

PROTECTION OF THE UNITED NATIONS PEACEKEEPERS

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I. INTRODUCTION

The post-cold war era, has seen the increasing involvement of the United Nations in the peace-keeping, peace-making and peace-enforcement activities. It has, at the same time witnessed an unprecedented surge in violence and attacks committed against peacekeepers. The parties in conflict often resort to detaining peacekeepers, including holding them hostages for political purposes. In May 1995, the Bosnian Serbs detained and prevented the movement of almost 400 United Nations peacekeepers and used them as human shields at probable targets of NATO bombing on 25-26 May. The UN officials described Serb operations as possessing a "terrorist" character.¹ There were also several attacks on French peacekeepers in Sarajevo, for which, on the demand of France, the Security Council adopted a resolution, condemning the attacks and inviting the UN Secretary-General to submit proposals to it on measures to prevent attacks against UN Protection Force (UNPROFOR).² In Somalia, the United States Chief Warrant Officer attached to the UN Unified Task Force (UNITAF) was held against his will following a mission in which a number of members of the force were killed.

It is reported that between 1948 to 1994, in the thirty-five peace-keeping operations undertaken by the UN nearly 720,000 peacekeepers have served, a total of 1194 have died in these operations, including 85 from India.³ In 1993 alone, 202 personnel were killed.⁴ In response to this ever-increasing incidence of violence against the peacekeeping forces, in 1993 the United Nations General Assembly established an Ad-hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel.⁵ The Committee met in two sessions after which the Sixth Committee (Legal Committee of the General Assembly) worked on it and prepared the Draft Convention⁶ which was adopted by the General Assembly by consensus on 9 December 1994 as a new multilateral Convention on the Safety of United Nations and Associated Personnel (hereinafter referred as Convention).⁷ The Convention will come into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the UN Secretary-General (Art. 27).⁸

While adopting the Convention, the General Assembly urged States to ensure the safety and security of the United Nations and associated personnel and those responsible for attacks against them should be brought to justice. It obliges States-parties to establish jurisdiction over crimes against the United Nations personnel including murder, kidnapping or threat of attack. It calls on host States and the UN to quickly conclude agreements on the status-of-forces.

This study will examine the scope of the Convention - the types of operations and personnel that are covered under the Convention. It will analyse its main features, including the key provisions concerning jurisdiction and status-of-forces. But at the outset, a brief survey of the UN peacekeeping operations will be undertaken.

II. UNITED NATIONS PEACEKEEPING

The UN Secretary-General in his Agenda for Peace has very correctly remarked that "Peacekeeping can rightly be called the *invention* of the United Nations".⁹ In fact, the UN Charter is not explicit about its peacekeeping function, which contains two distinctive chapters - Chapter VI (Pacific Settlement of Disputes - Arts. 33-38) and Chapter VII (Enforcement Action - Arts. 39-51). While the former is dedicated to working out a solution between the parties through peaceful means, the latter relies on the decision of the Security Council, imposing a solution through forcible measures. But the recourse to dispute settlement under Chapter VI has not been very encouraging in the history of the UN due to the absence or lack of political will of States. Similarly, recourse to Chapter VII and decisions for enforcement action are not always easy to come by because of the inherent flaws in the decision-making by the Security Council. Hence, in order to avoid war and political turbulence, the UN has innovated the method of peacekeeping, which is mid-way between dispute settlement and enforcement action, and has come to be called as Chapter VI and a half.

The essence of peacekeeping is the consent of the parties to the conflict to the deployment of UN forces as a buffer in conflict circumstances. However, the Security Council may station such forces compulsorily in the territory of a State under the enforcement action as was done with UNIKOM to monitor the line of Kuwait-Iraq border by replacing coalition forces, under the Security Council Resolution 689 of April 9, 1991. The peacekeeping forces are composed of military contingents of armed troops voluntarily made available by member-States to the UN. These forces are required to maintain the posture of impartiality with respect to the respective merits of the adversary positions and a commitment to use force only in self-defence strictly construed.¹⁰ Consent and cooperation are basic pre-requisites for successful peacekeeping operations. However, the UN peacekeeping has now far transcended from this

original position. The demand for operations, the number of personnel, the budget involved are of greater magnitude now than before. Today's peacekeeping involves new situations and new tasks. Peacekeepers have been sent to areas where there are no agreements, where consent to UN presence is sporadic and where governments are non-existent (due to collapse of machinery) or have limited effectiveness. Presently, there are seventeen UN peacekeeping operations in existence, with all but one in former Yugoslavia (where Multinational Forces (IFOR) under the command of NATO have replaced UNPROFOR) are located in the developing world.

The UN peacekeeping operations may broadly be classified under three categories. First is the traditional one under which the UN force acts as a buffer between antagonistic forces in circumstances of unresolved disputes of States, and essentially to monitor truce and ceasefire agreements. They are aimed at keeping the parties separated to discourage the resumption of hostilities. They are, in essence, confined to inter-State disputes. Out of the seventeen peacekeeping operations presently in existence, nine fall within this category. Such operations tended to be of comparatively long duration. Consent of the States is a pre-requisite for stationing such forces in a State territory.

The second category of peacekeeping operations essentially deal with the circumstances arising out of a partially or fully "imploded State" where the normal institutions of a State are near collapse, or have collapsed, and a state of anarchy exists. Consent of the imploded State by definition, would not be available in such cases. Somalia and Rwanda are the typical examples where the local authority had substantially disappeared. These are the cases of failed State which is a threat to international peace and security.

The third category consists of those operations that concern with *intra-State conflicts* and *civil wars* in order to restore peace and security. This type of operations have blurred the dividing line between peacekeeping and peace enforcement, both in mandate and enforcement. In principle, the UN cannot intervene in the domestic affairs of a State as mandated under Article 2(7) of the Charter. Hence, UN intervention in civil wars is in contravention of its own Charter. But in certain circumstances, the Security Council can authorise action to address a local conflict, when a State requests it, as in Cambodia, when all semblance of State authority vanishes, as in Somalia, and when whole population is singled out for genocide, as Tutsi tribe in Rwanda. In such circumstances, it may be argued that the Security Council is not intervening in internal affairs, rather it is acting in accordance with the Charter to maintain international peace and security. On the other hand, more often than not, such operations, linked to humanitarian assistance or independent of them, are required to demilitarise the existing armed conflicts within States. Cambodia and Somalia are typical examples. It is also noteworthy that it was typical of

cold-war era that the two Super-Powers intervened in many civil wars where they tried to enforce their own forms of "peace-keeping". Over 75% of the wars during this era were intra-State, and external intervention was a significant factor in over two-thirds of these. However, with the end of cold-war era, the frequency of UN interventions in civil wars, in the name of "peace-keeping" has increased markedly instead. But in these assignments, the basis of *consent* for sending and stationing the peacekeeping forces, and impartiality of these forces has been often undermined. This is partly because of the UN mandate - as in Somalia, Bosnia, Cambodia, Rwanda, Haiti, in which peacekeeping proceeded either without the genuine consent of the parties to the conflict or perceived as taking sides in the course of trying to restore government, protect vulnerable elements in the population, and promote a transition to democracy and constitutionality sliding into the mould of Chapter VII enforcement measure.

Peacekeeping today has become far more complicated because conflicts and confrontations inside State borders are now more prevalent than inter-State wars. Today's peacekeeping involves new situation and new challenges. Peacekeeping is more than just keeping apart the warring parties. It may be aimed at protecting vulnerable populations, delivering humanitarian relief or responding to the collapse of a State. It may entail restoring democracy or building a foundation for national recovery. In such types of peacekeeping, there are no easy solutions. Each operation is different. Each requires new variables, in different combinations, often undertaken by multiple actors. It is in these types of operations where the peacekeepers are more vulnerable to attacks and killing from local groups.

The 1994 Convention on the Safety of UN and Associated Personnel addresses the problem of such attacks against peacekeepers. It also fills up the gap in international law because the four Geneva Conventions of 1949 and their two additional Protocols of 1977 lay down the norms and principles to regulate the armed conflicts, and their violations are attendant with certain legal consequences, but there existed no instrument to prohibit or provide legal remedies for attacks against peacekeepers who normally perform non-combatants peacekeeping functions and not as combatants in a war. Certain Security Council resolutions, existed, requiring parties to conflicts to ensure the safety of UN forces and humanitarian personnel but they had little impact. Furthermore, the resolutions were related to particular cases and did not have universal application.¹¹ The 1994 Convention is general in nature and it creates a regime for prosecution or extradition of persons accused of attacking peacekeepers and other persons associated with operation under UN mandate. For this purpose, it contains provisions concerning the relationship of peacekeepers and other personnels with host and transit States.

III. SCOPE OF THE CONVENTION

A. Coverage of Operations

Articles 1 and 2 together expound the coverage of the Convention. Article 2(1) provides that the Convention applies to UN and associated personnel, as defined in Article 1. According to Article 1, United Nations operation covers an operation established by the competent organ of the UN in accordance with the Charter of the UN and conducted under the UN authority and control. The first category is where the operation is for the purpose of maintaining or restoring international peace and security. Thus, all operations authorised by the Security Council are automatically covered, including peacekeeping and peace-enforcement operations, because under the Charter, the Security Council is primarily entrusted with the task of maintenance of international peace and security (Art. 24 of the Charter). An operation properly authorised by the General Assembly for this purpose would also be covered.¹² The second category pertains to operations where the Security Council or the General Assembly *declares*, for the purpose of the Convention, that "there exists an exceptional risk to the safety of the personnel participating in the operation." It is so because sometimes operations may not be strictly related to peacekeeping, such as humanitarian and election-monitoring missions, which may expose the personnel involved to severe risks. However, no list has been drawn for this type of operations under the Convention. But in the final analysis of this provision, all UN operations can be covered under the Convention so long there is a *declaration* of the Security Council or the General Assembly about the risk.¹³

B. Coverage of Personnel

The very title of the Convention covers two types of personnel to carry out activities in support of the mandate of United Nations Operations (Preamble). The first is the "United Nations personnel", which is the core group of peacekeepers and comprises of the "military, police or civilian components of a United Nations Operation", engaged or deployed by the Secretary-General of the United Nations. For example, UN Observer Mission in El Salvador (ONUSAL); UN Operation in Mozambique (ONUMOZ); UN Assistance Mission for Rwanda (UNAMIR) and the UN Mission in Haiti (UNMIH) fall within this category. It also includes officials and experts on mission of the UN or its specialized agencies or the International Atomic Energy Agency (IAEA), who are present in the zone of risk in their official capacity and thus can be the natural targets of attacks.

The second group of "associated personnel" comprises of persons assigned by a government or an intergovernmental organization under an agreement with competent organ of the UN, or engaged by the UN Secretary-

General, a specialised agency or the IAEA. For example, NATO forces were asked to assist the UNPROFOR (now IFOR) in Bosnia-Herzegovina; Multi-national Force Assisting UNMIH or US-led Multinational Force (MNF) in Haiti;¹⁴ and US Assistance to UNITAF in Somalia fall within this category. These forces are normally not under the UN command and control. 'Associated personnel' also include persons deployed by a humanitarian non-governmental organization (NGO) or agency (*viz.* ICRC) under an agreement with the UN Secretary-General, a specialized agency or the IAEA. Through this clause, many NGOs and other groups connected with a UN operation can be covered. However, for this purpose, they should have a contractual link with the UN, which implies a measure of control by the UN over their activities in relation to the operation.

At the deliberations of the Ad-hoc Committee on the Elaboration of an International Convention dealing with the Safety and Security of UN and Associated Personnel, many Governments, NGOs and UN wanted to extend the coverage of personnel and viewed that all their employees in the field should be included, and not merely be restricted to personnel participating in the actual operations and argued that attacks on them are no less than attacks on armed peacekeepers. Nevertheless, strong views of certain powerful States prevailed that this exercise is primarily concerned with peacekeeping and not for the protection of all UN personnel. Moreover, to the extent the provision of universal criminal jurisdiction under the Convention intrudes on the sovereignty of States, such an intrusion would not be tolerated in relation to all UN activities by States, except in the matter of peacekeeping.¹⁵

C. Convention and the UN Enforcement Action

Article 2(2) of the Convention states :

“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.”

Thus, where the peacekeeping forces are acting as combatants in an armed conflict, they are outside the purview of the Convention. However, for the application of this provision, pertinent question to be determined is whether any of the personnel are engaged as combatants and whether the operation is one to which the law of international armed conflict applies.

The reason for the exclusion of the combatant UN forces is that such an action will be governed by the four Geneva Conventions of August 12, 1949 and their two additional Protocols of 1977. Attacks in contravention of these

humanitarian instruments or other mistreatment of persons constitute grave breaches, for which the offender would be liable under those Conventions. But they do not cover attacks on forces performing the traditional peacekeeping functions of monitoring and policing as such. However, when the UN deploys these forces as combatants, as in the Gulf-war (after Iraq invaded Kuwait), in furtherance of enforcement action under Chapter VII, they are covered by the Geneva Conventions for being international armed conflicts as defined in Article 2, common to all those Conventions.¹⁶

Where the Security Council resolution authorises an enforcement action specifically referring to Chapter VII, the position about the applicability of the Convention is clear, but where it is not explicit about Chapter VII action, to identify whether an action involves "enforcement" is a complicated inquiry in the absence of any definition under the Charter. Nevertheless, the object and purpose of the resolution, the particular action to be taken by the parties to a conflict despite their consent should be sufficient to decide whether the action was in the nature of enforcement measure, and hence would be covered under Article 2(2) of the Convention.

On the other hand, not all the Chapter VII actions would be covered under Article 2(2) of the Convention, but only when the UN forces, under the Security Council resolution, are engaged as combatants that it will have the application. When the force is engaged in humanitarian activities and/or to enforce peace, such as the UNPROFOR in former Yugoslavia, or UNOSOM's activities in Somalia, in each of these cases, attacks against covered personnel would fall within the scope of the Convention because the UN forces in such cases are not engaged as combatants. Similarly, use of force in self-defence by UN and associated personnel without sustained fighting would not take the operation out of the purview of the Convention because the UN forces, in such a case, are not necessarily engaged as combatants when they act in self-defence.¹⁷ However, if *any* personnel are engaged as combatants, that will have the effect of applying Article 2(2) (*i.e.* the law of international armed conflict) rather than the Convention.

IV. JURISDICTION UNDER THE CONVENTION

In the matter of jurisdiction, the Convention closely follows the other UN conventions on terrorism, *viz.*, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973 (Protection of Diplomats Convention),¹⁸ the International Convention Against the Taking of Hostages, 17 December 1979 (Hostages Convention),¹⁹ as well as the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970,²⁰ and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil

Aviation, 23 September 1971.²¹ The Convention on the protection of peacekeepers has created a regime of universal jurisdiction for attacks against UN and associated personnel.

Article 9 sets forth the crimes over which States will exercise jurisdiction, which are the intentional commission²² of murder, kidnapping or other attack upon the person or liberty of any UN or associated personnel, *viz.*, keeping them as hostages as in the case of Bosnia-Herzegovina, a violent attack upon the official premises, the private accommodation or the means of transportation of any UN or associated personnel likely to endanger his or her person or liberty. Even a threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act; an attempt to commit any such attack; and an act constituting participation as an accomplice in such attack, or in organizing or ordering others to commit such attack. The words "organizing or ordering others" obviously refer to the orders of the superior military and political authorities.

In order to exercise its jurisdiction, a State-party should take measures to establish its jurisdiction when any of the crimes set out in Article 9 has been committed in its territory, or on board the ship or aircraft registered there, and when the alleged offender is its national (Article 10, para. 1). A State can also establish its jurisdiction over such crimes if the alleged offender is present in its territory and it does not extradite the offender to any of the States which can establish their jurisdiction as provided in other provisions of Article 10, para 4. It can also exercise its jurisdiction over any crime committed by a Stateless person, habitually resident in its territory, or with respect to its national, or in an attempt to compel that State to do or abstain from doing any act.

The Convention emphasises on the mutual cooperation amongst States in the prevention of the crimes enlisted in Article 9. In this direction, States are required to take all practicable measures to prevent preparations for the commission of these crimes in their territories through exchange of information (Art. 11). If a State where the crime is being committed, has reasons to believe that the alleged offender has fled from its territory, it shall provide information, in accordance with its national law, to the UN Secretary-General and other States concerned. If any other State possesses any relevant information about the victim, it must transmit that information to the UN Secretary-General and the States concerned (Art. 12). Mutual assistance among States-parties has also been emphasised in criminal proceedings. They must provide full assistance to each-other in connection with criminal proceedings, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases (Art. 16).

It is the responsibility of the State-party in whose territory the alleged offender is present to take appropriate measures under its national law to ensure

that person's presence for prosecution or extradition. These measures must be notified to the UN Secretary-General and to (a) State where the crime was committed; (b) State of nationality of the offender, and if the offender is a Stateless person, the State in whose territory he/she habitually resides; (c) State of nationality of the victim; and (d) other interested States. The most important obligation of the State-party in whose territory the alleged offender is present, is either to prosecute or extradite the offender. In this respect, Article 14 provides :

"The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State."

This provision of the Convention gives effect to the principle of *aut dedere aut punire* of international law. The obligation to submit a case to competent authorities is not meant to prosecute the offender, but merely confined to submit the case before prosecutorial authorities who will act in good faith in prosecution proceedings. A State may not be able to proceed with the case in the absence of sufficient evidence in support of prosecution. Thus, this obligation of the State, in fact, is discharged when it has submitted the case to its competent authorities, who will decide, after taking into account all the circumstances involved, whether to prosecute the offender or not.

For the purposes of extradition, like all other treaties on terrorism, the Convention also provides that if the crimes under the Convention are not enlisted as extraditable offences in an extradition treaty between States-parties, they will be deemed to be included therein, and the Convention may form the basis for extradition. States-parties also undertake to include these offences in their future extradition treaties (Art. 15).

The offenders, and those targets of investigations are guaranteed fair treatment, a fair trial and full protection of their rights. The alleged offender shall be entitled (a) to communicate without delay with the nearest appropriate representative of the State of his/her nationality, or otherwise that State is entitled to protect the offender, or in case of a Stateless person, is willing to protect him, and (b) to be visited by a representative of that State (Art. 17). The outcome of any prosecution must be communicated to the UN Secretary-General, who, in turn would transmit the information to other States-parties (Art. 18).

V STATUS-OF-FORCES UNDER UN OPERATION

The status of forces are normally regulated through agreements between the UN and the host States. These agreements are concluded prior to the deployment of forces or soon thereafter.²³ The agreement governs all aspects of the operation, the stay of the forces, protection, privileges and immunities of the peacekeepers. The Convention takes note of the existing practice, and Article 4 provides that :

“The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, *inter alia*, provisions on privileges and immunities for military and police components of the operation.”

However, as each case of deployment has its special demands, such relationships can be better regulated through a bilateral agreement than through a multilateral treaty. The Convention, by taking into account this aspect, does allow some measure of flexibility under the status-of-forces agreement in the implementation of these provisions.

The Convention contains detailed provisions on the relationship between the UN and associated personnel on the one hand, and host and transit States on the other. The policy to conclude status-of-forces agreement with a host State has not always been successful, particularly when the internal law and order of the State is completely broken or other institutions are dismantled in a civil war, like in Somalia, and the forces are sent under Chapter VII to restore peace and order and provide humanitarian assistance. Nevertheless, Article 4 of the Convention reflects the concern of the troops contributing States and reinforce the desirability of the conclusion of such agreements at the earliest.²⁴

A transit State is required to facilitate the unimpeded transit of UN and associated personnel and their equipment to and from the host State (Art. 5). This obligation also exists under Article 2 para 5 of the Charter of the UN. Under the humanitarian conventions (four Geneva Conventions, 1949 and their two additional Protocols, 1977) this obligation exists towards the relief agencies.

On the other hand, the UN and associated personnel, without prejudice to such privileges and immunities as outlined in the agreement, are required to respect the laws and regulations of the host State and the transit State, and refrain from any action or activity incompatible with the impartial and international nature of their duties. The UN Secretary-General should take all appropriate measures to ensure the observance of these obligations by the peacekeepers (Art. 6).

For the purposes of the Convention, the men and their equipment, involved in the UN operation must be properly identifiable. Article 3 provides that military and police components of a UN operation and their vehicles, vessels and aircrafts should bear distinctive identification.²⁵ Other personnel and vehicles involved in the UN operation are also to bear appropriate identification unless decided otherwise by the UN Secretary-General.²⁶ All UN and associated personnel are required to carry appropriate identification documents, which need not be only UN issued documents.

Article 7 of the Convention sets out the obligations of the host State and others towards peacekeepers. Accordingly, the UN and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate. This is in line with the general international responsibility which is also recognized in the Preamble of the Convention that "attacks against, or other mistreatment of, personnel who act on behalf of the UN are unjustifiable and unacceptable, by whomsoever committed," because they make important contribution in respect of UN efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations. State-parties are required to take all appropriate measures to ensure the safety and security of the UN and associated personnel from the crimes set out in Article 9. But where the host State is unable to take the required steps, other State-parties will cooperate with the UN in the implementation of the Convention.

In order to tackle with situations that arose in Bosnia-Herzegovina and Somalia, when the UN peacekeepers were taken hostages for political purposes, Article 8 of the Convention provides :

"Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949."

Accordingly, peacekeepers cannot be taken as prisoners-of-war, and if captured and detained during the course of performance of their duties, as soon as their identification is established, they should be released immediately, and should not be detained till the end of the operation.²⁷

Among the other provisions of the Convention, Article 20(d) keeps intact the right of States contributing personnel to a UN operation to withdraw their personnel from participation in such an operation. However, the withdrawal

has to be in close coordination with the UN Secretary-General and keeping in mind the interests of the operation, the host State and other contributed forces. In the event of death, disability, injury or illness of peacekeepers while rendering peacekeeping service, appropriate compensation shall be paid (Art. 20(e)). However, it is not clear how this compensation be adjusted, *i.e.*, should it be in accordance with the present UN practice of providing compensation based on the amount paid by the contributing State? The matter of compensation is before the Fifth Committee (relating to Administrative and Budgetary Questions) of the General Assembly.²⁸

The Convention also protects the right of self-defence of peacekeepers. But Article 21 on self-defence generated a lot of controversy at the stage of negotiation, which provides that nothing in the Convention shall be construed so as to derogate from the right to act in self-defence. It was argued that this provision logically allows parties to a conflict a general right of self-defence (and conversely a right to attack) against UN and associated personnel, and thereby legalise an illegal act and jeopardise the safety of peacekeepers. However, many delegates, including the United States, at the deliberations of the Ad-hoc Committee were not willing to take it that far by accepting this implication, even though the right of self-defence is an inherent right and is part and parcel of the customary international law and part of the UN law (Art. 51 of the Charter).

Disputes under the Convention shall be settled through arbitration and, if the parties fail to agree on the organization of the arbitration, the dispute may be referred to the International Court of Justice (Art. 22). This provision on dispute settlement, however, is optional and parties may opt out of it by making a declaration to this effect.

VI. CONCLUSION

Since the end of cold-war, the UN has undertaken peace-keeping functions in a big way in many troubled parts of the world. For its peace-keeping missions, UN depends entirely on the voluntary contribution of forces by States. Peacekeepers quite often are killed, wounded, detained or captured while discharging their functions. Doubtlessly, they are manning the dangerous terrains. They are prone to these unlawful acts, committed against them contrary to their position as representatives of international community, more in the territories where they are sent without the consent of the host State, particularly on the humanitarian missions or to restore peace and order in imploded States. The 1994 Convention on the protection of peacekeepers provides measures to cope up with unlawful acts committed against peacekeepers. The effectiveness of the Convention in the elimination of such unlawful acts will be known only after the Convention comes into force.

However, there are certain inherent drawbacks in the Convention, which may come in the way of its effectiveness :

- (i) The operation of the Convention is restricted entirely to the parties to the Convention. Hence, the crimes set out in Article 9, if committed in the territory of a State which is not a party, the Convention will not be applicable. This will leave many operations outside the purview of the Convention.
- (ii) Unless there is a status-of-forces agreement, the operation of the Convention will remain blurred and such agreement is difficult to come-by in the case of an imploded State.
- (iii) The Convention does not make it clear as to what will be the extent of liability of an offender if he/she commits the crime under the orders or supervision of a superior.
- (iv) The Convention also does not recommend for the minimum punishment to be meted out by States-parties to the persons convicted of the Convention crimes.
- (v) The Convention suffers from all the flaws which have plagued the effectiveness of other UN Conventions on terrorism. Extradition of an offender cannot be demanded as a right if the State where the offender is present, promises to prosecute, even if the prosecution proceedings would have been a farce. There is no accountability of a State-party to discharge its Conventional obligation.

In spite of these drawbacks, the conclusion of the Convention is an encouraging and desired step to protect peacekeepers against the illegal attacks on them. It will make States aware about their duty towards peacekeepers.

NOTES AND REFERENCES

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- 1. See NEW YORK TIMES, May 29, 1995 at 1; see also THE TIMES OF INDIA, June 6, 1995 at 15.
- 2. SECURITY COUNCIL RESOLUTION 987, April 19, 1995.
- 3. As of December 1994, there were 5209 Indian men and women serving with six UN peace-keeping missions. On 22 August 1994, seven Indian peacekeepers were killed in Somalia when they were escorting a convey from Baledogle to Baidoa, see UN NEWSLETTER, 3 September 1994 at 3; See also *id.*, Vol. 50, No. 15, 15 April 1995 at 3.
- 4. See note by the UN Secretary-General, UN Doc. A/AC. 242/1 (1994). Between March 1993 to April 1995, there were 131 fatalities in Bosnia-Herzegovina, 134 in Somalia and 16 in Rwanda.
- 5. GENERAL ASSEMBLY RESOLUTION 48/37 of 9 December 1993, UNGAOR, 48th Sess. Supp. No. 49, Vol. 1, at 333, UN Doc. A/48/49 (1993). The Ad-hoc Committee met in New York in two sessions from 28 March to 8 April and August 1 to 8, 1994.

6. For Sixth Committee Report, see UN Doc. A/49/742 (1994); see also UN Doc. A/C.6/49/L.4, Annex (1994) on the draft Convention.
7. The General Assembly adopted the Convention by consensus. See GENERAL ASSEMBLY RESOLUTION 45/59, December 9, 1994. The Convention was opened for signature at UN Headquarter in New York on December 15, 1994. For the text of the Convention, see 34 INTERNATIONAL LEGAL MATERIALS (1995) at 482.
8. See Article 24 of the Convention. Till May 1995, twenty-six States had signed the Convention and only one (Denmark) had ratified it.
9. Boutros Boutros-Ghali, AGENDA FOR PEACE 1995 (2nd ed.) (New York; United Nations, 1995) at 57.
10. The involvement of the peacekeeping forces in Congo (ONUC's) in clearing the road blocks was criticised as amounting to military enforcement measure, which was beyond the scope of 'peace keeping' and 'policing' measures for which the forces were sent under the Security Council resolutions.
11. See SECURITY COUNCIL RESOLUTION 859 of 24 August 1993 relating to the protection of UNPROFOR and office of the UNHCR personnel in Yugoslavia and Bosnia; SECURITY COUNCIL RESOLUTION 865, September 22, 1993 relating to UNOSOM II in Somalia wherein individual responsibility for criminal acts was reaffirmed; SECURITY COUNCIL RESOLUTION 925, June 8, 1994 on the safety of personnel in Rwanda.
12. See UNITING FOR PEACE RESOLUTION of 3 November 1950, GENERAL ASSEMBLY RESOLUTION 377 (V) and Article 14 of the UN Charter.
13. *Declaration-trigger* mechanism was objected by a number of delegations, arguing that the Security Council or the General Assembly might not act promptly, which may create a gap in protection, and public statements might create political problems for nations contributing personnel. However, US did not see any problem in this mechanism, see UN Doc. A/49/PV. 84 (1994) at 15 for US statement.
14. SECURITY COUNCIL RESOLUTION 940, 31 July 1994.
15. See *Supra* n. 6.
16. It is, however, noteworthy that Article 2 talks in terms of "High Contracting Parties" which raises a doubt about their applicability to the UN. Nevertheless, these Conventions have now got the force of customary international law and thus apply to all forces engaged in international armed conflict. On the other hand, Article 2(2) refers to "the law of international armed conflict" rather than the Geneva Conventions which are certainly the part of the former.
17. However, such cases may overlap under the Convention and the Geneva Conventions. An important reason for permitting this overlap is to ensure that peacekeepers do not lose the benefits of the Convention simply because they respond in self-defence and fighting ensues.
18. 1035 UNTS 167.
19. 18 INTERNATIONAL LEGAL MATERIALS (1979) 1456.
20. 10 INTERNATIONAL LEGAL MATERIALS (1971) 133.
21. *Id.*, at 1151.
22. The same terminology has been used in the DIPLOMATS CONVENTION, 1973 and the MONTREAL CONVENTION ON THE SAFETY OF CIVIL AVIATION, 1971, which means the perpetrator of the act is aware of the status of his victim, *i.e.*, in the case of the Convention

on Peacekeepers, his association with the UN, see the INTERNATIONAL LAW COMMISSION REPORT of its 24th Sess., UNGAOR, Sess., Supp. No. 10, at 95, UN Doc. A/8710/Rev.1 (1972).

23. See the Report of the UN Secretary-General on *Comprehensive Review of the Whole Question of Peace-keeping Operations in all their Aspects*, MODEL STATUS OF FORCES AGREEMENT FOR PEACE-KEEPING OPERATIONS, UN Doc. A/45/594 (1990).
24. On December 20, 1995, the Security Council examined the issue of consultation between it and the troop-contributing States in response to a letter written by 34 nations, see UN NEWSLETTER, 30 December 1995 at 3.
25. This provision is similar to the humanitarian Conventions under which the relief agency, like ICRC, its personnel and vehicles should bear distinctive mark or emblem.
26. This provision is clearly aimed to dispel the concern expressed by the UN Secretariat that in some situations wearing the UN symbol might subject them to an increased risk of attack. Thus, it was the clear intention of the negotiators of the Convention that wearing an identification by the victim is not a *sine quo non* for establishing the criminal liability of the defendant.
27. It is contrary to Article 118 of the III GENEVA CONVENTION (on prisoners of war) wherein POWs shall be released and repatriated without delay after the cessation of active hostilities.
28. Cf. Evan T. Bloom, *Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel*, 89 AMERICAN JOURNAL OF INTERNATIONAL LAW (1995) 621 at 630.