu/hrbrief/10/2peacekeepers.cfm?&print_page=1 (last visited Sept. 16, 2004).

12. *See* Currier, *supra* note 2, at 7–8. Secretary-General Kofi Annan has stated, "[i]t is particularly troubling that so few perpetrators have been prosecuted for crimes against United Nations staff. The swift application of justice would be a real deterrent against such impunity." *Id.*

13. S.C. Res. 1502, U.N. SCOR, 58th Sess., 4814th mtg., U.N. Doc. S/RES/1502 (2003), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/478/02/PDF/N0347802.pdf> (last visited Oct. 16, 2004).

14. In a Press Statement after the August 19, 2003 attack on the U.N. Mission in Baghdad, "[t]he Security Council reaffirm[ed] its determination to assist the Iraqi people to build peace and justice in their country and to determine their own political future by themselves." Press Release, U.N. SCOR, Condemnation of Terrorist Attack Against U.N. Headquarters in Baghdad (Aug. 20, 2003), U.N. Doc. S/PRST/2003/13.

adopted Resolution 1502.¹⁵ Resolution 1502 states that “attacks knowingly and intentionally directed against” humanitarian or peacekeeping personnel “constitute war crimes.”¹⁶ The Resolution condemns “murder, rape and sexual assault, intimidation, armed robbery, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention to which [humanitarian or peacekeeping personnel] participating in humanitarian operations are increasingly exposed, as well as attacks on humanitarian convoys and acts of destruction and looting of their property.”¹⁷ The Resolution was, in large part, an answer to U.N. Secretary-General Kofi Annan’s plea to bring to justice those who attack innocent, unarmed civilian humanitarian workers, because “impunity for those who commit such unpardonable crimes cannot stand.”¹⁸

15. S.C. Res. 1502, *supra* note 13. China, France, the Russian Federation, the United Kingdom, and the United States are permanent members of the Security Council. The ten non-permanent members are selected by the General Assembly for two-year terms, with five members being replaced each year. The ten non-permanent members for 2003–2004 were: Angola, Bulgaria, Cameroon, Chile, Germany, Guinea, Mexico, Pakistan, Spain, and Syria. *United Nations Security Council Members*, available at http://www.un.org/DOLS/sc/unsc_members.html.

16. S.C. Res. 1502, *supra* note 13, pmb.; see also S.C. Res. 1511, U.N. SCOR, 58th Sess., 4814th mtg. ¶ 18, U.N. Doc. S/RES/1511 (2003), available at <http://ods-dds/ny.un.org/doc/UNDOC/GEN/N03/563/91/PDF/N0356391.pdf> (last visited Oct. 22, 2004) (“[u]nequivocally condemn[ing]” terrorist attacks against multiple targets from August 7, 2003, through October 14, 2003, which included the Baghdad bombing of U.N. headquarters, the murder of a Spanish diplomat, and the assassination of Dr. Akila al-Hashimi).

Resolution 1502 was originally proposed last spring by Mexico, but was revived one week after a suicide truck bomber devastated the U.N. mission in Baghdad, Iraq. The suicide truck bomber killed twenty-three people, including eighteen U.N. staff members and the mission’s leader, Sergio Vieira de Mello. Tim Cornwell, *20 Die As Suicide Bomber Destroys U.N. Base*, THE SCOTSMAN (Aug. 20, 2003), at <http://thescotsman.scotsman.com/index.cfm?id=913632003> (last visited Oct. 22, 2004). Resolution 1502 was sponsored by Mexico, France, Germany, Russia, Bulgaria, and Syria. S.C. Res. 1502, *supra* note 13.

17. SC Res. 1502, *supra* note 13, ¶ 1.

18. *Protection of U.N. Personnel, Associated Personnel and Humanitarian Personnel in Conflict Zones*, U.N. SCOR, 58th Sess., 4814th mtg. at 2, U.N. Doc. S/PV.4814 (2003). At the voting meeting for Resolution 1502, Security-General Kofi Annan stated:

I can think of no issue about which I feel more strongly as Secretary-General—and I believe none should be more important to each member of the Security Council—than the safety of those brave men and women who serve the Organization in the places where it matters most, that is, in zones of conflict and danger.

It is of course a fact of life that much of our work is done in dangerous places, since that is where it is most sorely needed. But that only strengthens the obligation on all of us to take every step in our power to protect those working under the blue flag and to bring to justice those who attack or harm them. Regrettably, in recent years we have not lived up to that obligation. Attacks on humanitarian workers and on United Nations personnel have increased alarmingly. Again and again, peacekeepers or unarmed civilians who have voluntarily gone in to help their fellow men and women have been deliberately targeted by armed factions seeking to make a political point or a military gain or to intimidate the international community.

Mexico, the sponsor of Resolution 1502, avoided a potential conflict with the United States by agreeing to eliminate a reference to the International Criminal Court (ICC).¹⁹ The ICC is a newly-established, standing war crimes tribunal,²⁰ to which the Bush Administration is strongly opposed.²¹ The deletion of the ICC reference was needed to ensure the unanimity of the Resolution, because “[t]he message to the international community and to the perpetrators cannot be affirmed if the resolution is not adopted unanimously.”²² Significantly, however, due to the removal of the ICC reference, if the country where the crimes occur declines to prosecute the offenders, then the U.N. must set up a special tribunal in order to do so.²³

Last week’s vicious attack on our headquarters in Baghdad, with all its tragic consequences, has brought that vital issue to the forefront of our priorities. It shows us what we must expect if we allow the impression to continue gaining ground that international workers are a soft, cost-free target.

Id. at 2.

Before the vote, the Secretary-General urged members of the Council:

[T]o adopt the timely draft resolution before you. I hope very much that you will pass it unanimously and that you will follow it up with action. In so doing, you will send an unambiguous message to all those who mistakenly believe that, in today’s turbulent world, they can advance their cause by targeting the servants of humanity. And if you succeed in strengthening the security of United Nations staff, you will not only do what, in all conscience, is your duty; you will also increase the authority and effectiveness of the Council by making clear that you are determined to protect those whom you send into the field to implement your decisions.

Id.

19. *Id.* at 4. The contested passage in Resolution 1502 merely stated that attacks against humanitarian personnel and peacekeepers were war crimes under the Rome Statute of the ICC. This passage was deleted from the final version of Resolution 1502. *Id.*

20. The U.S. opposes the ICC because it fears that it could result in frivolous prosecutions of U.S. soldiers or officials, including the President. Although more than one hundred countries have signed and ratified the Rome Statute that established the ICC, the United States is not alone in its lack of support for the tribunal. China, Japan, India, Saudi Arabia and Pakistan have not signed the Rome Treaty, while Russia, Iran, Egypt, and Syria have signed but not ratified it. See Coalition for the International Criminal Court, Rome Statute Signature and Ratification Chart, at <http://www.iccnw.org/countryinfo/worldsignsandratifications.html> (last visited Oct. 1, 2004).

21. For a discussion on U.S. opposition to the International Criminal Court, see Leila Nadya Sadat & S. Richard Carden, *The New International Criminal Court: An Uneasy Revolution*, 88 GEO. L.J. 381, 447–57 (2000). The most important U.S. objection to the ICC centers around the claim of the ICC to jurisdiction over non-party states. The ICC’s presumption of power over non-state parties, in the view of the United States, does not correspond with customary international law, where international treaties only bind those who are state parties to the treaty or convention. *Id.*

22. Felicity Barringer, *U.N. Condemns Attacks on Workers*, N.Y. TIMES, Aug. 27, 2003, at A10 (quoting Mexican ambassador, Adolfo Aguilar Zinser).

23. See, e.g., *Statute of the International Criminal Tribunal for Former Yugoslavia*, S.C. Res. 827, 3217th mtg. U.N. SCOR, 48th Sess., U.N. Doc S/RES/827 (1993); *Statute for the International Tribunal for Rwanda*, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994); Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1544, 8 U.N.T.S. 279; Charter of the International Military Tribunal for the Far East, Jan. 19, 1946, T.I.A.S. No. 1589, 4

Part I of this Recent Development explains why humanitarian workers are subject to attacks in the very states they are sent to serve and protect. Part II explores the previous resolutions and conventions condemning attacks against humanitarian workers. Part III analyzes the effectiveness of Resolution 1502.

I. HUMANITARIAN WORKERS: "SOFT TARGETS"

Humanitarian intervention existed as early as the nineteenth century, and the need for humanitarian missions has certainly grown since that time.²⁴ Those who advocate these humanitarian missions, however, are faced with a grave dilemma, because the desire to help those in need through humanitarian missions²⁵ is met with conditions so unsafe that these missions in some instances become infeasible.²⁶ The U.N. Security

Bevans 20.

24. See generally David J. Scheffer, *Toward a Modern Doctrine of Humanitarian Intervention*, 23 U. TOL. L. REV. 253 (1992) (providing a comprehensive examination of the doctrine of humanitarian intervention); T. Modibo Ocran, *The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*, 25 B.C. INT'L & COMP. L. REV. 1 (2002) (elaborating a justification for humanitarian intervention); Stephen Dycus & Barry Kellman, *International Law and National Security*, 35 INT'L LAW. 811 (2001) (giving examples of where humanitarian missions have been necessary).

25. The main goal of peacekeeping missions is to ensure normal living conditions for people in the countries where they are sent. See *supra* note 5 (discussing what peacekeeping missions are designed to achieve).

26. For example, in Somalia in 1994, the United States pulled their humanitarian aid workers out of the country. Art Pine, *U.S. Troops to Safeguard U.N. Evaluation From Somalia*, L.A. TIMES, Dec. 17, 1994, at A6.

"Most notably, in Timor-Leste (previously known as East Timor) in September 1999, human rights workers, journalists, and eventually the U.N. was forced to evacuate the province after repeated attacks by militia and members of the security forces." *Indonesia: Protecting the Protectors: Human Rights Defenders and Humanitarian Workers in Nanggroe Aceh Darussalam*, AMNESTY INT'L 9 (June 3, 2003), AI Index: ASA 21/024/2003, at <http://web.amnesty.org/library/index/ENGASA210242003?open&of=ENG-IDN> (last visited Oct. 16, 2004). Evacuations, however, are a "last resort"—an estimated 1,300 people were killed in Timor-Leste during 1999, but most of the killings occurred *after* the evacuation of the humanitarian workers. *Id.*

For a personal account of an evacuation, see I.A.R. (Psychologist in Sierra Leone), *An Evacuation from Sierra Leone*, in SHARING THE FRONT LINE AND THE BACK HILLS: INTERNATIONAL PROTECTORS AND PROVIDERS: PEACEKEEPERS, HUMANITARIAN AID WORKERS AND THE MEDIA IN THE MIDST OF CRISIS 222 (Yael Danieli ed., 2002).

Only then do we realize that it is really an evacuation and not just a stay at Conakry until things quiet down, and that we shall not be back soon, as we had thought. When we were leaving, we had even said, "... see you Tuesday or Wednesday" to the psychology program assistant ... we have plenty of time to imagine what could happen if the rebels take Freetown, and to think about those who were left behind. The children in the therapy groups are already suffering greatly; how will they survive another trauma? Will people be able to protect themselves? What chance do the girls in the team have of avoiding being raped if the rebels break into their houses? We are afraid for them. Our worries are fed by memories of the accounts told by patients already in our care. We have a whole sleepless night to imagine

Council has condemned the violence stating, “again and again, peacekeepers, who had voluntarily gone to help their fellow men and women, ha[ve] been deliberately targeted by armed factions seeking to make a political point or a military gain, or to intimidate the international community.”²⁷

There are several possible explanations as to why humanitarian workers are increasingly becoming victims of violence. First, the foreign presence may be unwanted and the violence can force these “unwanted” organizations to leave, as was the case in Somalia²⁸ and Baghdad.²⁹ Second, violence discredits the occupying coalition by displaying its

the worst, which is certainly going to happen.

And then the feeling of guilt at the moment of leaving, goodbye to the ideals of humanitarian aid. We are leaving because things could turn nasty. Of course we know that nothing would be gained by staying behind and that it could even put the whole Sierra Leone team in danger; that it is not our country. We are happy to climb into the helicopter, sure, but the anguish and feelings of guilt are still there. In the future, there will always be a “before” and an “after” the evacuation, when we speak of our mission in Sierra Leone.

Id.

27. Press Release, *Security Council Expresses Strong Condemnation of Violence Against Humanitarian Workers, Calls for Action to Ensure their Safety, Resolution 1502 (2003) Adopted Unanimously* (Aug. 26, 2003), U.N. SCOR, 58th Sess., 4814th mtg., U.N. Doc. SC/7856, available at <http://www.un.org/News/Press/docs/2003/SC7856.doc.htm> (last visited Sept. 3, 2004).

Tragic examples of this violence abound. For instance “on March 30, 2003, a water supply engineer with the International Committee of the Red Cross was shot by unidentified assailants in Afghanistan.” Currier, *supra* note 2, at 5. In October 2003, Dr. Annelena Tonelli was brutally assassinated in Somalia as she left her hospital. Dr. Nils Daulaire, *Line Fusing Between Non-combatant Aid Workers and Politics*, 124 GLOBAL HEALTH LINK 2 (Nov–Dec. 2003), at <http://www.globalhealth.org/publications.pdf> (last visited Sept. 18, 2004). Dr. Tonelli “had devoted the past 33 years to working with the sick and dispossessed in Somalia and Kenya. She had campaigned against female genital mutilation and founded a TB hospital . . . in Somaliland.” *Id.*

In October 2003, the attack on the Red Cross headquarters in Baghdad took the lives of two Red Cross workers and other innocent bystanders. The Red Cross has since evacuated from Baghdad. Jane Darby, *Field Under Fire, Humanitarian Workers Become Soft Targets*, 124 GLOBAL HEALTH LINK 4, 4 (Nov.–Dec. 2003), at <http://www.globalhealth.org/publications.pdf> (last visited Sept. 16, 2004).

Arjen Erkel, a volunteer with Doctors Without Borders, was kidnapped on August 12, 2002 in the Russian republic of Dagestan, and remains a hostage today. This brings the number to ten humanitarian workers kidnapped in the Northern Caucasus since 1999. *Id.*

Unfortunately, in the words of U.N. Secretary-General Kofi Annan: “We, who had assumed that our mission to help others served as its own and ultimate form of protection, now find ourselves threatened and exposed. We who have tried from the beginning to serve those targeted by violence and destruction, have become targets ourselves.” *Id.* (quoting Secretary-General Kofi Annan).

28. Grossrieder, *supra* note 7. For example, during the year 2000, armed conflicts stretched across the African continent in Angola, Congo, Sierra Leone, and Sudan, and along the border between Ethiopia and Eritrea. Civilians and humanitarian workers were also victimized in these conflicts as rebel forces refused to disarm and demobilize.

29. See *Humanitarian Protection*, *supra* note 1. After the explosion of the suicide truck bomb in Baghdad that prompted Resolution 1502, the British international relief agency, Oxfam, withdrew its fifteen workers from Iraq. The International Red Cross reduced its personnel in Iraq and the World Bank and International Monetary Fund ordered their entire staffs to leave. *Id.*

inability to protect civilians.³⁰ Third, humanitarian organizations are often targeted for the supplies they transport.³¹ Fourth, where the objective is to obliterate a particular group (ethnic or otherwise), impartial humanitarian intervention is difficult to achieve.³² Fifth, “humanitarian action . . . is often perceived as promoting undesirable Western values . . . ,” or, in a related vein, may be viewed as military operations with intentions of conquest under the guise of a “humanitarian mission.”³³ Finally, as the civilian population becomes a target in armed conflicts, humanitarian workers are inevitably exposed to danger due to their position on the front-lines.³⁴

Over the past few years, humanitarian agencies began training staff members to prepare them for the unsafe environment of humanitarian missions.³⁵ For example, the International Rescue Committee (IRC) has

30. See Darby, *supra* note 27, at 5. Unarmed humanitarian workers are easy targets. Harming them captures world attention because “it signals a disruption of the system and demonstrates to the population that there is no way to protect a humanitarian mandate that is built on decency and acceptance of that mandate by all parties.” *Id.*

For example, the killing of humanitarian worker Bettina Goislard in the center of Ghazni, Afghanistan on November 16, 2003 gave the message to the community that “if it can happen in Ghazni, it can happen anywhere.” Crispin Thorold, *Afghanistan’s Fearful Aid Community*, BBC NEWS, Nov. 17, 2003, at http://news.bbc.co.uk/go/pr/fr/-i/1/hi/world/south_asia/3278279.stm (last visited Sept. 3, 2004).

31. Grossrieder, *supra* note 7, at 2. “With all the relief supplies they handle and the resources at their disposal, humanitarian agencies make particularly tempting targets.” *Id.*

32. *Id.* Humanitarian workers may be attacked simply because they are inconvenient witnesses to massacres or to “ethnic cleansing.” Humanitarian efforts to protect and assist all victims runs counter to attempts to exterminate or drive out a certain group. For a discussion of “ethnic cleansing,” see MICHAEL BARNETT, *EYEWITNESS TO A GENOCIDE: THE UNITED NATIONS AND RWANDA* (2002).

33. Grossrieder, *supra* note 7, at 2–3. Because humanitarian workers are unarmed, they must rely on the good will of the communities they are in for their safety. It is their reputation for “neutrality and impartiality” that traditionally provides safety. Unfortunately, government officials have contributed to the blurring of the lines between combatants and non-combatants. For example, in Afghanistan, U.S. warplanes dropped humanitarian rations and cluster bombs, both of which were in yellow packaging. At the same time, NGOs, which Secretary of State Colin Powell has referred to as “force multipliers” for the military, have worked closely with the United States Small units of U.S. military forces in Afghanistan wear civilian clothing and claim to undertake “humanitarian” work. This blurring between military and humanitarian missions is an important reason for the increase in violence against aid workers. Kevin Henry, *Confused Roles Put Aid Workers at Risk*, SEATTLE POST-INTELLIGENCER, Jan. 21, 2004, at http://seattlepi.nwsource.com/opinion/157373_care21.html (last visited Oct. 16, 2004).

It is no wonder that the Taliban, who claimed responsibility for the recent attacks on employees of international aid groups in Afghanistan, said the following:

Our government has always respected the people who are working in NGOs that really want to build Afghanistan. But there is another kind of NGO, which only uses the name NGO but is actually working and spying for the U.S. We advise Taliban all over the country to attack them and extradite them from Afghanistan.

Darby, *supra* note 27, at 5.

34. Grossrieder, *supra* note 7. See also Daulaire, *supra* note 27.

35. *UN/NGO Security Collaboration Recommendations to the Inter-Agency Steering Committee*,

started to give yearly in-depth security training to two staff members in each of their programs; the staff members then return to their countries to train their colleagues in security management.³⁶ In addition, IRC has hired a global security advisor, to be based at IRC headquarters in New York, whose responsibilities include reviewing security plans, training staff, and warning workers about “hotspots.”³⁷

U.N. OHHI, 58th Sess. (Jan. 18, 2003), at http://www.hiciraq.org/services/security/reports/index_txt.asp (last visited Sept. 3, 2004) [hereinafter Recommendations]. The Recommendations outline security standards for field work. It is thought that the Recommendations will help in Iraq by “(1) serv[ing] as an instructive reminder on security to all agencies operational in Iraq; (2) set[ting] an example for NGOs to develop or (re)familiarise themselves with their own guidelines; and (3) institut[ing] a level of complementarity between UN and NGO security measures.” *Id.*

The Recommendations address the following areas:

- 1: Convening fora for field security collaboration between UN organizations and their IGO/NGO partners
- 2: Including staff security concerns of UN organizations and their IGO/NGO partners in the CAP
- 3: Meeting common security-related needs
- 4: Sharing resources
- 5: Collaborating in security planning between UN organizations and their IGO/NGO partners
- 6: Facilitating inter-agency telecommunication
- 7: Sharing information
- 8: Collaborating and consulting in security training
- 9: Identifying minimum security standards
- 10: Seeking adherence to common humanitarian ground-rules.

UN/NGO Recommendations, app. (Jan. 18, 2002), at <http://www.hiciraq.org/download/Brief%20-%20UN-NGO%20Security%20Collaboration%20Recommendations%20-%2018Jan02.doc> (last visited Sept. 3, 2004).

36. Darby, *supra* note 27, at 5–6. However, despite changes in security management, security continues to remain the single greatest concern for agencies such as Save the Children, which “operates one of the largest private relief efforts in Iraq, providing food, water, cooking fuel, shelter, medicines and other basic necessities for thousands of Iraqi children and their families.” *Id.* at 6. Save the Children officials said:

In every conflict situation, we assess the risks vs. the needs. In Iraq, we do so on almost a daily basis. There are three major questions we ask ourselves in responding to conflict situations: First, are children in need? Second, is there support for our efforts? And third, is it safe for us to work?

Id. at 6.

To address the security issue, Save the Children has “developed security standards and procedures as part of a comprehensive security plan . . .” and “hired a full time security manager who is based at their regional office . . . , and [works] to establish good relations with community leaders.” *Id.* Save the Children officials also said: “We believe that demonstrating to Iraqi citizens and community leaders that we are there to help the Iraqi people help themselves will do the most to help us become accepted within the community.” *Id.* at 6–7.

37. *Id.* at 6. “Our security training is geared toward making people smart, using common sense, and teaching them what to do in case they find themselves in a bad situation, and who to talk to in the event of a problem.” *Id.*

The U.N.-instituted Minimum Operational Security Standards (MOSS)³⁸ help determine the minimum requirements for field security and provide a mechanism by which security consciousness may be increased.³⁹ In addition, the Office of the U.N. Security Coordinator (UNSECOORD) focuses on strengthening “security coordination and management” and on “increasing the efficacy of the security management system.”⁴⁰

However, the Baghdad bombing demonstrates that “training alone is insufficient to protect against deliberate and targeted attacks.”⁴¹ Thus, the question remains as to how to ensure the security of the protectors.

38. Currier, *supra* note 2, at 6. “MOSS is a fundamental policy document for all UN field operations. It was developed in response to the United Nations requirement to ensure that minimal essential security practices are established and maintained in the delivery of security support to United Nations staff.” *Minimum Operating Security Standards (MOSS): Instructions for Implementation*, at <http://www.hiciraq.org/download/Guidelines%20-%20New%20MOSS%20Instruction%20Paper%20-%2012%20Nov%202002.doc> (last visited Sept. 8, 2004) [hereinafter MOSS].

The five steps required in the development of country-specific MOSS are as follows:

Step 1: Conduct a Threat Assessment and determine the level of Risk. Confirm Security Phases.

Step 2: Compare the United Nation’s current, extant security measures in each security Phase against those required in the baseline MOSS, and determine shortfalls.

Step 3: Identify what additional measures are required above the requirements of baseline MOSS, if any.

Step 4: Once all MOSS requirements have been considered and documented, the table should be completed in the format of Annex A. The SMT then concur to the country-specific MOSS and forward it to UNSECOORD for review.

Step 5: UNSECOORD will authorize the country-specific MOSS. The MOSS is implemented at the country level with equipment obtained and installed, with training undertaken and structures put in place.

Id.

39. Currier, *supra* note 2, at 8.

MOSS is divided into four sections: security planning, training of staff, telecommunications and security equipment. Its purpose for each duty station is to review the various country-specific threats and their associated risks, using a standardized threat-assessment system to help determine the safety measures undertaken to enable staff to operate effectively and safely

Id.

40. *Id.* at 8. UNSECOORD is helping countries implement MOSS. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children’s Fund (UNICEF), the United Nations Development Programme (UNDP), the Office of the High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), and the World Food Programme (WFP) are all assisting in the implementation of greater security management for humanitarian missions. *Id.*

41. Darby, *supra* note 27, at 6.

II. BEFORE RESOLUTION 1502 THERE WAS ROME, GENEVA, AND HIGH HOPES OF SAFETY

Many prior resolutions, conventions, and treaties condemn attacks against humanitarian workers. This Recent Development will only examine the Geneva Conventions, including Protocol I, the Rome Statute establishing the ICC, and the Safety Convention.⁴² These international agreements are earlier sources of the prohibitions mentioned in Resolution 1502.⁴³

A. Geneva Conventions and Protocol I

As a general rule, “protected persons” under the 1949 Geneva Conventions include persons not taking a direct part in the hostilities, such as prisoners of war, the wounded and/or sick, and innocent civilians.⁴⁴ Under Protocol I, civilians are given specific protections in that they “shall not be the object of attack.”⁴⁵ Because humanitarian workers are often civilians (e.g. doctors, lawyers, psychologists), Protocol I provides them with protections from attacks during the course of their field mission. In addition, Protocol I states that “attacks shall be limited strictly to military objectives.”⁴⁶ Accordingly, under Protocol I, attacks against civilians (e.g. humanitarian workers) constitute war crimes.⁴⁷

42. See *supra* notes 8–10.

43. *Id.* Both the Hague Convention and the U.N. Charter provide additional sources for the prohibitions found in Resolution 1502. For example, the U.N. Charter provides that U.N. personnel must enjoy “such privileges and immunities as are necessary for the independent exercise of their functions.” U.N. CHARTER art. 105, para. 2. The Hague Conventions regulate the means and methods of warfare and protect civilians from unlawful attacks. See Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.

44. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 4, 6 U.S.T. 3114, 75 U.N.T.S. 135 [hereinafter Third Geneva Convention]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 4, 6 U.S.T. 3114, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, art. 12, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter First Geneva Convention]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked members of Armed Forces at Sea, Aug. 12, 1949, art. 36–40, 6 U.S.T. 3114, 75 U.N.T.S. 85 [hereinafter Second Geneva Convention].

45. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating To The Protection Of Victims Of International Armed Conflicts, June 8, 1977, art. 6(5), 1125 U.N.T.S. 609, available at http://www.unog.ch/disarm/distreat/prt_gen.html. (last visited on Sept. 8, 2004) [hereinafter Protocol I].

46. *Id.* art. 52, para. 2.

47. *Id.* art. 85, paras. 3(a), 5. The United States objected to certain provisions found in Protocol I. Mohamed Elewa, *Genocide at the Safe Area of Srebrenica: A Search for a New Strategy for Protecting Civilians in Contemporary Armed Conflict*, 10 MSU-DCL J. INT’L L. 429, 462–63 (2001). While the United States is not a party to the Protocol, the provisions are widely regarded as customary

Under the Fourth Geneva Convention, civilians are protected from the beginning of any international armed conflict or occupation until one year after the general close of military operations in any situation and “in any manner whatsoever” that they may find themselves in the hands of a party to the conflict or occupying power.⁴⁸ Therefore, humanitarian workers, who remain in the state a year after the close of military operations, continue to be protected under the Geneva Conventions. Significantly, under article 27 of the Fourth Geneva Convention, civilians are entitled to be humanely treated and protected from all acts of violence.⁴⁹

However, under the Third Geneva Convention and Protocol I, prisoners can be held until the end of the conflict.⁵⁰ Thus, humanitarian workers may be captured and prevented from providing aid and support to the communities that require aid during times when the communities may need it most. Additionally, Common Article 2 of the 1949 Geneva Conventions provides protection only when the Geneva Conventions apply—during declared wars or other armed conflicts and occupations.⁵¹

B. Rome Statute

The Rome Statute identifies a war crime as “intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.”⁵² Much like the Geneva Conventions, under the Rome Statute the conduct must take place during an “armed conflict” to constitute a war crime by the ICC.⁵³ Thus, hypothetically speaking, the

international law, as evidenced by the number of states that have ratified the Protocol. ICRC, *States Party To The Geneva Conventions And Their Additional Protocols*, at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/\\$file/Conventions%20de%20GenSve%20et%20Protocoles%20additionnelles%20ENG-logo.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$file/Conventions%20de%20GenSve%20et%20Protocoles%20additionnelles%20ENG-logo.pdf) (last visited Oct. 3, 2004). Because Resolution 1502 advocates the same legal status for humanitarian workers, it appears that its provisions would tend to strengthen this view. S.C. Res. 1502, *supra* note 13.

48. Fourth Geneva Convention, *supra* note 44, arts. 2, 6.

49. *Id.* art. 27.

50. Art. 118 of the Third Geneva Convention states that prisoners “shall be released and repatriated without delay after the cessation of active hostilities.” Third Geneva Convention, *supra* note 44, art. 118.

51. *Id.* art. 2. See also Fourth Geneva Convention, *supra* note 44, art. 2; First Geneva Convention, *supra* note 44, art. 2; Second Geneva Convention, *supra* note 44, art. 2.

52. Rome Statute, *supra* note 10, art. 8, para. 2(b)(iii).

53. *Id.* art. 8, paras. 2(b) (international armed conflict), and 2(e)(iii) (armed conflict not on international scale).

determination as to whether or not Iraq was in a state of “armed conflict” on August 19, 2003 would determine if the bombers of the U.N. Mission Headquarters could be prosecuted as war criminals under the Rome Statute.⁵⁴

Additionally, ICC jurisdictional problems complicate the process of bringing the perpetrators of war crimes directed against humanitarian personnel to justice. ICC jurisdiction can be exercised over the perpetrators if the crime was committed in the territory of a state party to the Rome Statute, or by a national of a state party.⁵⁵ However, Iraq (the territory where the crime was committed, conceivably by its nationals) is not a state party to the Rome Statute.⁵⁶

ICC jurisdiction can also be established if either the territorial state or the state of the accused’s nationality, though not a party to the Rome Statute, makes a declaration accepting the jurisdiction of the Court with respect to the crime in question.⁵⁷ However, the United States, the current occupying power in Iraq, is not likely to accept ICC jurisdiction because of its strong opposition to it.⁵⁸ Accordingly, the bombers of the U.N. Mission Headquarters in Baghdad cannot be tried before the ICC.

Where the perpetrators are not nationals of a state party to the ICC, nor are their crimes committed on the territory of a state party, the ICC’s jurisdiction may only be exercised when the U.N. Security Council refers such a case to the ICC.⁵⁹ This is extremely unlikely to occur in the case of the Baghdad bombing because the United States opposes the ICC and possesses a veto power that it would certainly employ in order to block referral of such a case.⁶⁰

C. Safety Convention

The Safety Convention was drafted⁶¹ in response to attacks on U.N. personnel.⁶² It applies to forces conducting non-combat operations on

54. Though, it should be noted, that the ICC would not take jurisdiction in any case because neither state was an ICC party and the ICC’s jurisdiction is non-retroactive. Rome Statute, *supra* note 10, arts. 11, 12.

55. Rome Statute, *supra* note 10, art. 12, para. 2.

56. Rome Statute Signature and Ratification Chart, *supra* note 20.

57. Rome Statute, *supra* note 10, art. 12, para. 3.

58. For a discussion on why the U.S. opposes the ICC, see Sadat & Carden, *supra* note 21, at 447–57.

59. Rome Statute, *supra* note 10, arts. 12, 13.

60. Sadat & Carden, *supra* note 21, at 447–57.

61. Safety Convention, *supra* note 9.

62. For example, on June 5, 1993, Somalis killed twenty-four members of a U.N. operation and wounded another fifty-seven. The following day, the Security Council passed Resolution 837, which

behalf of the U.N. and establishes a legal norm of protecting workers.⁶³ The Safety Convention incorporates the principle of universal jurisdiction over offenses directed against U.N. and associated personnel and requires prosecution or extradition of perpetrators.⁶⁴

The convention also creates obligations on its states party. Article 7 states that U.N. personnel may not be attacked or prevented from accomplishing their mission⁶⁵ and requires parties to take measures to ensure the safety of U.N. personnel.⁶⁶ Article 9 requires that parties criminalize under national law attacks against the U.N. and its associated personnel.⁶⁷ The Safety Convention provides specific protections for captured U.N. personnel by requiring that such persons be immediately released once their identity is established. In addition, while being held, U.N. personnel may not be interrogated⁶⁸ and, “[p]ending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.”⁶⁹

Unfortunately, the Safety Convention is unlikely to be useful in the present situation in Iraq.⁷⁰ First, because Iraq is not a party to the Safety

authorized U.N. forces to “take all necessary measures against all those responsible for the armed attacks . . . including to secure the investigation of their actions and their arrest and detention for prosecution” S.C. Res. 837, U.N. SCOR, 48th Sess., 3229th mtg., para. 5, U.N. Doc. S/RES/837 (1993).

63. See Mjr. Michael A. Newton, *United Nations Convention on the Safety of United Nations (UN) and Associated Personnel Enters Into Force*, 315 ARMY LAW. 21, 23 n.76 (1999) (citing a United States Mission to the U.N. Press Release which notes that the Convention represents an “important element” in protecting persons deployed on operations involving “exceptional risk.”).

64. See Safety Convention, *supra* note 9, art. 10. Universal jurisdiction is a form of extraterritorial jurisdiction that can be exercised by a domestic court for crimes that occurred abroad. The multilateral Convention grants every state party to the Convention jurisdiction over an attack on U.N. or associated personnel engaged in a U.N. operation when (a) the crime is committed in that state’s territory, (b) the alleged offender is a national of that state, (c) the alleged offender, though stateless, resides in that state, (d) a victim is a national of that state, or (e) the attack was an attempt to compel that state to do or abstain from doing any act. *Id.* art. 10.

65. *Id.* art. 7, para. 1.

66. *Id.* art. 7, para. 2.

67. *Id.* art. 9, para. 2. The Convention has several provisions that detail the crimes punishable under article 9. The Convention also requires nations to establish jurisdiction over crimes committed: in the nation; on a ship or airplane registered to the nation; or by a resident of the nation. *Id.* art. 10, para. 1. The Convention urges participating nations to attempt to prevent crimes against U.N. and associated personnel by “[t]aking all practicable measures to prevent preparations in their respective territories for the commission of those crimes” and exchanging information with other nations. *Id.* art. 11. Articles 13, 14, and 15 attempt to ensure that alleged criminals are held for prosecution or extradition and are actually prosecuted or extradited for their crimes. *Id.* arts. 13–15.

68. *Id.* art. 8. This differs from the Geneva Conventions, where such personnel would not be released until after the conflict ceased. See *supra* note 50 and accompanying text.

69. Safety Convention, *supra* note 9, art. 8.

70. See generally Newton, *supra* note 63 (presenting an analytical discussion of the Safety

Convention,⁷¹ its provisions are not binding and as a result it cannot serve as authority that would require or authorize prosecution or extradition of perpetrators. Second, the attacks were not just against U.N.-associated personnel, but were against all humanitarian aid workers, whether they worked for the United Nations, the Red Cross, or private organizations. Because the Safety Convention only applies to U.N. personnel and a tightly defined class of other associated personnel as defined in article 1 its protections cannot be afforded to the entire class of victims.⁷²

Finally, the Safety Convention contains an important limitation⁷³ in that it does not apply to a U.N. operation authorized by the Security Council as an enforcement action.⁷⁴ The drafters intended to create a “clear separation” between the Safety Convention and the Geneva Conventions such that only one or the other would apply in any particular situation.⁷⁵ The result, however, is an unintended void between the two conventions that leaves no recourse against the perpetrators in Iraq.

III. RESOLUTION 1502—DOES IT CONTRIBUTE ANYTHING NEW?

By unanimously adopting Resolution 1502, the Council expressed its determination to take appropriate steps to ensure the safety and security of humanitarian and U.N. personnel.⁷⁶ The Resolution “[e]mphasiz[es] that there are existing prohibitions under international law against attacks

Convention).

71. Multilateral Treaties Deposited with the Secretary General, *Convention on the Safety of United Nations and Associated Personnel: Participants*, at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty8.asp> (last visited Oct. 22, 2004).

72. Safety Convention, *supra* note 9, art. 1. Article 1 defines “United Nations personnel” in article 1(a), and “associated personnel” in article 1(b). The Convention defines associated personnel as persons deployed by a government, intergovernmental organization or “a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency. . . . to carry out activities in support of the fulfillment of the mandate of a United Nations operation.” *Id.*

73. Newton, *supra* note 63, at 24.

74. Safety Convention, *supra* note 9, art. 2, para. 2.

75. *Id.* at 25. “The drafters, did not intend for both bodies of law to apply at the same time.” *Id.* However, “the problem is that the Geneva Conventions set the threshold for applying the laws of war at a deliberately low, subjective threshold to maximize their application” and accordingly, this creates the “fatal flaw in the U.N. Safety Convention.” *Id.* Thus, the broad Safety Convention protections afforded to U.N. personnel will not usually apply. *Id.*

76. Care Int’l UK, *International Community Must Act Quickly To Enforce New Security Council Resolution For Aid Workers*, at http://www.careinternational.org.uk/news/media_release.php?id=239 (last visited Sept. 9, 2004). Denis Caillaux, Secretary-General of CARE International stated: “We commend the Council for coming to a consensus on this crucial issue, and are especially glad to see that they retained the legal basis for prosecuting attacks on humanitarian workers as war crimes.” *Id.* See also S/PV.4814, *supra* note 18.

knowingly and intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission undertaken in accordance with the Charter of the United Nations which in situations of armed conflicts constitute war crimes.”⁷⁷ The Resolution “recall[s] the need for States to end impunity for such criminal acts”⁷⁸ and

[e]xpresses its strong condemnation of all forms of violence, including, inter alia, murder, rape and sexual assault, intimidation, armed robbery, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention to which those participating in humanitarian operations are increasingly exposed, as well as attacks on humanitarian convoys and acts of destruction and looting of their property.⁷⁹

The Resolution “[u]rges States to ensure that crimes against such personnel do not remain unpunished”⁸⁰ and requests that the Secretary-General “seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of United Nations and its Associated Personnel” in their national law.⁸¹

The language of Resolution 1502 imposed no obligations or duties upon states not already required by previously existing conventions and treaties.⁸² Paragraph 3 of Resolution 1502 only reaffirms the existing obligations of all parties involved in an armed conflict to comply fully with the rules and principles of international law.⁸³ Additionally, paragraph 4 urges parties to implement their existing international legal obligations concerning the promotion of safety, security, and freedom of movement of humanitarian workers.⁸⁴ Moreover, because civilian-attacks

77. SC Res. 1502, *supra* note 13, pmbl. and accompanying text.

78. *Id.* Secretary-General Kofi Annan: “It is, of course, a fact of life that much of our work is done in dangerous places, since that is where it is most sorely needed. But that only strengthens the obligation on all of us to take every step in our power to protect those working under the blue flag and to bring to justice those who attack or harm them.” S/PV.4814, *supra* note 18, at 2 (statements of the Secretary-General).

79. SC Res. 1502, *supra* note 13, para. 1.

80. *Id.* para. 2.

81. *Id.* para. 5(a). Among other things, those provisions concerned the prevention of attacks against members of U.N. operations, a reaffirmation that such attacks are crimes punishable by law and a commitment to the prosecution or extradition of offenders. *Id.*

82. S/PV.4814, *supra* note 18, at 3 (statements made by Ambassador Negroponte, United States). The Security Council reaffirmed its Resolutions 1296 (2000) and 1265 (1999), which also dealt with the protection of civilians in armed conflicts and the protection of United Nations personnel, associated personnel, and humanitarian personnel in conflict zones. S.C. Res. 1502, *supra* note 13, pmbl.

83. *Id.* para. 3.

84. *Id.* para. 4.

are already considered war crimes by these previous agreements, the Resolution does not add anything new to the enforcement and prosecutorial powers of states.⁸⁵ Therefore, the Resolution is simply a re-statement of international law outlined in the Geneva Conventions, the Rome Statute, and the Safety Convention.

However, the Resolution fills voids in the Geneva Conventions, the Rome Statute, and the Safety Convention by broadening the definition of “humanitarian workers.” Resolution 1502 does not just apply to those humanitarian workers on missions under U.N. mandate, but also provides “protection [for] United Nations personnel, associated personnel, and humanitarian personnel in conflict zones.”⁸⁶ The “added factor” of issuing a declaration of “exceptional risk” and inviting the Secretary-General to advise the Council where circumstances would support such a declaration helps to ensure the security and safety of U.N. personnel.⁸⁷ Therefore, Resolution 1502, while imposing precautionary measures on the Security Council and potentially broadening the class of protected persons, adds no new substantive legal obligations.⁸⁸

85. *Id.* Although “[a]id agencies welcomed the new resolution,” they have said that “without the political will to follow it up—and without a proper mechanism of enforcement—the problem of insecurity would not be solved.” Lars Inge Staveland, *Aid Groups Divided on U.N. Resolution*, ALERTNET, Sept. 10, 2003, at <http://www.reliefweb.int/w/rwb.nsf/0/0045F55070B4BE6849256D9E00008DBC> (last visited Oct. 20, 2004).

Bjarte Vandvik, director of the international department at the Norwegian Refugee Council, noted that the Security Council missed an opportunity to strengthen the authority of international law and the ICC. He said:

We welcome this reminder of existing international law protecting aid workers, but for people to respect international law there has to be a mechanism of enforcing it . . . We think it is deplorable that the Security Council missed the opportunity to use a concrete international tribunal which could have been strengthened by such a resolution.

Id.

86. SC Res. 1502, *supra* note 13, pmbl.

87. SC Res. 1502, *supra* note 13, para. 5(c). Further, the Security Council requested that the Secretary-General address in his “country-specific situation reports the issue of the safety and security of humanitarian personnel and United Nations and its associated personnel, including specific acts of violence against such personnel, remedial actions taken to prevent similar incidents and actions taken to identify and hold accountable those who commit such acts, and to explore and propose additional ways and means to enhance the safety and security of such personnel.” *Id.* para. 6.

88. *Id.* para. 5. Mexico’s Ambassador Aguilar Zinser said that the “added factor” of the resolution is that it “provides the capacity to take action. It specifies when and how the secretary general has to raise the issue of protection of humanitarian workers so the Security Council takes action.” Judy Aita, *U.N. Security Council Focuses On Protecting Aid Workers: Resolution Calls Attacks on Workers “War Crimes”*, WASHINGTON FILE, Aug. 26, 2003, at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2003&m=August&x=20030827083621noshojb8.129519e-02&t=xarchives/xarchitem.html> (last visited Oct. 20, 2004).

CONCLUSION

Resolution 1502 is the latest international effort to protect humanitarian workers⁸⁹ and its unanimous passage was celebrated among humanitarian organizations. Unfortunately, however, while it is a recent reminder of laws protecting aid workers, it adds no new substantive obligations.⁹⁰

Nor will it ensure the safety of humanitarian workers or lead to the prosecution of those who attack humanitarian workers.⁹¹ States must, as before, provide protection for these workers and in the face of a state's failure to investigate and prosecute attacks on aid workers, it remains nearly impossible to bring the offenders to justice. The attacks against humanitarian workers will not stop because of a new resolution that is simply a restatement of old conventions that were themselves ineffective at addressing this crucial dilemma.

Lindsay Jill Suttnerberg *

89. As of April 2004, International Federation of Journalists (IFJ) is working with the United Nations to extend to journalists the protection of Security Council Resolution 1502. It will be interesting to see how far the protections of Resolution 1502 can reach.

90. See CARE Int'l UK, *supra* note 76.

91. Aid Doctors Give Up on Afghanistan, CNN.COM, July 28, 2004, at <http://www.cnn.com/2004/WORLD/asiapcf/07/28/afghanistan.aid/index.html> (last visited Sept. 30, 2004). "The killing of our own colleagues, together with the government's failure to arrest the culprits, along with false allegations of the Taliban, have led us to come to the regrettable conclusion that it is no longer possible for us to work here," said the Doctors Without Borders international secretary. In June 2004, the group suspended its Afghanistan operations. The international secretary stated that the group was "leaving with 'a sense of mourning' for its slain workers and for those who ultimately will suffer—the sick, the wounded and the needy that will need assistance in Afghanistan." *Id.*

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