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**CIVIL AND POLITICAL RIGHTS**

**The right to a remedy and reparation for victims of violations  
of international human rights and humanitarian law**

**Note by the High Commissioner for Human Rights**

In its resolution 2004/34, the Commission on Human Rights requested the High Commissioner for Human Rights to hold, with the cooperation of interested Governments, a third consultative meeting for all interested Member States, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, using available resources, with a view to finalizing the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” and, if appropriate, to consider all options for the adoption of these principles and guidelines.

In paragraph 6 of that resolution, the Commission also requested the High Commissioner to transmit to the Commission at its sixty-first session the outcome of the consultative process, for its consideration.

Accordingly, the High Commissioner has the honour to transmit to the Commission on Human Rights the report of the Chairperson-Rapporteur, Mr. Alejandro Salinas (Chile), on the third consultative meeting.

**REPORT OF THE THIRD CONSULTATIVE MEETING  
ON THE “BASIC PRINCIPLES AND GUIDELINES ON  
THE RIGHT TO A REMEDY AND REPARATION FOR  
VICTIMS OF VIOLATIONS OF INTERNATIONAL  
HUMAN RIGHTS AND HUMANITARIAN LAW”  
(GENEVA, 29 SEPTEMBER-1 OCTOBER 2004)**

**Chairperson-Rapporteur: Mr. Alejandro Salinas (Chile)**

**Summary**

Pursuant to Commission on Human Rights resolution 2003/34, the Office of the High Commissioner for Human Rights convened, with the cooperation of the Government of Chile, the third consultative meeting for all interested Member States, intergovernmental organizations and non-governmental organizations, with a view to finalizing the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” (hereinafter “Principles and Guidelines”) and, if appropriate, to consider options for the adoption of these principles and guidelines.

The meeting was chaired by Mr. Alejandro Salinas (Chile). Mr. Theo van Boven, one of the mandated authors of the Principles and Guidelines, provided expert guidance during the consultation. The consultation further benefited from the broad participation of Member States, international organizations and non-governmental organizations.

The participants in the consultation considered the revised version of the Principles and Guidelines dated 5 August 2004 and provided comments of a general and specific nature on the text. The meeting proceeded with two readings of the revised text, principle by principle. Subsequently, the Chairperson-Rapporteur and the various participants discussed the follow-up to the consultative meeting. At the conclusion of the meeting, the Chairperson-Rapporteur circulated the revised draft Principles and Guidelines, dated 1 October 2004, which took into account comments received from participants during the two readings.

Based on discussions during the meeting, the Chairperson-Rapporteur made recommendations for the follow-up to the third consultative meeting as follows:

The draft Principles and Guidelines, dated 1 October 2004, have been revised to incorporate a number of proposals made during the third consultative meeting. The Chairperson-Rapporteur considered the document now to be mature, as it reflected three rounds of consultative meetings and some 15 years of work on the text. He thus believed that the mandate provided by the Commission on Human Rights in resolution 2004/34 had been fulfilled, as the draft Principles and Guidelines have been finalized. Delegations were urged to examine the revised Principles and Guidelines and to consult with their capitals on the document. The Chairperson-Rapporteur announced that he was planning to convene an additional half-day informal consultation prior to the next session of the Commission on Human Rights to discuss ideas on how to proceed during 2005. The exact date of the informal consultation is subject to the availability of conference facilities.

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## **Introduction**

1. From 29 September to 1 October 2004, the Office of the High Commissioner for Human Rights (OHCHR) convened the third consultative meeting with a view to finalizing the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” (hereinafter “Principles and Guidelines”) and, if appropriate, to consider options for the adoption of these Principles and Guidelines. The third consultative meeting, convened pursuant to Commission on Human Rights resolution 2004/34, was chaired by Mr. Alejandro Salinas (Chile), and benefited from the expert guidance of Mr. Theo van Boven, one of the mandated authors of the Principles and Guidelines. Representatives of 51 Member States, two international organizations and nine non-governmental organizations participated in the consultation. (The list of participants is contained in annex III.)

2. The consultative meeting had, as one of the bases for its work, the revised version of the Principles and Guidelines of 5 August 2004, which had been prepared pursuant to resolution 2004/34 by the Chairperson-Rapporteur in consultation with the independent experts, Mr. Theo van Boven and Mr. M. Cherif Bassiouni. In the preparation of the revised text, all comments, questions and suggestions raised to date by Member States, international organizations and non-governmental organizations (NGOs) were taken into account.

3. The meeting was opened by the Chief of the Research and Right to Development Branch of OHCHR. Following the election of the Chairperson-Rapporteur, the meeting adopted its agenda (annex II). The meeting proceeded with general comments and two readings of the revised text, principle-by-principle.

4. Oral and written comments received from participants during the meeting were taken into account in preparing the revised draft Principles and Guidelines of 1 October 2004. The Chairperson and experts also held informal consultations with several delegations in order to achieve consensus. Subsequently, the Chairperson and the various participants discussed the follow-up to the consultative meeting.

5. The present report to the Commission on Human Rights on the final outcome of the meeting includes (a) the Chairperson’s observations; (b) the Chairperson’s recommendations for follow-up to the third consultative meeting; and (c) the revised version of the Principles and Guidelines, dated 1 October 2004 (annex I).

### **I. OBSERVATIONS OF THE CHAIRPERSON-RAPPORTEUR**

6. The Chairperson made several observations based on the discussions during the consultative meeting. These observations are not intended to be either comprehensive or exclusive, but merely serve as a summary of the main issues addressed during the meeting.

### **A. General observations**

7. The draft Principles and Guidelines had benefited greatly from more than 15 years of work and the broad consultative process facilitated by the three consultative meetings. The revised text had been significantly improved by the useful input from Governments, international organizations and NGOs, as well as the ongoing revision efforts and assistance of the experts.

8. Several delegations expressed their general support for the revised text. They expressed their hope to comply with the mandate provided by the Commission on Human Rights and that the Principles and Guidelines would be adopted at the sixty-first session of the Commission.

9. The Principles and Guidelines had been drafted to reflect a victim-based perspective, and had been systematized according to the needs and rights of the victims. Delegations recalled that the document would serve as a useful working tool for both States and victims.

10. The revised Principles and Guidelines did not introduce new principles of international law, but rather consolidated and clarified already existing obligations. The document reflected minimum standards of international law. It was emphasized that the Principles and Guidelines should in no way fall below the requirements of existing international legal standards.

11. The text of the document had been drafted to reflect this reality, and, accordingly, mandatory language had been used only where a particular international obligation existed.

12. Pursuant to the compromise found during the second consultative meeting, the document referred to “gross violations” of international human rights law and “serious violations” of international humanitarian law. Both terms constituted a term of art and it should be ensured that they were correctly translated in the final draft.

### **B. Observations on the preamble**

13. The inclusion in the first preambular paragraph of a reference to articles 68 and 74 of the Rome Statute of the International Criminal Court was suggested.

14. It was suggested that the quotes from international instruments in the fourth and fifth preambular paragraphs should be more accurate.

15. The sixth preambular paragraph was considered important as it set out the scope of the document. The listing of specific rights in the paragraph, however, appeared to create some form of hierarchy and, accordingly, the following amendment was proposed: “*Affirming* that the Principles and Guidelines are directed at gross violations of human rights and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity.”

16. Some delegations reiterated their concern regarding the use of “shall” as binding treaty language in certain areas of the text and suggested that some common understanding be included in the seventh preambular paragraph to emphasize that the document was not legally binding. However, as current legal thinking considered soft law documents non-binding, it was felt that this proposal would change the understanding of future soft law documents. To avoid such potential problems, delegations were encouraged to find another formulation for the seventh preambular paragraph.

17. The reference to “classes of persons” in the ninth preambular paragraph was questioned and the following amendment was proposed: “*Noting further* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively.”

### **C. Observations on the specific principles**

#### **Principles 1 and 2**

18. To avoid any difficulties with the use of the word “enforce” in principle 1, the word “implement” could be used. Concerns were raised regarding the reference to “domestic law” in principle 1 (c). A suggestion was made to refer to the domestic law of “each State”.

19. The use of “shall” in principle 2 could be revisited and less categorical wording, such as “should”, could be used in order to remove any ambiguity that the Principles and Guidelines were non-binding. On the other hand, the practice of using “shall” in non-binding legal instruments was noted. A suggestion was made to use the wording “States shall, as required under international law, ...”.

20. Additional amendments to principle 2 were considered. The wording “to that end” should be removed. A reference in principle 2 to the obligation to “incorporate” international law into national law could benefit from further clarification. The word “norms” should be retained as it provided for rights and obligations. Principle 2 (d) should be reworded so as to state “Ensuring that their domestic law provides at least the same level of protection for victims as required by their international obligations.”

#### **Principle 3**

21. The use of the qualifying word “applicable” with regard to the reference to international human rights law and international humanitarian law would ensure consistency with principle 1. On the other hand, it was noted that insertion of the word “applicable” was inconsistent with agreements made on the text last year. Subsequently, the wording “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law ...” was suggested for both principles 1 and 3.

22. The use of “alleged perpetrator” in principle 3 (b) was questioned as its translation into Spanish limited its scope.

23. References to “gross” violations of international human rights law and “serious” violations of international humanitarian law were considered in principles 3 (c) and 3 (d). However, it was noted that the chapeau of principle 3, referring to “the obligation to respect and ensure respect for ...”, applied to all violations. Thus, more open, all-encompassing language should be retained.

24. Principle 3 (d) should more accurately reflect the wording of article 2 of the International Covenant on Civil and Political Rights and refer to “effective” remedies.

#### **Principles 4 and 5**

25. In the heading of chapter III and in principle 4, it was important to retain the reference to international crimes as not all gross violations of human rights or serious violations of international humanitarian law constituted crimes under international law. As the text addressed States’ “duty to investigate and ... prosecute”, it was specifically related to criminal procedures and the reference to international crimes was appropriate and necessary.

26. The following amendment to the first sentence of principle 4 was proposed (changes indicated in italics): “*In cases of gross violation of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate ...*”. Some delegations expressed opposition to the proposal and noted the existence of international ad hoc criminal tribunals in which States were not involved. The following proposal was suggested for the second sentence of principle 4: “... States should, *in accordance with international law*, cooperate ...”.

27. Several delegations proposed the reinstatement in principle 5 of the reference to “universal jurisdiction”. Furthermore, it was suggested that the use of the word “should”, as opposed to “shall”, with regard to the issue of extradition or surrender, was not consistent with international law and undermined the previous reference to international obligations in principle 4. On the other hand, it was noted that there were instances in which some States would not extradite their own nationals to international tribunals.

28. The inclusion in principle 5 of a reference to “the right to a fair trial” was contested as it was suggested that no international legal agreement specifically provided for the right to a fair trial as a condition or requirement for extradition. On the other hand, it was noted that the right to a fair trial was included in article 14 of the International Covenant on Civil and Political Rights and in common article 3 of the Geneva Conventions of 12 August 1949. Additionally, many States entered into bilateral extradition agreements containing similar requirements. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibited extradition in cases where torture would likely be committed.

#### **Principles 6 and 7**

29. Some delegations raised questions about the source of obligations contained in principle 6. In response, it was noted that while the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity had not been universally

ratified, it largely reflected existing international law on this issue. To further address concerns raised by some delegations, a suggestion was made to reinstate the qualifying words “where so provided for in an applicable treaty or contained in other international legal obligations ...” in principle 6.

30. In principle 7, an amendment to the first sentence was suggested so that it would read “Domestic statutes of limitations or other types of violations that do not constitute crimes against international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.”

### **Principles 8 and 9**

31. Some delegations expressed general satisfaction with the revisions made to principles 8 and 9, but various additional amendments were also considered. Some delegations noted the lack of clarity with regard to the meaning of “a person who individually or collectively” in principle 8 (a). It was noted that the term “collectively” reflected recent important court judgements, including those by the Inter-American Court of Human Rights, on the issue of reparations. Other means of collective satisfaction, such as the provision of tributes, commemorations and memorials, were noted. These and other forms of reparation would only make sense in the collective realm. Additionally, the deletion of the words “or impairment of their fundamental rights” in principle 8 (a) was proposed.

32. With regard to principle 8 (b), it was questioned whether a person intervening on behalf of a victim was not already covered by principle 8 (a), and thus a suggestion was made for its deletion. Some delegations expressed opposition to this proposal and noted the importance of covering third parties intervening on behalf of victims.

33. There was debate about whether it was appropriate to include in the definition of victim, as contained in principle 8 (c), a reference to “a legal person”. Also with regard to principle 8 (c), it was suggested that representatives of victims should not be considered as victims unless they had also suffered harm on the victim’s behalf. Similarly, the lack of clarity surrounding the term “immediate family” was noted.

34. Several amendments to principle 9 were considered. A proposal was made to reinstate language addressing the status of the victim in relation to the perpetrator. Some delegations were concerned about the reference to an unidentified perpetrator, while others noted that many forms of reparation remained valid and applicable even in situations where the perpetrators had not been identified.

35. In order to overcome various differences, several delegations suggested that the text in principles 8 and 9 could reflect more faithfully the agreed language contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

**Principle 10**

36. Some delegations questioned the reference to “other entities or groups whether public or private”, in principle 10. Other delegations, however, noted that the inclusion of this element was essential to both address the relationship between victims and other components of society and to cover the ways in which society addressed the treatment of victims. Specific examples in which private rehabilitation centres had been established for victims of torture were noted. The inclusion of the wording “trauma or serious effect” in the second sentence of principle 10 was suggested in order to ease potential translation difficulties.

**Principle 11**

37. The inclusion of the wording “as provided for under international law” was suggested for the chapeau of principle 11. The inclusion of the words “equal” and “effective” with regard to access to justice in principle 11 (a) was considered. Subsequently, the inclusion of “adequate, effective and prompt” with regard to reparation in principle 11 (b) was suggested.

**Principles 12 to 14**

38. Several amendments with regard to principles 12 to 14 were considered. There was a need to ensure consistency in the use of terms with regard to a right to “effective” remedy. The inclusion of wording “as provided for under international law” in principle 12 was suggested. A suggestion to shorten the chapeau in principle 12 was made. Some delegations felt that retaining the reference to “international proceedings” in the chapeau would have been preferable. The words “information about” with regard to “all available remedies” was included in principle 12 (a).

39. The inclusion of the words “right to privacy” in principle 12 (b) was considered as it was felt that the previous formulation, referring only to “privacy”, was too broad. Subsequently, a suggestion to use the wording “privacy interests” was made, but it was noted that this concept had no meaning in Spanish. With regard to principle 12 (c), the inclusion of the words “as appropriate” was suggested. Other delegations felt that the wording “provide proper assistance” was more adequate as it reflected more faithfully the text of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A proposal to retain the previous reference to “consular means” in principle 12 (d) was made.

40. Several amendments were considered with regard to principle 13. The suggestion to reinstate references to “collective” claims for reparation and to receive reparation “collectively” was made. Several delegations opposed that suggestion, however, and highlighted the lack of collective procedures in their domestic systems. A specific amendment to address the problem of property that had no heir was also proposed. It was noted that it might be difficult to find consensus on the issue of collective rights and that the language thus reflected a compromise.

41. Several amendments were considered with regard to principle 14. A suggestion to insert the wording “an individual should have legal standing upon exhaustion of all domestic remedies” was made. It was questioned, however, how this proposal would impact the special procedures of the Commission on Human Rights, which did not require exhaustion of domestic remedies.

The inclusion of the words “consider allowing” was also considered. A suggestion to replace “an individual” with “a person” was made so as to cover the concept of “legal person”, which existed in different legal systems. It was noted that the Spanish translation of the term “should be without prejudice” in principle 14 was inconsistent with the original English meaning.

### **Principles 15 to 18**

42. A suggestion was made to incorporate the following wording into a new principle 15 (b): “States, which by action or omission, allow within their territory the promotion, organization or financing of acts that violate international human rights standards and international humanitarian law, should take measures to prevent such acts, punish the perpetrators and compensate the victims of such acts.” It was noted, however, that the idea was already covered in the current principle 15.

43. With regard to principle 16, some delegations indicated that while they did not intend to exclude State action in providing compensation, they also did not intend to include a blanket obligation of States in this regard, particularly in cases where perpetrators were unwilling to provide remedies. The reorganization of principle 16 was suggested so that it would commence with “To that end, States should endeavour to establish national programmes for reparation and other assistance to victims, in the event ...”. Such reorganization would provide a purpose for the establishment of reparation programmes.

44. Several amendments to principle 17 were considered. The inclusion of the following wording was suggested (changes indicated in italics): “States shall, *upon the application of the victim*” enforce ...”. Additionally, the insertion of the following language was suggested: “... shall also execute international court sentences recognized by the State and shall ensure the enforcement of valid foreign court judgements for reparation”. Some delegations expressed concern with regard to the doctrine of foreign sovereign immunity and the enforcement of foreign legal judgements. To address this issue, the addition of the words “in accordance with domestic law and international legal obligations” was suggested. The replacement of “shall” with “should” in the second sentence of principle 17 was also proposed.

45. With regard to principle 18, it was noted that international rules had been established to govern State succession, while the succession of Governments was an internal matter. The insertion of the wording “in accordance with international law of State succession” was therefore suggested. Other delegations, however, affirmed the importance of retaining references to Governments in addressing situations in which violations had occurred under previous regimes, such as military dictatorships. The participants were also reminded that the document was intended to be victim-centred and thus references to Governments should be retained. On the other hand, some delegations reiterated that they would like to see this principle omitted.

### **Principles 19 to 24**

46. In principle 19, some delegations questioned the use of the word “guarantees” in the context of prevention. As prevention was not a subcategory of reparation, the term should be deleted in principle 19.

47. In principle 20, the use of the words “legal rights” and “social status” was discussed.
48. There was a discussion about the different forms of compensation listed in principle 21. With regard to principle 21 (a), a question was raised about how to put a monetary value on pain and emotional distress. The use of the concepts of “lost opportunities” in principle 21 (b) and of “moral damage” in principle 21 (d) was questioned. On the other hand, participants were reminded that these concepts were drawn from international case law, such as that of the Inter-American Court of Human Rights.
49. Some delegations noted that not all of the elements of principle 21 (b) could be fulfilled by the State, and suggested the insertion of the words “as appropriate” or “in accordance with domestic law”. Such a reference could be made either in principle 21 (b) or, more generally, in principle 19. It was noted, however, that it would be a step backwards if principle 21 (b) were limited to domestic legislation only and did not take into account what had already been achieved in international case law, including that of the Inter-American Court and the International Court of Justice.
50. A suggestion was made to insert a new principle 21 (f), stating that “When determining the amount of compensation, reasonable account should be taken of any contributory negligence on the part of the victim, including in particular the failure to claim legal redress to avert the harm.” The participants were reminded, however, that the Principles and Guidelines dealt with victims of gross violations of international human rights law and serious violations of international humanitarian law. On the other hand, the suggested language would apply in civil law with regard to a relationship between a creditor and a debtor whereby the context and level of harm involved were different.
51. In principle 22, the reference to “legal services” was questioned. A suggestion was made to insert the qualifying words “as appropriate”.
52. Several amendments to principle 23 were considered. In principle 23 (a), a suggestion was made to use the wording “effective measures aimed at the cessation of continuing violations”. In principle 23 (b), a proposal to add the wording “and the protection of data” was considered to prevent the disclosure of information from causing additional harm to the victim. It was pointed out, however, that as the document applied to gross violations of international human rights law and serious violations of international humanitarian law, it would not be desirable to apply that concept to the current text. Data protection had been used to justify non-disclosure of information, and thus it would be more appropriate to specify what types of data were meant to be protected. In principle 23 (c), a suggestion was made to replace the clause “in accordance with the cultural practices of the families and communities” with “in accordance with the last testament and wishes of the victim or, in the absence of such, with the wishes of the next of kin”. It was felt that the issue of abducted children in principle 23 (d) would be better dealt with in principle 23 (c) which addresses the disappeared.
53. A suggestion to use the wording (changes in italics) “*measures of prevention*” in principle 24 was made. Several amendments to the wording of the chapeau in principle 24 were suggested, such as: “Guarantees of non-repetition should include ... any or all of the following measures which also constitute essential elements of prevention policies” and “Guarantees of

non-repetition should include ... any or all of the following measures which will contribute to prevention.” Additionally, the insertion of the words “inter alia” or “in accordance with domestic law” or “as appropriate” in the chapeau of principle 24 was also considered. There was a discussion about narrowing the scope of principle 24 (e) due to questions raised about the feasibility of providing human rights and international humanitarian law training to “all sectors of society”. Accordingly, a suggestion was made to use the word “teachings” or “education” instead and to specify that the training was to be provided for “law enforcement officials as well as military and security forces”. In principle 24 (f), the deletion of the reference to “staff” with regard to “economic enterprises” was proposed. In principle 24 (g), clarification of the term “inter-social conflicts” was requested and a suggestion was made to use the term “social conflicts”.

54. Some delegations expressed further support for linking principles 20 to 24 with principle 19, which refers to “domestic law and international law, and taking account of domestic circumstances”. It was felt that various reservations expressed about the wording of principles 20 to 24 could be addressed in this way. Such a link could be specified in principle 19 by inserting the wording (changes in italics) “... *and as laid out in principles 20 to 24*, be provided ... with full and effective reparation ...”.

### **Principle 25**

55. Principle 25 has two elements and refers to the rights of victims to be informed with regard to violations, as well as to the development by States of means of informing the public of rights and remedies. Accordingly, the title of chapter X should be amended so as to read “Access to relevant information concerning violations and compensation mechanisms.” The use of the terms “addressed” or “referred to” was considered preferable to the word “contained” in order to avoid any implication that these principles and guidelines created new obligations.

### **Principle 27**

56. In principle 27, a suggestion was made to insert the wording “and provisions of international law that related to the right to a remedy ...” after the words “without prejudice to ...”. Subsequently, a proposal was made to insert an additional sentence clarifying that these Principles and Guidelines should be understood to be without prejudice to special rules of international law. An error in the Spanish translation was noted.

### **Principle 28**

57. A suggestion was made to omit the reference to “national” standards of due process as such standards usually derive from international standards.

## **II. RECOMMENDATIONS OF THE CHAIRPERSON-RAPPORTEUR FOR THE FOLLOW-UP TO THE THIRD CONSULTATIVE MEETING**

58. The annexed draft Principles and Guidelines, dated 1 October 2004, have been revised to incorporate a number of proposals made during the third consultative meeting. The Chairperson-Rapporteur considered the document now to be mature, as it reflected three rounds of consultative meetings and some 15 years of work on the text. He thus believed that the mandate provided by the Commission on Human Rights in resolution 2004/34 had been fulfilled as the draft Principles and Guidelines had been finalized. The delegations were urged to examine the revised Principles and Guidelines and consult with their capitals on the document. The Chairperson-Rapporteur announced that he was planning to convene an additional half-day informal consultation prior to the next session of the Commission to discuss ideas on how to proceed during 2005. The exact date of the informal consultation was subject to the availability of conference facilities.

## **Annex I**

# **BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

**(Rev. 1 October 2004)**

### **Preamble**

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 14, the Convention on the Rights of the Child at article 39, and of international humanitarian law as found in article 3 of the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention No. IV of 1907), article 91 of Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), and articles 68 and 75 of the Rome Statute of the International Criminal Court,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples' Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation" and requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and

of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”,

*Affirming* that the Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Principles and Guidelines do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

*Noting further* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims’ right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines.

## **I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND IMPLEMENT INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW**

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

(a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(c) Making available adequate, effective, prompt, and appropriate remedies, including reparation, as defined below; and

(d) Ensuring that their domestic law provides at least the same level of protection for victims as required by their international obligations.

## **II. SCOPE OF THE OBLIGATION**

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and,

(d) Provide effective remedies to victims, including reparation, as described below.

## **III. GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW**

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

#### **IV. STATUTES OF LIMITATIONS**

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

#### **V. VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

8. For purposes of this document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

#### **VI. TREATMENT OF VICTIMS**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

## **VII. VICTIMS' RIGHT TO REMEDIES**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered; and
- (c) Access to relevant information concerning violations and reparation mechanisms.

## **VIII. ACCESS TO JUSTICE**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

## IX. REPARATION FOR HARM SUFFERED

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

#### **X. ACCESS TO RELEVANT INFORMATION CONCERNING VIOLATIONS AND REPARATION MECHANISMS**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

#### **XI. NON-DISCRIMINATION**

25. The application and interpretation of these Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or ground, without exception.

#### **XII. NON-DEROGATION**

26. Nothing in these Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Principles and Guidelines are without prejudice to special rules of international law.

#### **XIII. RIGHTS OF OTHERS**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

**Annex II**

**AGENDA**

**THIRD CONSULTATIVE MEETING**

**on**

**“The Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”**

**Conference Room VII, Palais des Nations, Geneva**

**Wednesday, 29 September 2004**

- |             |  |
|-------------|--|
| 10:00-12:00 | Opening <ul style="list-style-type: none"><li>• Opening remarks by the Secretariat</li><li>• Appointment of the Chairperson-Rapporteur</li><li>• Adoption of the Agenda</li><li>• Introduction by the Chairperson-Rapporteur</li></ul> |
| 12:00-13:00 | Revised version of the Principles and Guidelines*  |
| 15:00-18:00 | Revised version of the Principles and Guidelines   |

**Thursday, 30 September 2004**

- |             |  |
|-------------|--|
| 10:00-13:00 | Revised version of the Principles and Guidelines |
| 15:00-18:00 | Revised version of the Principles and Guidelines |

**Friday, 1 October 2004**

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|-------------|---|
| 10:00-13:00 | Proposals for the follow-up   |
| 15:00-18:00 | Summary by the Chairperson-Rapporteur of the proposals and informal consultations |

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\* Prepared by the Chairperson-Rapporteur, Mr. Alejandro Salinas, in consultation with the independent experts, Mr. Theo van Boven and Mr. Cherif Bassiouni (5 August 2004).

**Annex III**

**LIST OF PARTICIPANTS**

**Expert members**

Mr. Theo VAN BOVEN

**States Members of the United Nations represented by observers**

ALBANIA	Ms. Pranvera GOXHI
ARGENTINA	Mr. Sergio CERDA
ARMENIA	Ms. Marta AYVAZYAN
AUSTRALIA	Ms. Julia FEENEY
AUSTRIA	Ms. Elisabeth ELLISON
AZERBAIJAN	Mr. Azad CAFAROV Mr. Seymur MARDALIYEV
BELGIUM	Mr. Bart OUVRY
BOLIVIA	Mr. Gino POGGI
BRAZIL	Ms. Claudia DE ANGELO BARBOSA
CANADA	Ms. Deirdre KENT
CHILE	Mr. Alejandro SALINAS Mr. Jorge MERA Ms. Amira ESQUIVEL Mr. Patricio UTRERAS
CROATIA	Mr. Branko SOCANAC
CUBA	Mr. Oscar Leon GONZALEZ
CZECH REPUBLIC	Mr. Lukas MACHON
DENMARK	Mr. Christian ANDERSEN
DOMINICAN REPUBLIC	Ms. Ysset ROMAN
ECUADOR	Ms. Leticia BAQUERIZO
EGYPT	Mr. Mahy ABDELLATIF

EL SALVADOR	Mr. Ramiro RECINOS
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FRANCE	Ms. Catherine CALOTHY
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GREECE	Mr. Takis SARRIS
GUATEMALA	Ms. Angela CHAVEZ
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LIBYAN ARAB JAMAHIRIYA	Mr. Murad HAMAIA
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NORWAY	Mr. Per LIED Ms. Astrid AJAJAY
PARAGUAY	Mr. Francisco BARREIRO
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RUSSIAN FEDERATION	Mr. Sergey CHUMAREV Mr. Sergey KONDRATIEV
SAUDI ARABIA	Mr. Turki AL MADI
SLOVAKIA	Mr. Drahoslav STEFANEK Ms. Sona DANOVA
SPAIN	Mr. Joaquin DE ARISTEGUI
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SWITZERLAND	Ms. Kamelia GRANT Mr. Michael COTTIER
SYRIAN ARAB REPUBLIC	Mr. Mohamed ALNASAN
TUNISIA	Ms. Holla BACHTOBI
TURKEY	Mr. Guclu Cem ISIK Mr. Selcuk UNAL
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Ms. Helen UPTON
UNITED STATES OF AMERICA	Mr. Joel DANIES Ms. Stacy BARRIOS Ms. Gilda BRANCATO Mr. Michael PEAY Mr. Steven SOLOMON
URUGUAY	Mr. Pedro VAZ

**Non-member States represented by observers**

HOLY SEE

**Intergovernmental organizations**

EUROPEAN COMMISSION Ms. Lauren HANNA

**Other entities**

INTERNATIONAL COMMITTEE  
OF THE RED CROSS Ms. Jelena PEJIC

**Non-governmental organizations**

AMNESTY INTERNATIONAL	Mr. Jonathan O'DONOHUE
ASSOCIATION FOR THE PREVENTION OF TORTURE	Mr. Edouard DE LA PLACE
CONSULTATIVE COUNCIL OF JEWISH ORGANIZATIONS	Mr. Daniel KINGSLEY Mr. Alexander GOLDBERG
INTERNATIONAL COMMISSION OF JURISTS	Mr. Cordula DROEGE
INTERNATIONAL FEDERATION OF HUMAN RIGHTS LEAGUES (FIDH)	Ms. Una KWONG MANGUS
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WORLD ASSOCIATION AGAINST TORTURE	Ms. Gaelle CARAYON

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