

Convention on the Safety of UN Personnel

A. Convention on the Safety of United Nations and Associated Personnel

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Convention on the Safety of United Nations and Associated Personnel, UN Doc. Annex to Resolution 49/59, New York, 9 December, 1994; available at <http://treaties.un.org>]

Convention on the Safety of United Nations and Associated Personnel

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed, [...]

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State, [...]

Have agreed as follows:

Article 1: Definitions

For the purposes of this Convention:

- 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;
- 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;
- c. "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:
 - i. Where the operation is for the purpose of maintaining or restoring international peace and security; or
 - ii. Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;
- d. "Host State" means a State in whose territory a United Nations operation is conducted; [...]

Article 2: Scope of application

- 1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.
- 2. 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. [...]

Article 6: Respect for laws and regulations

- 1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:
 - a. Respect the laws and regulations of the host State and the transit State; and
 - b. Refrain from any action or activity incompatible with the impartial and international nature of their duties.
- 2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the

observance of these obligations.

Article 7: Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations 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.
2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.
3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8: Duty to release or return United Nations and associated personnel captured or detained

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.

Article 9: Crimes against United Nations and associated personnel

1. The intentional commission of:
 - a. A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;
 - b. A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;
 - c. 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;
 - d. An attempt to commit any such attack; and
 - e. An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack, shall be made by each State Party a crime under its national law.
2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10: Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases: [...]

Article 13: Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition. [...]

Article 14: Prosecution of alleged offenders

[...]

Article 15: Extradition of alleged offenders

[...]

Article 16: Mutual assistance in criminal matters

[...]

Article 17: Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.
2. Any alleged offender shall be entitled:
 - a. To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and
 - b. To be visited by a representative of that State or those States. [...]

Article 19: Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20: Savings clauses

Nothing in this Convention shall affect:

- a. 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 law and standards;

- b. The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;
- c. The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;
- d. The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or
- e. The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21: Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence. [...]

B. Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel

[Source: Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, New York, 8 December 2005]

OPTIONAL PROTOCOL TO THE CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

The States Parties to this Protocol,

Recalling the terms of the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994,

Deeply concerned over the continuing pattern of attacks against United Nations and associated personnel,

Recognizing that United Nations operations conducted for the purposes of delivering humanitarian, political or development assistance in peacebuilding and of delivering emergency humanitarian assistance which entail particular risks for United Nations and associated personnel require the extension of the scope of legal protection under the Convention to such personnel,

Convinced of the need to have in place an effective regime to ensure that the perpetrators of attacks against United Nations and associated personnel engaged in United Nations operations are brought to justice,

Have agreed as follows:

Article 1: Relationship

This Protocol supplements the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994 (hereinafter referred to as “the Convention”), and as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as a single instrument.

Article 2: Application of the Convention to United Nations operations

1. The Parties to this Protocol shall, in addition to those operations as defined in article 1 (c) of the Convention, apply the Convention in respect of all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purposes of:
 - a. Delivering humanitarian, political or development assistance in peacebuilding, or
 - b. Delivering emergency humanitarian assistance.
2. Paragraph I does not apply to any permanent United Nations office, such as headquarters of the Organization or its specialized agencies established under an agreement with the United Nations.
3. A host State may make a declaration to the Secretary-General of the United Nations that it shall not apply the provisions of this Protocol with respect to an operation under article II(1)(b) which is conducted for the sole purpose of responding to a natural disaster. Such a declaration shall be made prior to the deployment of the operation.

Article 3: Duty of a State Party with respect to Article 8 of the Convention

The duty of a State Party to this Protocol with respect to the application of article 8 of the Convention to United Nations operations defined in article II of this Protocol shall be without prejudice to its right to take action in the exercise of its national jurisdiction over any United Nations or associated personnel who violates the laws and regulations of that State, provided that such action is not in violation of any other international law obligation of the State Party.

[...]

Discussion

1. Are this UN Convention and its Optional Protocol instruments of IHL? Are they more treaties of *jus ad bellum*? Or of international criminal law?
2. When is the UN Convention applicable? When is IHL applicable? Can both apply at the same time? On which issues do this Convention and IHL contradict each other?
3.
 - a. Which types of UN operations does the Convention apply to? Why was the scope of application limited to such operations? Does the Optional Protocol extend the scope of application of the Convention to all UN operations?

- b. What does Art. 2(2) of the Convention mean? In which cases is the Convention not applicable? Does Art. 2(2) mean that the Convention is not applicable when UN forces are acting under Chapter VII of the UN Charter and fighting against organized armed forces, because the IHL of international armed conflicts applies in that case, or does it mean that the Convention does not apply only when the IHL of international armed conflicts applies? In other words, are the applicability of the IHL of international armed conflicts, on the one hand, and the involvement of UN forces acting under Chapter VII of the UN Charter and fighting against organized armed forces, on the other hand, cumulative conditions for the non-applicability of the Convention?
- c. Why does Art. 2(2) explicitly refer to the IHL of international armed conflict? Are there situations where UN forces are acting under Chapter VII of the UN Charter and fighting against organized armed forces but to which the IHL of international armed conflict does not apply? Does it mean that UN forces involved in a non-international armed conflict are protected by the Convention?
- d. Could the Convention apply to UN forces taking part in a non-international armed conflict? Would not the protection offered by the Convention contradict the provisions of the IHL of non-international armed conflict?
- e. Does the Optional Protocol extend the scope of application of the Convention to Chapter VII operations? Should UN forces involved in an armed conflict be protected by the Convention?

4.

- a. In which circumstances does IHL apply to UN forces? To what kind of UN forces?
- b. Is the UN party to the Geneva Conventions and Protocols? Can the UN conceivably be a party to an international armed conflict in the sense of Art. 2 common to those Conventions?
- c. Which rules of IHL can the UN, not being a State and not having either legislation or a territory, by definition not respect?
- d. What do you think of the argument that IHL cannot formally apply to UN operations, because they are not armed conflicts between equal partners but law enforcement actions by the international community authorized by the Security Council representing international legality, and their aim is not to make war but to enforce peace?
- e. What do you think of the practical arguments that UN forces do not have the means to respect IHL, e.g. that their medical personnel are assigned in sufficient number to care for UN forces only, and cannot possibly collect and care for the wounded or sick of other armed forces encountered in the area of operations (as they should under GC I, Arts 3(2) and 12)?
- f. Can the UN forces, for purposes of the applicability of IHL, be considered as armed forces of the contributing States (which are party to the Geneva Conventions), and can any hostilities be considered an armed conflict between those States and the party responsible for the opposing forces?
- g. To what extent does IHL apply to UN forces? When does the IHL of international armed conflicts apply to UN forces? When does the IHL of non-international armed conflicts apply?
- h. Can you imagine why the UN and its Member States do not want to recognize the de jure applicability of IHL to UN operations or to establish precisely which "principles and spirit" (*UN Convention, Art. 8*) of IHL they recognize as being applicable to UN operations?

5.

- a. Is a member of UN forces attacked by armed forces of a State a combatant or a civilian? Does he or she fall within a third category? Does such an attack constitute the war crime of deliberately

attacking civilians or only a crime under the UN Convention? (P I, Arts 50(1), 51(2), and 85(3)(a); ICC Statute, Art. 8(2)(b)(iii) and (e)(iii) [See The International Criminal Court])

- b. If a member of UN forces is attacked and reacts by attacking those who attack him or her, is he or she a civilian directly participating in hostilities, losing protection against attacks? What if the member of the UN forces uses force first? May such a civilian be punished for having directly participated in hostilities? Under IHL? Under the UN Convention? (P I, Art. 51(3); P II, Art.13(3); [See also ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities])

6.

- a. Do UN military personnel captured by armed forces of a State during a hostile encounter have prisoner-of-war status? Do members of the armed forces of a State captured by UN military forces during a hostile encounter have prisoner-of-war status? Is it conceivable that the answers to these two questions could differ? (GC III, Arts 2 and 4)
- b. Which provisions of the UN Convention are incompatible with prisoner-of-war status and the treatment GC III prescribes for prisoners of war? Why does Art. 8 refer to the principles and spirit of the Geneva Conventions and not to those Conventions themselves?
- c. If you were a military member of UN forces captured during a hostile armed encounter by armed forces of the country where the UN operation is deployed, would you prefer to be treated as a prisoner of war under GC III or protected under this UN Convention? What are the advantages and disadvantages of both options from the point of view of your treatment, repatriation and the chances that your status will be accepted and respected by the enemy?

7.

- a. Are the crimes mentioned in Art. 9 of the UN Convention grave breaches of IHL? Do they always constitute violations of IHL? (GC III, Arts 2, 4, 21, 118 and 130; GC IV, Arts 2, 4, 42, 78 and 147; P I, Art. 85(3)(a)(e) and (4)(b), CIHL, Rule 156)
- b. Is it compatible with IHL to punish members of a State's armed forces for attacking UN military forces pursuant to the instructions of the authorities of that State? Does such an attack fall under Art. 9 of the UN Convention? (P I, Preamble, para. 5, and Art. 43(2))
- c. If a soldier forcefully resists a UN use of force in response e.g. to the shelling of safety zones, is he committing a crime under Art. 9 of this Convention? If so, is punishment for such a crime compatible with IHL? (P I, Preamble, para. 5, and Art. 43(2))

8. Does this Convention and/or its Optional Protocol protect ICRC delegates as associated personnel? If so, in what circumstances?

9. What implementation mechanisms are provided for by this Convention?