"Convention on the Safety of United Nations and Associated Personnel": Presentation and analysis

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Introduction

On 9 December 1994 the United Nations General Assembly adopted by consensus the Convention on the Safety of United Nations and Associated Personnel. In so doing it completed a process of *codification* and *progressive development* of international law at an unusually fast pace, considering that the Ad Hoc Committee entrusted by the 48th General Assembly (1993) with drafting the Convention took less than nine months to complete its task.

Such speed can be explained only by the urgent need to give United Nations staff better protection in the accomplishment of their increasingly numerous, dangerous and complex duties.

At the time, the General Assembly fully recognized that need, declaring itself *"(...) gravely concerned at the increasing number of attacks on United Nations and associated personnel that have caused death or serious injury"* and *"(...) recognizing the need to strengthen and keep under review arrangements for the protection"* of that staff.[1]

The Convention on the Safety of United Nations and Associated Personnel (referred to hereinafter as "the Convention") has of course been prompted by the considerable increase in the number and scope of *peace-keeping* and *peace-making* operations.

[1] See Preamble to resolution 49/59 adopted by the United Nations General Assembly on 9 December 1994.

Its provisions must therefore be analysed first and foremost from that point of view, although such an approach, limited as it is to *jus ad* or *contra bellum*, would not suffice in itself because the Convention must also be considered in relation to *jus in bello*. Thought should accordingly be given to *where, how* and *in what circumstances* the Convention can or must fit within the broader framework of international humanitarian law.

That is the purpose of this study. Some aspects, such as the repression of breaches, have intentionally been left outside the scope of our analysis.

Part I of the study is devoted to a general presentation of the Convention, including a reminder of how it came into being. In view of the small number of studies hitherto devoted to the Convention it seemed appropriate to highlight its "legislative history". Part I concludes with a summary of its main provisions.

Part II is more analytical and examines certain provisions of the Convention from the standpoint of international humanitarian law. Special attention is therefore given to the *formal* and *material scope of application* of the Convention, i.e. the categories of personnel protected and the situations in which the treaty is applicable.

The study ends with a few comments on the strengths and weaknesses of the Convention and the pitfalls that may lie ahead of it.

I. Origin, negotiation and content of the Convention

A. Origin of the Convention

Although from its earliest years the United Nations has had cause to deplore the loss of colleagues engaged on dangerous missions,[2] the perils sometimes encountered by United Nations personnel have not seriously hampered the organization's activities.

Consequently, it was generally accepted that "working under the banner of the United Nations ... provided its personnel with safe passage and an unwritten guarantee of protection".[3]

[2] For details of these losses see M. Arsanjani: *Protection of United Nations Personnel*, paper submitted on 11 March 1995 during a colloquium held at the University of Durham, draft, pp. 2 and 3.

[3] See Note by the Secretary-General, Doc. A/AC.242/1 of 25 March 1994, paragraph 4.

Since the early 1990s, the situation has radically changed and risks to life and limb of personnel engaged by the United Nations have greatly increased. Whereas injuries in the past were largely accidental, nowadays United Nations personnel are often deliberately attacked with the sole aim of paralysing the operation in which they are engaged. To give but one example of how the situation has worsened, out of a total of 1,074 dead in all past and ongoing missions by United Nations military contingents up to late March 1994, 202 military personnel were killed in 1993 alone.[4]

Many factors lie behind this increase in the number of victims, especially the greater frequency with which the United Nations is required to intervene in internal conflicts and situations in which all authority has disappeared.

The United Nations quickly realized the need to take steps to enhance the safety of personnel. As early as 1992, the Secretary-General drew attention to "(...) the pressing need to afford adequate protection to UN personnel engaged in life-endangering circumstances".[5]

The international community as a whole, and States regularly contributing to peace-keeping operations in particular, lost no time in responding to the issues highlighted by the United Nations Secretary-General. In a statement read out by its President on 31 March 1993, for instance, the Security Council declared that attacks against United Nations forces and personnel were unacceptable, and demanded that States act promptly and effectively to prosecute and punish the perpetrators of such acts.[6]

Furthermore, in a letter to the Secretary-General dated 25 June 1993, the New Zealand representative called for the question of protection for United Nations personnel to be considered at the 48th Session of the General Assembly. In a memorandum annexed to that letter, New Zealand noted that personnel were inadequately protected by the existing international rules and that the Member States had only limited means for prosecuting infringements of the security of United Nations staff. It was suggested that a Convention be concluded to that effect.[7]

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[4] *Ibid.* For other statistics on the number of victims see Arsanjani, *op. cit.*, p. 1; United Nations Press Release GA/PK/125, 11 April 1995, p. 1; United States Mission to the United Nations, Press Release, 217-(94), 9 December 1994, p. 1.

[5] See Boutros Boutros-Ghali, *An Agenda for Peace*, Doc. A/47/277-S/24111, June 1992, paragraph 68.

[6] See Press Release GA/PK/125, 11 April 1994, p. 5; Doc. S/25493.

[7] *Ibid*, UNGA 49th Session, item 141, Statement delivered by the representative of New Zealand, Friday, 9 December 1994, p. 1; Doc. A/48/144.

Responding on 27 August 1993 to the above statement, the Secretary-General presented a report to the Security Council on the security of United Nations operations,[8] proposing various improvements. Referring to the possibility of drafting a new convention devoted exclusively to the protection of United Nations personnel, the Secretary-General stressed that such an instrument "should codify and further develop customary international law as reflected in the recent practice of the United Nations and Member States and should consolidate the set of principles and obligations contained in current multilateral and bilateral treaties".[9]

The Security Council took account of that report in its resolution 868,[10] which provided for certain measures for the protection of personnel to be taken when setting up future peace-keeping operations.

Following the request by New Zealand, the question of protection for United Nations personnel was considered at the 48th Session of the General Assembly (1993) and referred for consideration to the Sixth (Legal) Committee, which set up an Ad Hoc Working Group.

The Working Group members recognized the need to improve the protection of personnel[11] and agreed that a convention should be elaborated on the subject. To that end New Zealand and Ukraine submitted two draft conventions.[12] Both the Working Group and the Sixth Committee recognized the usefulness of both drafts but called for a single draft convention to be prepared.

The outcome of the work by the Sixth Committee was reported to the General Assembly which, on 9 December 1993, adopted resolution 48/37, expressing its concern at the increasing number of attacks on United Nations personnel.

The resolution provided for the establishment of an Ad Hoc Committee, open to all Member States, to elaborate an international convention

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[8] Doc. A/48/349 of 27 August 1993.

[9] See Doc. A/AC.242/1, Note by the Secretary-General, 25 March 1994, paragraphs 11, 17.

[10] Resolution SC 868 (1993) of 29 September 1993. For an analysis of the resolution, see Doc. A/AC/241/1, paragraphs 12, 17.

[11] This need had also been recognized at the International Conference for the Protection of War Victims convened by the Swiss government (Geneva, 30 August-1 September 1993). Particular attention was drawn to it in paragraph 7 of Part I and in paragraphs 8 and 9 of Part II of the Declaration adopted there. For the text of the Declaration, see *International Review of the Red Cross*, No. 296, September-October 1993, pp. 377-381.

[12] Doc. A/C.6/48/L.2 and Doc. A/C.6/48/L.3.

taking into account "any suggestions and proposals from States, as well as comments and suggestions that the Secretary-General may wish to provide".[13] The General Assembly further specified that the future convention "should not be limited to the issue of responsibility for attacks on the said personnel"[14], thus implying some modification to the approach adopted in the drafts submitted by New Zealand and Ukraine.[15]

B. Elaboration and negotiation of the Convention

Responding to the wishes expressed by the General Assembly during the adoption of resolution 48/37, New Zealand and Ukraine agreed to merge their respective draft conventions in a single document[16] which, they suggested, should be accepted as the Committee's main working document.

Presenting the joint draft Convention, the New Zealand representative emphasized that it contained relatively few new elements in comparison with the drafts[17] examined by the General Assembly in 1993;[18] it reflected above all an effort of harmonization.

However, he drew the attention of the Ad Hoc Committee to the absence of a draft preamble (which he said should be prepared once the draft Convention was in a more advanced state of development) and to the insertion in the joint draft of a new Article 21 on the settlement of disputes.

Availing themselves of resolution 48/37, which invited States to let the Ad Hoc Committee have their suggestions and proposals, the Nordic countries submitted "a set of elements which we believe should be included in any new legally binding instrument concerning the safety and security of United Nations and associated personnel".[19] For the most part, those elements related to the material and formal scope of application of

[13] See Doc. A/AC.242/1 of 25 March 1994, paragraph 3.

[14] *Ibid*, paragraph 8.

[15] See note 12 above.

[16] Doc. A/AC.242/L.2 of 16 March 1994.

[17] See note 12 above and Press Release GA/PK/125 of 11 April 1994, pp. 2-3.

[18] A comparison of the different drafts shows that, subject to a few amendments, Articles 1, 2 and 10-20 of Doc. A/AC.242/L.2 are drawn from the earlier New Zealand draft and Articles 3-9 and 22-27 from the text proposed by Ukraine.

[19] See Doc. A/AC.242/L.3.

the Convention; the fundamental protection to be provided to personnel; the obligation to disseminate the rules of international humanitarian law and the need to offer the United Nations the possibility of acceding to the future Convention.

The Ad Hoc Committee was thus able to start work on 28 March 1994 on the basis of (a) the joint proposal submitted by New Zealand and Ukraine, (b) the proposals of the Nordic countries and, (c) a note by the Secretary-General giving an overview of the problem.[20]

(a) Organization of work

The Ad Hoc Committee entrusted with elaborating the Convention held its first session from 28 March to 8 April 1994 and its second session from 1 to 12 August 1994.[21] Open to all Member States, it also agreed to allow Switzerland and the International Committee of the Red Cross to participate with observer status.

During its two sessions, the Ad Hoc Committee decided to constitute itself as a Working Group of the Whole to examine the texts submitted to it.

First session

After a brief general debate, the Committee set up a Working Group to consider the above-mentioned proposals and a number of amendments submitted during the debates.[22]

Its deliberations took place in three stages. In the *first stage* it examined on first reading all the draft articles submitted in Doc. A/AC.242/L.2. In the *second stage* the Working Group reviewed on second reading Articles 1 (Definitions) and 2 (Application of Convention). Lastly, in a *third stage*, work continued in the framework of two consultation groups respectively entrusted with the examination of Articles 1-9 and 10-27 of the draft. The work of the consultation groups resulted in a "negotiating text" consisting of Articles 3-27.[23] No agreement was reached on Articles 1 and 2.

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[20] See Doc. A/AC/242/1 of 25 March 1994.

[21] See Doc. A/49/22, Report by the Ad Hoc Committee on the elaboration of an international convention dealing with the safety and security of United Nations and associated personnel.

[22] *Ibid.*, Annex.

[23] See Doc. A/AC.242/1994/CRP.2 of 8 April 1994.

After its first session, the Ad Hoc Committee decided to hold a second session to review the negotiating text.

Second session

After briefly examining Articles 3-27 of the negotiating text, the Ad Hoc Committee entrusted an Informal Working Group with the preparation of a negotiating text for Articles 1 (Definitions) and 2 (Scope of the Convention). The Working Group completed its task and proposed to the Committee a single draft article entitled "Scope of application and definitions".

The Ad Hoc Committee then examined all the draft articles.[24] It concluded its work by adopting a "consolidated negotiating text".[25] The text was then transmitted to the Sixth (Legal) Committee of the General Assembly, which took note of it and passed it on to a Working Group which it established on 26 September 1994.

Consideration of the draft Convention by the Working Group of the Sixth Committee

Although set up by a different body, the Working Group was similar in composition to the earlier Ad Hoc Committee.[26]

At the 11 meetings it held between 3 and 14 October 1994, the Working Group prepared a draft preamble and reviewed the entire draft submitted by the Ad Hoc Committee.

It completed its work on 14 October 1994 and decided to submit a revised draft convention to the Sixth Committee for consideration with a view to its adoption.[27]

Careful scrutiny of the different drafts that led up to the final text of the Convention reveal that the discussions within the Ad Hoc Committee and later within the Working Group of the Sixth Committee centred on only a limited number of provisions.

In fact, many of the draft articles submitted by New Zealand and Ukraine had simply been the subject of terminological, drafting or tech-

[24] See Doc. A/49/22, Annex I, summary of the debate.

[25] See Doc. A/AC.242/1994/CRP.13/Rev. 1 of 11 August 1994.

[26] See Doc. A/C.6/49/L.4 of 25 October 1994, Report of the Working Group.

[27] *Ibid.*, Annex.

nical amendments (numbering changes and running together of sub-paragraphs).[28]

Several reasons may be advanced to explain the relative ease with which those provisions were adopted, for instance: (a) the quality of the initial draft (which was itself the outcome of numerous consultations and reflected the views stated by the Sixth Committee in 1993); (b) the fact that the Convention is clearly modelled on other international instruments[29] and that some of its provisions could thus be adapted to the specific case of staff protection without major difficulty and, (c) the widespread feeling among delegations that urgent solutions had to be found to increasingly disturbing problems.

Another hypothesis, admittedly less satisfying but one which cannot be ruled out in the light of certain ambiguities in the final text, is that there was simply not enough time to amend some of the articles.

(b) Provisions which raised negotiating difficulties

Of those provisions which raised particular drafting difficulties, mention must be made first and foremost of Articles 1 (Definitions), 2 (Scope of application) and 20 (Saving clauses).[30]

The discussions also led to the adoption of articles which were not in the initial draft; for example, the Preamble[31] and Articles 4 (Agreements on the status of the operation),[32] 5 (Transit),[33] 8 (Duty to release or return United Nations and associated personnel captured or detained)[34] and 23 (Review meetings).[35]

Incidentally, substantive amendments were made to some of the provisions: Articles 3 (Identification),[36] 6 (Respect for laws and regula-

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[28] *Inter alia* in the case of Articles 9, 11, 12, 14-21, 24 and 25-29 of the final text of the Convention.

[29] See, for example, the International Convention against the Taking of Hostages of 1979.

[30] See II B, C and D below for an analysis of these articles.

[31] See Doc. A/C.6/49/L.4, paragraph 8; Doc. A/49/22, p. 54.

[32] See Doc. A/49/22, paragraphs 24-30.

[33] *Ibid.*, paragraphs 31-35.

[34] *Ibid.*, paragraphs 66-67.

[35] See Doc. A/C.6/49/L.4, paragraph 13.

[36] See A/49/22, paragraphs 15-23.

tions),[37] 7 (Duty to ensure the safety and security of United Nations and associated personnel),[38] 10 (Establishment of jurisdiction),[39] 13 (Measures to ensure prosecution or extradition)[40] and 22 (Dispute settlement).[41]

(c) Adoption of the Convention

The report by the Working Group was introduced on 8 November at a plenary meeting of the Sixth Committee under agenda item 141.[42] It was presented by the Chairman of the Working Group as reflecting a compromise likely to meet the concerns of all Member States. All the delegations which spoke on the issue stressed the speed with which the work had been completed and most delegations indicated their readiness to adopt the draft Convention.

However, several delegations expressed concern about the scope of application of the Convention, which some deemed too broad and diffuse.

A draft resolution[43] was tabled by the representatives of New Zealand and Ukraine, calling upon the General Assembly to adopt the draft Convention and open it for signature by States. The Sixth Committee adopted the draft resolution by consensus on 16 November 1994.

The draft Convention[44] was then submitted to the General Assembly on 9 December 1994 and adopted the same day.[45] Most of the delegations which spoke following the vote expressed satisfaction at the speed with which the work had been completed, stressed the importance of the Convention and invited the Member States to ratify it as soon as possible.

The Convention was opened for signature by Parties on 15 December 1994. Ten States had signed it by 31 December.[46] On 11 April 1995, Denmark became the first State to ratify the instrument.

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[37] *Ibid.*, paragraphs 36-41.

[38] *Ibid.*, paragraphs 55-65.

[39] *Ibid.*, paragraphs 81-83.

[40] *Ibid.*, paragraphs 88-91.

[41] See Doc. A/C.6/49/L.4, paragraph 13.

[42] "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice".

[43] Doc. A/C.6/49/L.9.

[44] *Ibid.*

[45] Res. AG49/59.

[46] At 1 December 1995, 36 States had signed the Convention.

C. Brief presentation of the text of the Convention

A brief presentation of the provisions of the Convention is given below. Those provisions which have a closer link with international humanitarian law are analysed in greater depth.

The *Preamble* to the Convention recalls the increasing number of attacks on United Nations and associated personnel; it stresses the inadequacy of the measures then in force and the urgent need to adopt appropriate and effective supplementary measures.

Article 1 contains certain definitions necessary to an understanding of the Convention. It defines *United Nations personnel* as persons directly engaged by the United Nations or its specialized agencies. *Associated personnel* means persons assigned by a government or by an intergovernmental or non-governmental organization under an agreement with the Secretary-General of the United Nations to carry out activities in support of the fulfilment of the mandate of a United Nations operation. The term *United Nations operation* means an operation established by the competent organ of the United Nations and conducted under United Nations authority and control. This covers operations for the purpose of maintaining or restoring international peace and security, and those involving "an exceptional risk to the safety of the personnel".

Article 1 also defines the notions of *host State*, meaning States in whose territory an operation is conducted, and *transit States*, i.e. States in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2 defines the actual scope of application of the Convention, in other words those situations in which the Convention is or is not applicable. In particular, it specifies that the Convention shall *not* apply to operations "authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies".

Article 3 stipulates that personnel and means of transport involved in a United Nations operation shall bear distinctive identification.

Article 4, which meets a concern expressed by the Secretary-General,[47] calls for the conclusion of an agreement on the status of each operation,

[47] See Doc. A/AC.242/1, paragraphs 11-*14* and 16.

including provisions on privileges and immunities for military and police components of the operation.[48]

Article 5 requires transit States to facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6 obliges United Nations and associated staff to respect the laws and regulations of the host State and the transit State, without prejudice to such privileges and immunities as they may enjoy.

Articles 7 and 8 define the obligations incumbent upon States hosting an operation. *Article 7* requires them to guarantee the inviolability of personnel, premises and equipment assigned to an operation. *Article 8* lays down the duty to release United Nations personnel captured or detained. It further provides that, pending their release, such personnel must be treated in accordance with the principles and spirit of the Geneva Conventions of 1949.

Article 9 lists a series of acts regarded as breaches of the Convention, including the murder and kidnapping of personnel. It prohibits not only the commission of such offences but also any attempts to commit them and participation as an accomplice. Those offences must be regarded by the States Parties as a crime under their own national law.

Article 10 obliges each State Party to take such measures as may be necessary to establish its jurisdiction over the crimes set out in Article 9.

Articles 11, 12, 13 and 16 provide for measures, under criminal law, for the prevention of offences, the exchange of information, and the prosecution or extradition of offenders, and lay down the principle of mutual assistance in criminal matters.

Articles 14 and 15 stipulate the applicability of the *aut judicare aut dedere* principle[49] to the Convention. *Article 14* requires the State Party in whose territory an offence has been committed to prosecute the alleged

[48] See, *Ibid.*; during negotiation of the Convention, the United Nations Secretariat frequently indicated the advisability of using as a working document the "Model agreement between the United Nations and Member States contributing personnel and equipment for United Nations peace-keeping operations", Doc. A/46/185.

[49] This principle, whereby States are obliged to prosecute or extradite alleged offenders, is common to many international treaties, including the Geneva Conventions of 1949 and Additional Protocol I of 1977, and the International Convention against the Taking of Hostages of 1979. See Arsanjani, *op. cit.*, p. 21.

offender without delay. *Article 15* imposes the obligation to extradite alleged offenders who have not been prosecuted under Article 14.

Article 17 defines the fair treatment to be guaranteed to alleged offenders against Article 9. *Article 18* makes notification of the outcome of proceedings instituted in response to violations of Article 9 mandatory.

Article 19, inviting States to disseminate the Convention as widely as possible,[50] is intended to serve a general preventive purpose.

Article 20 contains a number of saving clauses. In particular, it stipulates that nothing in the Convention shall affect: the applicability of international humanitarian law and human rights standards; the rights of States regarding the entry of persons into their territories; the obligation of United Nations personnel to act in accordance with the terms of the mandate of a United Nations operation; the right of States which voluntarily contribute personnel to withdraw them from an operation, and the entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to service during a United Nations operation.

Article 21 stipulates that the Convention shall not be so construed as to derogate from the right to act in self-defence.

Article 22 invites States to submit any dispute concerning the interpretation or application of the Convention to negotiation or arbitration.

Article 23 provides for review meetings, at the request of one or more States Parties, to study problems relating to the implementation of the Convention.

Articles 24-27 deal with the signature, ratification, accession and entry into force of the Convention. *Article 28* provides for a denunciation procedure and *Article 29* settles the question of authenticity of texts.

II. Consideration of certain provisions of the Convention from the standpoint of international humanitarian law

A. Introductory remarks

Before analysing specific provisions of the Convention, a word should be said about some aspects of a related problem, namely the applicability

[50] In both its wording and its purpose, this provision is broadly based on Articles 47, 48, 127 and 144 of the Geneva Conventions of 1949, and on Articles 89 and 19 of the Additional Protocols of 1977.

of international humanitarian law to peace-keeping and peace-making operations.[51]

The two subjects are closely interrelated[52] because — if and when it is applicable — current international humanitarian law can in fact offer some protection to United Nations personnel engaged in such operations.

As it would be superfluous to go into the entire debate concerning the applicability of international humanitarian law to peace-keeping operations, only a brief reminder will be given here of those considerations which must be borne in mind when examining certain provisions of the Convention.

The question of the applicability of international humanitarian law to forces deployed by the United Nations has arisen ever since the first such forces were created.[53] For several decades it was of purely academic interest: operations *were few in number, had very limited terms of*

[51] For the most recent contributions on this problem, see E. David: *Précis de droit des conflits armés*, Université libre de Bruxelles, Bruylant, Brussels 1994, pp. 138; C. Emanuelli: *Les actions militaires de l'Organisation des Nations Unies et le droit international humanitaire*, Wilson and Lafleur, Montreal 1995; H.-P. Gasser "Die Anwendbarkeit des humanitären Völkerrechts auf militärische Operationen der Vereinten Nationen", in *Schweizerische Zeitschrift für internationales und europäisches Recht*, 5/1994, pp. 443-473; O. Otunu: "Peacekeeping: from a crossroads to the future", statement delivered at the United Nations Special Committee on Peace-keeping operations, New York, 14 April 1995; U. Palwankar: "Applicability of international humanitarian law to United Nations peace-keeping forces", in *International Review of the Red Cross*, No. 294, May-June 1993, pp. 227-240; T. Pfanner: "Application of international humanitarian law and military operations undertaken under the United Nations Charter", in *Symposium on Humanitarian Action and Peace-keeping Operations*, ICRC, 1995, pp. 51-62; D. Shraga and R. Zacklin: "The applicability of international humanitarian law to United Nations peace-keeping operations: conceptual, legal and practical issues", *ibid.*, pp. 41-50; B. Simma (ed.): *The Charter of the United Nations, a Commentary*, Oxford University Press 1994, pp. 600 ff. For a more detailed analysis of the Convention, see E.T. Bloom: "Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel, in *American Journal of International Law*, July 1995, Vol. 89, No. 3, pp. 621-631; M.-C. Bourloyannis-Vrailas: "The Convention on the Safety of United Nations and Associated Personnel", in *International and Comparative Law Quarterly*, July 1995, Vol. 44, pp. 560-590.

[52] See Emanuelli, *op. cit.*, p. 75. The existence of links between the question of the applicability of the rules of international humanitarian law to United Nations operations and the conclusion of a Convention granting special protection to United Nations and associated personnel was a matter raised from the start of the negotiations on the Convention.

[53] For instance, in a *Memorandum* addressed on 10 November 1961 to the States party to the Geneva Conventions and United Nations Member States, the ICRC drew the attention of the United Nations Secretary-General to the need to ensure application of the Conventions by the forces placed at the United Nation's disposal, see Palwankar, *op. cit.*, p. 230.

reference and *practically excluded the use of force*, which meant that, objectively, situations in which international humanitarian law could or should have been applied were rare.

However, the question again became highly relevant at the end of the Cold War. The Security Council gained much greater room for manoeuvre and peace-keeping operations have since then become *far more numerous, diversified* and, at the same time, singularly *complex*.

Since recourse to the use of force in such operations is now much more frequent, the question of the applicability of international humanitarian law can no longer be ignored.

Without going into detail on the largely opposing positions upheld on the subject by the ICRC and the United Nations, it should simply be recalled that whereas the ICRC has systematically spoken up for the applicability of international humanitarian law whenever United Nations forces had to resort to force, the United Nations itself has constantly opposed such an interpretation. Indeed, it put forward various arguments against it, both *legal* (in particular, the fact that the international humanitarian law treaties made no provision for the participation of international organizations); *political* (the impossibility of classifying the United Nations as a "party to conflict")[54] and *practical* (the extreme difficulty, if not impossibility, for a non-State body to implement certain provisions of international humanitarian law, such as the rules on the role of Protecting Powers or on the prosecution and punishment of offences).

In those discussions, the United Nations preferred to adopt a pragmatic position, declaring that the forces it deployed should observe the principles and spirit of the general international conventions applicable to the conduct of military personnel.[55]

Such a clause now features in a growing number of agreements, such as those between the United Nations and States providing troops.

Since 1992, and this is a major development as it implies direct United Nations responsibility for ensuring respect for international humanitarian law by members of its forces,[56] a similar clause has been incorporated in

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[54] See Shraga/Zacklin, *op. cit.*, p. 47.

[55] Such a clause, now standard, appears for the first time in Article 44 of the UNEF Regulations; see UNTS, Vol. 271, p. 168.

[56] See Shraga/Zacklin, *op. cit.*, p. 47.

the Model agreement on the status of forces for peace-keeping operations[57] and subsequently in several other agreements.[58]

Such a development in United Nations practice is of course welcome, although the new position falls far short of the interpretation embraced by the ICRC and a growing number of authors.

Indeed, the latter maintain that international humanitarian law (or at least its customary rules) becomes applicable and should therefore be respected as soon as United Nations forces actually resort to the use of force. They hold that while reasons relating to the structure and competence of the United Nations make it impossible to demand respect for all the rules of international humanitarian law, their applicability *mutatis mutandis* should nonetheless be guaranteed.

That interpretation stems from a main principle of humanitarian law, namely that a strict distinction must be drawn between *jus ad bellum* and *jus in bello*, from which the equality of parties in the eyes of international humanitarian law is derived. Under that principle, humanitarian law is applicable as soon as actual hostilities occur between organized armed forces,[59] regardless of the nature or legal origin of the conflict, the legality of recourse to force or the legitimacy of the cause of the parties in international law.[60]

Mention should also be made of a related but nonetheless important question, namely whether United Nations forces are bound by the rules applicable to international armed conflicts or only by those relating to non-international armed conflicts. It is nowadays generally accepted (and that is the position of the ICRC in particular) that, given the outsider status of United Nations forces and the fact that the United Nations intervenes in an internal conflict not to help one of the parties but to see that Security Council resolutions *are implemented with regard to all parties to the conflict*, those forces should logically be subject to the rules of international humanitarian law applicable in international armed conflicts.[61]

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[57] The importance of this Model agreement (Doc. A/45/594) was expressly emphasized by the United Nations Secretary-General during negotiation of the Convention when he said that "(...) it would logically follow that, in drafting the proposed Convention, existing status-of-forces agreements should be used as examples." See Doc. A/AC. 242/1, paragraph 13.

[58] See Shraga/Zacklin, *op. cit.*, p. 47 and note 10.

[59] See J. Pictet (ed.), *The Geneva Conventions of 12 August 1949, Commentary*, Vol. I, on the First Geneva Convention, ICRC, Geneva 1952, p. 32.

[60] See Protocol I to the Geneva Conventions of 1949, preambular paragraph 5.

[61] See Emanuelli, *op. cit.*, pp. 24-41.

The question of the applicability of international humanitarian law to peace-keeping operations was often raised during the negotiation of the Convention. While the Convention is not free from ambiguities in that respect, as will be seen in II B and C below, it has nonetheless enabled certain aspects of the problem to be clarified. The discussions leading up to its adoption revealed that international humanitarian law in its present formulation does not completely protect (or at least not as broadly as the United Nations would like) all personnel engaged in humanitarian operations[62] and that additional rules were therefore needed: as stated above, in the event of hostilities international humanitarian law cannot offer United Nations forces more rights than it does to their adversaries.

Then again (and this is a considerable development), the Convention stipulates that — in some cases[63] and *mutatis mutandis* — international humanitarian law as a whole and not just "its principles and spirit" is applicable to United Nations forces,[64] who hence may then be regarded as a party to conflict.[65]

B. Scope of application in terms of personnel

The Convention protects certain categories of personnel engaged in United Nations operations. Those categories are strictly defined in Article 1 of the Convention as follows:

a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

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[62] See "Protection afforded to personnel engaged in humanitarian activities by the Geneva Conventions and their Additional Protocols", ICRC statement to the Ad Hoc Committee, 6 April 1994, p. 4.

[63] See II.C below.

[64] See Shraga/Zacklin, *op. cit.*, pp. 49-50.

[65] See Emanuelli, *op. cit.*, pp. 87-88.

b) "Associated personnel" means:

(i) Persons assigned by a government or an intergovernmental organization with the agreement of the competent organ of the United Nations,

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency,

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency,

to carry out activities in support of the fulfilment of the mandate of a United Nations operation.

At least partially, those definitions meet a desire expressed by the Secretary-General, who proposed that "consideration could be given to extending some of the privileges and immunities presently enjoyed by the Organization and its personnel to civilian contractors and non-governmental organizations (NGOs) and their personnel who are engaged in United Nations operations through contractual or other arrangements".[66] Incidentally, that wish had already been partially taken into account in the draft Convention submitted by New Zealand and Ukraine, as well as in the working document submitted by the Nordic countries.

Discussions on the definition of categories of protected personnel continued throughout all three sessions of the Ad Hoc Committee and the Working Group of the Sixth Committee. They were singularly complicated because questions relating to the scope of application with regard to *personnel* (the categories of personnel to be protected) and *material* scope of application of the Convention (situations in which that protection should take effect) were often dealt with simultaneously and on occasion were somewhat confused.

Throughout the negotiations, those drafting the Convention had to pursue two almost irreconcilable objectives, namely to ensure protection under the Convention to as many categories of personnel as possible without unduly extending its scope of application, which would have prevented certain States from ratifying it.

[66] See Doc. A/AC.242/1, paragraph 11.

While the material scope of application of the Convention was confined to operations approved by a Security Council resolution, during both sessions of the Ad Hoc Committee several organizations directly concerned expressed the hope that its coverage would be extended to other categories of operations.

For instance, the Office of the United Nations Security Coordinator[67] apprised the Committee of the concerns expressed by United Nations specialized agencies regarding the material scope of application proposed, noting that many United Nations staff-members had been killed or wounded in operations mandated not by the Security Council but by other United Nations bodies.[68]

The ICRC also spoke during the discussions. In a statement delivered during the first session of the Ad Hoc Committee, it indicated that it did not believe it should wish to be protected under the Convention being drawn up, because application of the Convention to the ICRC would necessarily imply a fairly close association between it and the United Nations; this would include contexts in which it would generally be essential for the ICRC to be separate and different, and also clearly seen as such.

The explicit desire of the ICRC not to enjoy protection under the Convention may at first sight seem surprising given the daily risks to which its delegates are exposed. However, there are at least two reasons for this.

First, and unlike other categories of personnel, ICRC personnel already enjoy the international protection deriving from the Geneva Conventions, which afford it in particular the protection of the red cross or red crescent emblem.

Secondly, the wish expressed by the ICRC also stemmed from its concern to be able at all times to act as a *neutral humanitarian intermediary* between parties to conflict, a role which might be jeopardized if the ICRC were perceived as being closely linked with the United Nations.

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[67] Doc. A/49/22, paragraph 19.

[68] Such fears were expressed *inter alia* by the United Nations High Commissioner for Refugees in a document entitled "UNHCR Comments on the proposals by New Zealand and Ukraine for a draft Convention on the Protection of UN Personnel" circulated during the first session of the Ad Hoc Committee. In it, the UNHCR declared that: "(...) an unfortunate result of the present draft would be to extend greater protection to one UN colleague than to another, although they might face similar levels of danger and even be working in the same place".

If hostilities break out between United Nations forces and organized armed groups, the ICRC must have the ability to play that role. Consequently, it cannot be protected by the same rules as United Nations forces, which by definition are infringed whenever such hostilities occur.

The definitions of categories of protected personnel that were finally adopted were for the most part drawn up by an informal working group set up during the second session of the Ad Hoc Committee. They were then finalized during the third session.[69]

The definitions themselves seem clear enough not to warrant lengthy comment. However, it should be stressed that a compromise had to be reached on the thorny question of *associated personnel* (which some delegations wanted to extend to all non-governmental organizations). This made the protection of non-governmental organizations subject to a very close contractual link[70] with the United Nations. That formulation meets a concern expressed by the ICRC, whose delegates are clearly excluded from the scope of the Convention.

C. Material scope of application

Delimitation of its material scope of application, i.e. the types of situation in which it should apply, gave rise to difficult discussions throughout negotiation of the Convention. The clauses ultimately adopted (Articles 1 c and 2) were finalized only at the very last meetings of the third session.

Given the importance of this subject and the complexity of the discussions to which it gave rise, it would be appropriate to recall chronologically the main stages leading up to the adoption of the final text before analysing the text itself in greater depth.

a) First session of the Ad Hoc Committee

The material scope of application proposed by the authors of the first draft Convention was fairly narrow in that it limited the applicability of the Convention to operations "established pursuant to a mandate approved by a resolution of the Security Council".[71]

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[69] See Doc. A/C.6/49/L.4, paragraphs 9-11.

[70] See Article 1 b) iii of the Convention; C. Emanuelli, *op. cit.*, p. 76.

[71] See Doc. A/AC.242/L.2, proposal by New Zealand and Ukraine, Article 1, paragraph 2.

Introducing the draft text, the New Zealand representative acknowledged that the issue was one of the most delicate to be discussed and said he was prepared to broaden the scope of application proposed.[72]

A broader material scope of application was proposed by the Nordic States, which suggested that the Convention should apply "in all situations where United Nations or associated personnel are operating, be it in time of peace or during armed conflict, whether of an international or a non-international character".

From the earliest meetings of the Ad Hoc Committee, most delegations realized the tremendous complexity of the problem and the need to find a solution compatible with existing law. Throughout the discussions, the question of the applicability of international humanitarian law to peace-keeping and peace-making operations was often raised, as was the need to incorporate in the Convention an exclusion clause defining situations in which the Convention would not apply.

During the debate, the United States delegation proposed a very broad scope of application for the Convention, whereby only operations that were classifiable as an international armed conflict under the terms of Article 2 common to all four Geneva Conventions of 1949 should be excluded.[73] That proposal was to influence the discussions until the final text was eventually adopted.

Although, as we have seen, governmental delegations expressed some perplexity as to the scope of application to be given to the Convention, the United Nations Secretariat did not appear at that stage of the negotiations to have any clear-cut stance on the subject.[74]

UNHCR came out strongly against the proposed scope of application set out in the draft submitted by New Zealand and Ukraine,[75] objecting

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[72] See statement by the Permanent Representative of New Zealand, 28 March 1994, pp. 2 and 3: "... we recognized, however, that this question will be one of the key issues for negotiation ... But we are open to suggestion on this point ... For New Zealand's part, we would support a wider coverage ...".

[73] See Doc. A/49/22, pp. 46 and 51.

[74] See Doc. A/AC.242/1, paragraph 22: "Another issue relates to enforcement measures under Article 42 of the Charter of the United Nations. *The question arises* (our underlining) whether attacks on United Nations military contingents engaged in an enforcement operation should be considered, for the purposes of such a convention, as an attack on United Nations personnel."

[75] See II.B and note 68 above.

in particular to any application that was confined to operations established pursuant to a Security Council resolution.

Called upon to comment on the issue, the ICRC gave a reminder of its own opinion as to the applicability of international humanitarian law and drew the attention of delegations to the problems inherent in *hybrid* operations involving both peace-keeping and peace-making, i.e. enforcement.

By the end of the first session, no consensus had been reached on the scope of application or the definitions, the discussion of which was postponed until the next session.[76]

b) Second session of the Ad Hoc Committee

Here again, the main stumbling-block was to define the Convention's material scope of application.

The issue was first raised during the general debate within the Ad Hoc Committee. While some delegations insisted that the Convention should cover only peace-keeping operations conducted with the consent of the host State, the majority were in favour of a scope of application also covering certain coercive operations. However, it remained necessary to identify those operations in which international humanitarian law rather than the Convention would apply, since both legal systems were in principle mutually exclusive.

When invited to speak on the subject, the ICRC commented that an exclusion clause limited to operations that could be classified as an international armed conflict within the meaning of common Article 2 to the Conventions of 1949 (United States proposal, see above) seemed dubious because the United Nations was not party to those Conventions. Incidentally, it is doubtful whether any such limitation would be compatible with the United Nations' own much earlier undertaking to respect "the principles and spirit" of international humanitarian law.

The elaboration of a negotiating text for Articles 1 (Definitions) and 2 (Scope of application) was then entrusted to an informal working group which eventually produced a single draft article entitled "Scope of application and definitions".

[76] See Doc. A/49/22, Annex I, pp. 16-17.

That single article spelled out *inter alia* some of the definitions contained in the first draft. It also contained several important elements concerning the scope of application. First, in response to concerns expressed by UNHCR and other specialized agencies, the article provided that the Convention should also apply to operations in which there was "exceptional risk to the life or liberty of United Nations and associated personnel". In the case of the exclusion clause (paragraph 3 of the draft), the United States proposal was adopted.

Those proposals were then discussed by the Ad Hoc Committee.[77] Several delegations, including that of France, took account of the views expressed by the ICRC and proposed that the exclusion clause should not be limited to international armed conflicts. Accordingly, they suggested that the reference to Article 2 common to the Geneva Conventions of 1949 should be deleted and replaced by a general reference to international humanitarian law. The United States delegation objected to those proposals, claiming that only the reference to common Article 2 would enable the scope of application of the Convention to be defined with sufficient clarity. The proposals were not adopted and those of the informal working group were submitted to the third session practically as they stood.[78]

c) Third session, Working Group of the Sixth Committee

In opening the work of the Sixth Committee's Working Group, its Chairman noted that of the subjects pending before an agreement could be reached on the text as a whole, the finalization of Articles 1 and 2 was the main one. In that connection several delegations drew attention to the exclusion clause, pointing out that differences persisted as to the delimitation between the scope of application of the Convention and that of international humanitarian law. Some stressed the need for a re-examination of the proposals made by France and the ICRC during the preceding session.

The Chairman of the Working Group then decided to suspend the meetings so that informal negotiations leading to an agreement could proceed.

Those informal negotiations led to the adoption of Articles 1 and 2 of the final text of the Convention. The exclusion clause (which now

[77] See Doc. A/49/22, Annex I, paragraphs 10-14.

[78] See Emanuelli, *op. cit.*, pp. 76-78.

appears as Article 2 (2)) is a compromise between the United States and French proposals. It stipulates that: "This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies."[79]

d) Analysis of the provisions adopted

First let us analyse the definition of the *types of operation* in which the Convention is intended to apply. In that respect, the negotiations fortunately enabled the scope of application proposed in the initial draft to be considerably extended.

The withdrawal of the condition whereby only operations mandated by the Security Council could be covered by the Convention is particularly welcome. Equally welcome is the broadening (thanks to vigorous efforts by the United Nations Secretariat and specialized agencies) of the scope of application to operations involving an "exceptional risk" (Article 1 (c, ii)), even though it is likely to raise thorny problems of application.[80]

As to the exclusion clause (Article 2 (2)), the outcome of hard-won compromise, we have already noted that it poses several tricky problems in itself.

The clause might at first sight seem to imply that international humanitarian law applies only to coercive operations (defined as operations undertaken by the Security Council or at its invitation and motivated either by an aggression or by armed opposition to the accomplishment of a peace-keeping operation) carried out within the framework of Chapter VII

[79] It should be noted that whereas Article 2, paragraph 2 mentions operations *authorized* by the Security Council, Article 1 (c) refers to operations *established* by a competent organ. In our view, bearing in mind the way the work progressed and the general haste in efforts to find an acceptable compromise on Article 2, paragraph 2, it would be inappropriate to attach too much importance to this use of differing terms. It is simply an example of the terminological inconsistencies which occur throughout the text of the Convention.

[80] To Arsanjani, *op. cit.*, p. 23, this was even a "virtually non-invokable criterion. The political pressure mounted on the Secretary-General would make it impossible for him to request the General Assembly or the Security Council to declare that there is an exceptional risk to the safety and security of United Nations personnel in a particular part of the world. Even assuming that he overcame that pressure, the Assembly or the Council would not be able to make such a declaration, due to pressure from many Member States."

of the Charter, and not to military operations conducted under Chapter VI (or "VI bis") of the Charter. As mentioned earlier, such an interpretation would run counter to the opinions most widely held,[81] not to mention the long-standing practice of the United Nations itself.

Incidentally, the terms used in the exclusion clause might be read in two ways. They might be taken to mean that (a) when personnel are engaged as combatants *and* international law relating to international conflicts is declared applicable, then the Convention is not applicable, or (b) that when personnel are engaged as combatants against organized armed forces then international humanitarian law applies, not the Convention.

In our view, bearing in mind how the negotiations proceeded, it is the second of those readings which should prevail.

Lastly, the mere fact that an action is based on Chapter VII of the Charter does not automatically rule out application of the Convention and render international humanitarian law applicable instead. As seen earlier, the latter is applicable only in cases of armed confrontation between forces deployed by the United Nations and organized armed forces.

The text finally adopted is therefore still ambiguous and it is simply regrettable that the question of the applicability of international humanitarian law to United Nations operations was not solved once and for all.[82]

Moreover, the exclusion clause provides only a partial answer to the need for protection in "hybrid" operations involving very diverse categories of personnel. By stipulating that the Convention does not apply once personnel are engaged as combatants, it could deprive non-combatants engaged in the same operation of the special protection conferred by the Convention.[83] In that eventuality, however, such personnel would enjoy the protection afforded by the provisions of international humanitarian law.

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[81] In this connection see H.-P. Gasser, Comment on the 1994 Convention on the Safety of United Nations and Associated Personnel: Proceedings of the Third Joint Conference of the American Society of International Law and the Netherlands Society of International Law, 13-15 July 1995 (to be published): "Thus it would be wrong to conclude *a contrario* from Article 1, paragraph 2 of the 1994 Convention that, as the Convention does not apply in enforcement situations, its applicability in other situations should automatically exclude that of international humanitarian law".

[82] See Emanuelli, *op. cit.*, p. 84.

[83] See Arsanjani, *op. cit.*, p. 25.

In view of the difficulty with which the provisions establishing the material scope of application were negotiated, the final outcome would appear acceptable. However, only the way in which they are put into practical effect by the organs of the United Nations and by the States Parties to the Convention will enable the merits or otherwise of those provisions, and above all their realism, to be judged. The exclusion clause cannot be interpreted as marking a setback in the debate on the applicability of humanitarian law to peace-keeping and peace-making forces, even if the terms used are, as noted above, sometimes unclear. On the contrary the clause implies that in the event of clashes between United Nations forces and organized armed forces, international humanitarian law — that relating to international armed conflicts and not to internal conflicts — then applies.

D. Saving clause

As soon as the process of *progressive legal development* that was to culminate in the final text began, it was clear that the Convention would have close links with international humanitarian law and that a saving clause in favour of that law would thus be necessary.

Such a clause was included in the proposal submitted by New Zealand and Ukraine, Article 6 of which stipulated that: "In cases not covered by this Convention or by other international agreements, United Nations personnel remain under the protection of universally recognized principles of international law, in particular, the norms of international humanitarian law".

There were also similar clauses in the working document submitted by the Nordic States[84] and in another put forward by Austria, Denmark, Finland, the Netherlands, Norway and Sweden.[85]

During the first reading of the draft, the ICRC stressed the importance of the problem and the need to clarify the scope of Article 6.[86] An

[84] See Doc. A/AC.242/L.3, third element: "Besides the protection offered under the new instrument, United Nations and associated personnel remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience".

[85] See Doc. A/AC.242/1994, Informal paper 2, 31 March 1994, Article 3: "The protection provided under the present Convention is without prejudice to that afforded by (...) the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

[86] See statement by the ICRC on 29 March 1994: "It is now conceivable that the real function of Article 6 may have to be clarified in one of two ways:
- as a cross-reference to other rules for situations other than those covered by the Convention;
- as a remedy for omissions in the Convention in those situations which it covers (that was the main purpose of the 'Martens Clause')."

amended version of Article 6 was adopted at the end of the first session of the Ad Hoc Committee.[87]

It was decided during the second session of the Ad Hoc Committee that as Article 6 had been drafted in terms of a saving clause, it should be placed at the end of the Convention. It thus became Article 21, paragraph 1 of the revised negotiating text. Various terminological amendments were also adopted, as was a reference in the body of the article to associated personnel.

Lastly, a few essentially drafting amendments were made to the text during the final phase of the negotiations.

The text ultimately adopted (Article 20 (a)) stipulates that nothing in the Convention shall affect "the applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such laws and standards".

Here again, the text adopted is not absolutely clear. It leaves room for conjecture whether humanitarian law may be applicable when the Convention itself applies, or whether that law may be brought to bear only in situations not covered by the Convention.

It can however be unquestionably deduced both from the text of the Convention[88] and from the negotiations leading up to its adoption (in this connection, see how the text developed as the sessions proceeded) that the first hypothesis should prevail.

The material scope of application of the Convention is therefore distinct from that of international humanitarian law, even if both overlap. Consequently two types of situation may be distinguished: (1) those in which the Convention and humanitarian law apply and, (2) those in which only humanitarian law is applicable (i.e. those situations specified in the exclusion clause in Article 2 (2)).

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[87] See Doc. A/49/22, Annex I, paragraph 47: "Nothing in this Convention shall in any way affect the application of international humanitarian law and international human rights law in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law."; see also Emanuelli, *op. cit.*, pp. 75-76.

[88] See in particular Article 8 which stipulates that, pending their release, United Nations personnel must be treated in accordance with the principles and spirit of the Geneva Conventions.

This duality between the Convention and humanitarian law is not a problem in itself, since both have a common aim, namely that of ensuring the safety of United Nations personnel. It is explained by the fact that, as shown above, the Convention must be regarded as coming under *jus ad bellum*, which absolutely prohibits attacks on United Nations forces,[89] not under *jus in bello*.

The complementarity of the Convention's provisions on the one hand and those of humanitarian law on the other is consistent with the distinction that must be drawn between *jus in bello* and *jus ad bellum*. Given that distinction, therefore, it may be accepted that the prohibition of attacks on United Nations and/or associated personnel does not preclude such personnel from the coverage — or from the obligations — of humanitarian law if that prohibition is violated.[90]

Consequently, although unsatisfactory in formulation (a simpler and clearer text could presumably have been adopted), the saving clause in Article 20 (a) is extremely important: it felicitously supplements the exclusion clause in Article 2 (2) of the Convention by guaranteeing that whenever the Convention proves insufficient to ensure the protection of United Nations and associated personnel, international humanitarian law should take effect.[91]

Conclusion

In a statement to the United Nations General Assembly, the United States representative remarked that the adoption of the Convention was one of the key accomplishments of the 49th Session.

Now, a few months later, consideration may well be given to the intrinsic value of the Convention and the results that may be expected of it.

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[89] See Emanuelli, *op. cit.*, p. 83.

[90] *Ibid.*, p. 85.

[91] *Ibid.*, p. 84; for an analysis of the scope of this clause, see Shraga/Zacklin, *op. cit.*, pp. 49-50. It is surprising that besides the aforesaid shortcomings of Article 20 (a) of the Convention makes no provision concerning the relationship between the Convention and other instruments dealing with related areas, such as the Convention of 1946 on United Nations Privileges and Immunities and the Convention of 1979 against the Taking of Hostages.

While there can be no doubt as to the validity of its objectives, since the need for better protection of personnel engaged by the United Nations has unfortunately been amply demonstrated by recent events, questions inevitably arise as to the effectiveness of some of its clauses.

A careful examination of the treaty reveals that some major issues have not been considered in sufficient depth and that, as a result, the Convention may prove extremely difficult to implement.

At times one also cannot help feeling that in too many respects the desire for a speedy end to the negotiations took precedence over mature reflection.

It would probably be wrong to claim that such a Convention might have no effect whatsoever;[92] it must nonetheless be recognized that its provisions will sometimes prove difficult to respect and implement. Some aspects of the Convention will be clarified only by consistency on the part of the United Nations Member States in implementing it and the practice thereby established.

Among the chief weaknesses of the Convention — which will perhaps be corrected by the way in which States interpret it — mention should first be made of the insufficient attention apparently paid to problems specific to "hybrid" operations combining both peace-keeping and peace-making mandates, in which the forces engaged by the United Nations (or under its auspices) are entrusted with extremely diverse tasks. The complex operations carried out in Somalia and in the former Yugoslavia are example enough of such problems.

Furthermore, the scope of application finally adopted with regard to personnel appears too narrow. Practical experience in present operations shows that many categories of personnel not protected by the Convention are actually subject to sometimes serious attacks and injury. The "answer" provided in Article 1 (c, ii) of the Convention therefore seems very inadequate.

Certain key provisions of the Convention, including those specifying its material scope of application, are couched in somewhat confusing terms and therefore imperatively require interpretation. Only the actual practice adopted by the United Nations and its Member States will make

[92] See Arsanjani, *op. cit.*, pp. 21-22: "...the effect of a Convention of this nature is even more minimal than other similar Conventions".

such an interpretation possible. We can but hope that it will not run counter to the tendency to recognize that international humanitarian law is applicable *mutatis mutandis* to United Nations operations whenever they involve recourse to force against organized armed forces. In our opinion, any other interpretation would be contrary to the views expressed when the Convention was being negotiated.

Lastly, with regard to the links between the Convention and international law, it must be acknowledged that despite the clear advances made during the negotiation process, some ambiguity persists. It can only be regretted that the opportunity to settle the question of the applicability of international humanitarian law to United Nations operations once and for all was missed.

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