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The Protection of United Nations & Associated Personnel

Noelle Higgins

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Introduction

The development and evolution of the peace support operation function of the United Nations has been, to many, the most positive contribution of the organisation to the maintenance of international peace and security.¹ As White points out:

To the layman peacekeeping is a concrete manifestation of the United Nations, which offsets the common view that the Organisation produces only rhetoric and ideologically motivated resolutions. To the political scientist peacekeeping probably represents the most concerted effort the international community makes in regulating conflict.²

Peace support operations are seen as the aspect of the United Nations which most validates the existence of the organisation among the 'lay people' because they have successfully diffused various potentially explosive situations and have prevented large scale violence in many parts of the world. The importance of, and need for, peace support operations cannot be overstated.

The forces who serve with the United Nations on these peace support operations very often face volatile situations and dangerous missions on behalf of the world community. In order for the United Nations to fulfill their role as overseers of international peace and security, the men and women deployed on United Nations missions have to take risks. Risks, of course, can lead to injuries and casualties, which unfortunately, has been the case with regard to peace support operations of the United Nations. Because the forces deployed on these missions are acting on behalf of, and for the good of, the world community, the loss of life and the various injuries incurred on the missions therefore affects the whole community. Attacks on United Nations personnel are, indeed an affront to the world community. Until quite recently, however, there was very little protection

¹ See James 1990, 371 and White 1990, 165.

² White 1990, 165.

afforded to personnel on peace support missions by international humanitarian law and those who attacked UN forces were left largely unpunished by international law. The most positive development in this area of protection of peacekeepers was the 1994 United Nation's *Convention on the Safety of United Nations and Associated Personnel*³. This Convention seeks to improve the protection level of United Nations and Associated Personnel who undertake the dangerous task of participating in peace support operations and punish the perpetrators of attacks against these Personnel. While the Convention is a very positive measure there are, however, still some unsatisfactory gaps in the protection regime which still need to be addressed.

This essay will discuss in depth the protection of peacekeepers under international humanitarian law with special emphasis on the *Convention on the Safety of United Nations and Associated Personnel* mentioned above. To fully understand this complex question, however, other relevant areas relating to peace support operations and humanitarian law must be considered. To this end, Part I of the essay will deal with the nature of peace support operations and the evolution of these missions since their inception, especially in post-Cold War scenarios. Part II will deal with pre-1994 Convention protection of UN personnel and the void in this protection system, as well as the need for development in this area. Part III will analyze the means whereby the United Nations sought to fill this void in the laws of war, i.e. the 1994 Convention, with a discussion of the advances made in the protection system by means of this Convention. The effect of the Convention on Irish peacekeeping will also be examined in this section. Finally, the conclusion will focus on the areas of humanitarian law which still need to be improved before United Nations and Associated Personnel on peace support operations will be protected as they should, and need, to be.

Part I: The Nature and Development of Peace Support Operations

(a)The genesis and meaning of Peacekeeping

³ U.N. Doc. A / Res. / 49 / 49 (1994)

Weiner and Ní Aoláin succinctly described the precarious position of peacekeepers when they stated that:

Peacekeeping and related peace activities occupy the twilight between war and peace in which the law has not yet been settled.⁴

Part of the reason why the law has not yet been settled in this area is because of the complexity of the nature of peace support operations and the changing character thereof. With today's multidimensional peace support operations having evolved and changed greatly from the traditional original peacekeeping operations, humanitarian law is trying to keep up to the pace of this change. Even at the genesis of peace support operations as peacekeeping missions, however, uncertainty surrounded this concept. Peacekeeping, as such, was not explicitly foreseen by the *United Nations Charter*, it being said to fall somewhere between the pacific settlements of Chapter VI and peace enforcement actions of Chapter VII, being a reaction to situations rather than a distinctly thought-out function of the United Nations. In fact, as Boutros Boutros-Ghali pointed out:

The first purpose of the United Nations enunciated in the Charter is to maintain international peace and security. The term 'peace-keeping', however, does not appear in that document, and the very concept - non-violent use of military force to preserve peace - differs fundamentally from the enforcement actions described in the Charter.⁵

Therefore, from the beginning, the concept of peacekeeping has never been ultimately defined. James is of the opinion that:

The term 'peacekeeping' has never formally been given a fixed and detailed meaning by the collectivity of states, and such a development is most unlikely. Instead, what happened was that states, often in their capacity as members of the UN, authorized and embarked on certain activities which, with hindsight, were seen as having certain basic factors in common. It was then possible, and natural, to invent a term to refer, in an overall way, to the activity. Conceptualization had taken place.⁶

⁴ Weiner & Ní Aoláin 1996, 304.

⁵ Boutros Boutros-Ghali in *The Blue Helmets*, the United Nations 1996, 4.

⁶ James 1990, 8.

The then-Secretary-General of the United Nations, Boutros Boutros-Ghali made an effort to define the concept of peacekeeping in 1992 in his *Agenda for Peace*⁷.

...the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and / or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.⁸

However, even with this definition of peacekeeping, the concept is still of a complex character. As Arend and Beck comment:

Peacekeeping...has a very special meaning in international organizational parlance. Traditionally, it refers to the imposition of a neutral force in an area of conflict once the fighting has stopped. This 'buffer force' serves the purpose of keeping the parties apart, supervising a cease-fire, and / or facilitating a troop withdrawal.⁹

This would be regarded as a description of a 'traditional' peacekeeping force. The members of the United Nations forces who take part in such traditional peacekeeping missions are members of domestic armies from states acceptable to the parties to the conflict. The force is deployed with the consent of the states involved in the conflict. They are non-combatant, with a mandate to use force only in cases of self-defence and are lightly armed, and as stated above, their main tasks are usually to maintain a buffer zone between the belligerent forces and supervise ceasefires and troop withdrawals. Traditionally, these tasks were not considered to be of too dangerous a nature as the force had been deployed with the consent of the parties involved in order to keep the peace while an agreement acceptable to the two parties was being brokered. The presence of the force was requested, and for the most part, respected. The concept of peacekeeping first developed to make observer groups available for the ceasefires taking place in Kashmir and Palestine in the late 1940's. It formally came into being with UNEF 1 in the Suez crisis in 1956, as a means of supervising the withdrawal of British, French and Israeli troops from Egypt while a political settlement was being discussed. With no

⁷ U.N. Doc. A / 47 / 277 - S / 24111 (1992)

⁸ A / 47 / 277 - S / 24111, par. 20.

⁹ Arend & Beck 1993, 65 - 6.

Charter basis and no terms of reference as such, the practice of peacekeeping developed its own set of rules and customs, developing and evolving as necessitated by the particular situation faced, with the various Status of Forces Agreements - each concerned with its own conflict - being the only real protection for non-combatant peacekeepers. UN personnel acting as combatants, on the other hand, would be under the protection of the rules of humanitarian law. The most fundamental rule of international humanitarian law is that a distinction must be made between combatants and non-combatants. A combatant is a legitimate target who does not benefit from the same protective measures offered to civilians by international humanitarian law, but who, at the same time, comes within the scope of the laws of war. Article 43 of Geneva Protocol I¹⁰ defines 'armed forces' or combatants as those who have 'the right to participate directly in hostilities'¹¹. Article 44 of the same document defines how a combatant is to be recognised and distinguished from a non-combatant. Article 48 is entitled the 'Basic Rule' and provides:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Section 5.1 of the UN Secretary - General's Bulletin of 1999¹², a document which is binding upon UN personnel, reiterates this doctrine:

The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

At all times, therefore, a combatant is to be distinguished from a civilian in humanitarian law. While a civilian is offered more protection by the laws of war than a combatant, who is a legitimate target for attack, the conduct of combatants in international armed

¹⁰ 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.

¹¹ Ibid, Article 43.2.

¹² 1999 UN Secretary-General's Bulletin on Observance by United Nations Forces of International Humanitarian Law.

conflicts is still regulated by the Geneva Conventions of 1949¹³ and related norms and principles¹⁴. Traditional peacekeepers are not deployed as combatants however, and therefore, do not come within the area of application of the laws of war and before the 1994 Convention came into force, were without any legal instrument which would prohibit attacks on them or punish those who would attack them.

(b) First- and Second-Generation Peacekeeping

The development of the concept of peacekeeping was necessitated by the evolution of the type of conflicts taking place on the world stage. Mingst & Karns¹⁵ divide the development and evolution of peace support operations into three separate sections or 'generations'. According to this evaluation of the development, 'First-Generation' peacekeeping took place during the Cold War period. At this time, most of the peace support operations were carried out in the Middle East and they were necessitated because of post-decolonization conflicts. The forces on these types of operations were usually lightly armed and tended to act as a buffer zone between the belligerent forces, i.e. 'traditional' peacekeeping forces:

First-generation peacekeeping provided impartial and neutral assurance to the parties desiring a settlement (or at least a ceasefire) and a guarantee that the United States and the Soviet Union would not directly intervene.¹⁶

An example of such a 'first-generation' peacekeeping operation is UNEF I - the first United Nations Emergency Force which was deployed in response to the Suez crisis of 1956. In this conflict, as mentioned above, the peacekeepers served to separate the belligerent forces and also to supervise the withdrawal of foreign troops from Egypt. After the conflict the UN force also patrolled areas of the Sinai Peninsula.

¹³ 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949 Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949 Geneva Convention III Relative to the Treatment of Prisoners of War, 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War.

¹⁴ See Bloom 1995, 621.

¹⁵ Mingst & Karns 2000.

¹⁶ Ibid, 82.

Other examples of this type of peacekeeping mission are UNFICYP - the United Nations Force in Cyprus which was established in 1964. This force still acts as a buffer zone between Greek and Turkish Cypriot forces on the island. Also included in this category would be UNEF II, UNDOF and UNIFIL. These types of peacekeepers, i.e. non-combatants, would have been without any conventional legal protection, having to rely on their Status of Forces Agreements (SOFAs), which were not always drafted immediately on deployment and which were not adequate to prevent attacks on UN personnel.

The main objective of these types of operations was, as noted above, to act as a buffer zone and / or to monitor ceasefires and withdrawal of troops. In order to successfully achieve these objectives, the UN forces had to be seen as neutral, as facilitators, by not using force in any circumstance besides self-defence. Therefore, these forces were lightly armed. However, with the passing of time, came a development in the World Order, which had an effect on the development of peace support operations. Mingst & Karns place 'Second-Generation' peacekeeping in the 'Transition Period' of 1985 - 9. This period was marked by the beginning of co-operation between the 5 permanent members of the UN's Security Council. As they describe it:

Never before in the forty years of the UN's existence had there been such consensus. With nonpermanent member acquiescence and now collaboration between the Security Council and the secretary - general, UN peacekeepers chalked up a series of successes.¹⁷

This new generation of peacekeeping was on a different, a higher level than the 'traditional', 'first-generation' peacekeeping. More than acting as a buffer zone between warring parties, the activities of 'second-generation' peacekeeping forces went to the core of the conflict itself and tried to come to a resolution of a permanent nature.

As a result, second-generation peacekeeping has often given rise to new elements of peacemaking efforts to bring parties to an agreement that settles a conflict and peace-building (postconflict activities such as

¹⁷ Mingst & Karns 2000, 85.

providing development aid, implementing arms control measures, organizing elections, and monitoring human rights violations).¹⁸

Examples of such operations are UNGOMAP (UN Good Offices Mission in Afghanistan and Pakistan) from 1988 to 1990, UNIIMOG (UN Iran-Iraq Military Observer Group) from 1988 to 1991, UNAVEM I (first UN Angola Verification Mission) from 1989 to 1991, UNTAG (UN Transition Assistance Group) from 1989 to 1990 and ONUCA (UN Observer Group in Central America) from 1989 to 1992.

It was during this transition period that the UN peacekeeping forces were awarded the Nobel Peace Prize (1988) in recognition of their 'decisive contribution toward the initiation of actual peace negotiations.' The UN peacekeeping forces most definitely deserved the Nobel Prize, especially when one considers the valuable work they were undertaking while facing volatile and dangerous situations and being, to all intents and purposes, ignored by humanitarian law.

(c) Peace enforcement and Third-Generation Peacekeeping

In some situations, however, peace enforcement rather than peacekeeping missions have been deployed to maintain international peace and security. These forces are specifically foreseen by the Charter and they do not require the consent of the parties in order to intervene in the conflict. They are more heavily armed than peacekeeping forces and they have a mandate to use force in cases other than in self-defence, and when acting as combatants, they are protected by the laws of war as mentioned above. As Bowett says:

Whilst armed combat may not be inevitable, it is clear that the mandate of the Force includes an authorisation to *initiate* hostilities, and these hostilities - or use of force - whether described as 'belligerent action' or 'enforcement measures' are to be taken by reference to international law and not the municipal law of any State.¹⁹

While first- and second-generation peacekeeping involved almost exclusively 'traditional' peacekeeping forces only, in recent times, not all missions have been so clear-cut. Some

¹⁸ Ibid, 86.

missions have become multidimensional, encompassing observer, peacekeeping and peace enforcement functions rather than just the traditional peacekeeping function only.

The 'Third-Generation' peacekeeping missions came about in the post-Cold War period. The success of the Second-Generation missions coupled with an increase in the number of ethnic and regional conflicts led to an increase in the number of UN peace support operations demanded. The conflicts which the UN had to react to in this generation were, for the most part, of a different nature to the more traditional inter-state conflicts of the previous generations. Third-Generation Peacekeeping also differs from the previous generations in that there is an increasing number of civilians involved.

Third-generation peacekeeping operations are frequently described as 'complex peacekeeping' because their mandates involve both civilian and military activities. While troop contingents may be providing observer activities characteristic of first-generation operations, other military personnel and civilians, along with humanitarian NGOs, may also be involved in organizing elections, reorganizing police forces, delivering relief, and other peace-building activities.....These operations are inherently more expensive and may last for a longer period of time. They have tended to be controversial and to blur the line between peacekeeping and enforcement actions under Chapter VII.²⁰

Examples of this type of operation are UNAMIC (UN Advance Mission in Cambodia), deployed in 1991, UNPROFOR (UN Protected Force) from 1992 to 1993, and the two UNOSOM (UN Operations in Somalia) from 1992 to 1995.

Mingst & Karns conclude that:

The cumulative result of the three generations of peacekeeping operations has been the expansion of the UN's menu for dealing with threats to peace and security.²¹

The UN's menu for dealing with threats to international peace and security has indeed expanded as the organisation has had to react to different and more complex conflict

¹⁹ Bowett 1964, 485.

²⁰ Mingst & Karns 2000, 89 - 91.

²¹ Ibid, 99.

situations over the years. The more complex the conflict situation, however, the more danger to UN and Associated Personnel working to control the conflict. By 1994, the types of conflicts faced by UN personnel had changed greatly from the types faced by traditional peacekeepers. Therefore, the type of peace support operations deployed in response to these conflicts also changed, leaving the peacekeepers in a very unsafe and unprotected position. It was also the most unsatisfactory case that those deployed or acting as combatants in a conflict were protected by humanitarian law, while those who were acting as traditional peacekeepers, were still unprotected by any legal order.

In *Supplement to An Agenda for Peace*²², Boutros Boutros-Ghali, discusses the new generation of peace support operations in the post-Cold War era:

The new breed of intra-state conflicts have certain characteristics that present United Nations peace-keepers with challenges not encountered since the Congo operation of the early 1960s. They are usually fought not only by regular armies but also by militias and armed civilians with little discipline and with ill-defined chains of command. They are often guerrilla wars without clear front lines. Civilians are the main victims and often the main targets. Humanitarian emergencies are commonplace and the combatant authorities, in so far as they can be called authorities, lack the capacity to cope with them.²³

He goes on to say that:

Another feature of such conflicts is the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order, and general banditry and chaos. Not only are the functions of government suspended, its assets are destroyed or looted and experienced officials are killed or flee the country. This is rarely the case in inter-state wars. It means that international intervention must extend beyond military and humanitarian tasks and must include the promotion of national reconciliation and the re-establishment of effective government.²⁴

And he later comments:

²² A / 50 / 60 - S / 1995 / 1.

²³ Ibid, par. 12.

²⁴ Ibid, par. 13.

Peace-keeping in such contexts is far more complex and more expensive than when its tasks were mainly to monitor cease-fires and control buffer zones with the consent of the States involved in the conflict. Peace-keeping today can involve constant danger.²⁵

Despite the fact that UN and Associated Personnel had to work in situations involving constant danger, the international community did very little to protect them from this danger before the adoption of the 1994 Convention. Traditional peacekeeping had evolved into multidimensional peace support operations, bringing with them more risks and more dangers, yet not more protection to the personnel involved.

Part II: Pre 1994 Protection of Peacekeepers

Prior to the adoption of the 1994 Convention, as Roberts & Guelff point out²⁶, references to the protection of United Nations Forces in treaties on the laws of war were very scant. The UN Forces, who were not parties to conflicts as such were, at the same time, open to attack by parties to the conflict. These UN Forces were very rarely recognised as a protected group to whom special attention should be paid or who should be protected, even though the status of protected persons was often granted to other categories of individuals, e.g. Prisoners of War etc.

(a)The UN Charter

The UN Charter of 1945, as noted above, did not foresee the development of traditional peacekeeping operations, and therefore, there is no protective measures for peacekeeping personnel to be found here. However, other categories of UN personnel are offered privileges and immunities under Article 105. Article 105 (1) provides that:

The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

Article 105 (2) goes on to state that:

²⁵ Ibid, par. 15.

²⁶ Roberts & Guelff 2000, 623.

Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

While these provisions may offer some limited protection to certain UN personnel, they are obviously inadequate to deal with the many dangerous situations faced by members of peace support operations today.

(b) Convention on the Privileges and Immunities of the United Nations

An early UN Convention which deals with UN Personnel is the 1946 *Convention on the Privileges and Immunities of the United Nations*²⁷. Following on from the above-quoted Article 105 of the UN Charter, this Convention confers specific immunities and privileges upon certain categories of UN personnel e.g. representatives of Members of the UN²⁸. Article V deals with the immunity of UN officials while Article VI provides for the immunity of experts on UN missions. The type of protection conferred by these provisions includes immunity from arrest and detention²⁹, but the Convention would be of little, if any, aid to ensure the safety of UN personnel acting as peacekeepers on peace support operations. Again, this Convention was drafted when the future evolution and development of peace support operations were unforeseen. Therefore, there was no apparent need to provide for protection of personnel of this type. While damage to UN property and premises and assets is a crime under the Convention³⁰, the Convention does not make illegal the killing of UN personnel.

(c) Geneva Protocol I

Article 37 (1) (d) of the *1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict*, regarding the prohibition of perfidy also makes reference to UN personnel. Article 37 (1) states:

²⁷ 1 UNTS 15, 13 February 1946.

²⁸ See *ibid*, Article IV.

²⁹ See *ibid*, Article IV section 11(a).

³⁰ See *ibid*, Article 2.

It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy.

Article 37 (1) (d) is one of the examples given of what constitutes perfidy:

...the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the Conflict.

Article 38 (2) also refers to the United Nations:

It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

These provisions illustrate that the UN has a special and important position in the world community which should not be abused but it would not be of much aid in ensuring the safety of UN peacekeepers on a peace support operation mission.

(d) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects and its Protocols

Article 9 of the *1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects* also refers to the United Nations - this time as regards peacekeeping / observation functions of the UN and the Denunciation of the 1980 Convention and its Protocols. Article 9 (1) states:

Any High Contracting Party may denounce this Convention or any of its annexed Protocols by so notifying the Depositary.

Article 9 (2) goes on to state:

Any such denunciation shall only take effect one year after receipt by the Depositary of the notification of denunciation. If, however, on the expiry

of that year the denouncing High Contracting Party is engaged in one of the situations referred to in Article 1 (i.e. situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article 1 of the Additional Protocol I to these Conventions), the Party shall continue to be bound by the obligations of this Convention and of the relevant annexed Protocols until the end of the armed conflict or occupation and, in any case, until the termination of operations connected with the final release, repatriation or re-establishment of the persons protected by the rules of international law applicable in armed conflict, and in the case of any annexed Protocol containing provisions concerning situations in which peace-keeping, observation or similar functions are performed by United Nations forces or missions in the area concerned, until the termination of these functions.

Again, while this provision shows the respect in which the world community holds the peacekeeping function of the UN, little concrete protection is offered to the forces on peacekeeping missions.

Protocol II (1980) to this Convention - the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices specifically refers to the protection of UN forces from mines and booby-traps. Article 8 (1) reads:

When a United Nations force or mission performs functions of peacekeeping, observation or similar functions in any area, each party to the conflict shall, if requested by the head of the United Nations force or mission in that area, as far as it is able:

- (a) remove or render harmless all mines or booby-traps in that area;
- (b) take such measures as may be necessary to protect the force or mission from the effects of minefields, mines and booby-traps while carrying out its duties; and
- (c) make available to the head of the United Nations force or mission in that area, all information in the party's possession concerning the location of minefields, mines and booby-traps in that area.

Article 8 (2) states:

When a United Nations factfinding mission performs functions in any area, any party to the conflict concerned shall provide protection to that mission except where, because of the size of such mission, it cannot adequately provide such protection. In that case it shall make available to

the head of the mission the information in its possession concerning the location of minefields, mines and booby-traps in that area.

Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (1996) to the above-quoted 1980 Convention also refers to peacekeeping forces and missions. Article 12 (2) states:

- (a) This paragraph applies to:
 - (i) any United Nations force or mission performing peacekeeping, observation or similar functions in any area in accordance with the Charter of the United Nations;
 - (ii) any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.
- (b) Each High Contracting Party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:
 - (i) so far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;
 - (ii) if necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and
 - (iii) inform the head of the force or mission of the locations of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines booby-traps and other devices.

Article 12 (1) of this Protocol states:

With the exception of the forces and missions referred to in sub-paragraph 2 (a) (i) of this Article, this Article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

These provisions are of a more concrete nature than those quoted above, with conventional rules obligating that specific measures be taken to ensure the safety of UN peacekeepers and UN personnel on observer missions in areas of conflict. Of particular importance is Article 14 of the present Protocol which obligates the High Contracting Parties to punish violators of the Convention.

(e) Other Protective Provisions

Two other treaties which could, in certain circumstances, be of relevance to the protection of peacekeepers and other UN personnel are: 1. The *1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War* (Art. 11, 21 - 3.) and 2. the *1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (Art. 21 - 31, 64, 69 - 71). These provisions are concerned with:

...protection of specific people and activities (e.g. connected with medical aid and / humanitarian assistance) that might in certain cases be part of a UN operation is provided for in certain treaties...³¹

Prior to 1994 these types of provisions coupled with provisions of SOFA's were the only legal protection offered by humanitarian law to traditional peacekeepers, while the members of peace support operations acting as combatants were protected by the laws of war. The void in the legal order was obviously immense but the UN realised the necessity to better protect their forces.

Part III: The 1994 Convention for the Safety of UN and Associated Personnel

(a) Background to the adoption of the 1994 Convention

Bowett points out that:

...from the authority given the organisation to create and employ armed Forces can be implied the correlative authority to make treaties on behalf of or for the protection of those Forces.³²

Yet, the protection offered to UN forces by the above-mentioned treaties was clearly not sufficient in the face of the multifarious hazardous and challenging situations with which UN and Associated forces had to contend in recent years. The protection offered was of the most minimal nature. In addition to failing to demand adequate protection for UN and Associated Personnel, international humanitarian law did not address very well the

³¹ Roberts & Guelff 2000, 624.

³² Bowett 1964, 507.

issue of punishment of perpetrators of attacks against these personnel. Attacks on UN and Associated personnel are, as already stated, attacks on the whole community. While attacks on UN and associated personnel would be crimes under the municipal law of the host State, many of these states are ill-equipped to prosecute and punish the perpetrators. In some of the recent conflicts in which UN and associated personnel have been attacked, the system of government of the host State, had itself broken down and so these attacks went unpunished. Bloom comments that:

While these attacks are normally covered as murders, batteries, and the like under the criminal laws of the state that hosts the peacekeeping operation, the law enforcement capabilities of a state requiring outside forces for internal stability are almost always insufficient to investigate, much less try and prosecute, persons for such crimes.³³

The need for some means of legal protection of these personnel and the punishment of the perpetrators of the attacks was obvious and immediate. With the increase in the number of attacks on, and casualties of, UN and Associated Personnel in the post-Cold War era...

...UN member states realized that there was an urgent need for an international agreement that would deter and ensure punishment of such attack.³⁴

The solution put forward by the United Nations is the *Convention for the Safety of UN and Associated Personnel*. The Convention was adopted by consensus after less than nine months of deliberations during the drafting process. As Bouvier points out:

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.³⁵

In the year prior to the adoption of the Convention, 202 United Nations personnel were killed on United Nations peace support operations. The issue was a priority of the then Secretary-General, Boutros Boutros-Ghali. Section VIII of *An Agenda for Peace* is devoted to the topic of 'Safety of Personnel'. The Secretary-General was extremely

³³ Bloom 1995, 622.

³⁴ Ibid, 621.

³⁵ Bouvier 1995.

concerned about the large number of injuries and fatalities incurred on peacekeeping operations of the United Nations.

When United Nations personnel are deployed in conditions of strife, whether for preventive diplomacy, peacemaking, peace-keeping, peace-building or humanitarian purposes, the need arises to ensure their safety. There has been an unconscionable increase in the number of fatalities. Depending upon the nature of the situation, different configurations and compositions of security deployments will need to be considered. As the variety and scale of threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel.³⁶

He also pointed out that:

Experience has demonstrated that the presence of a United Nations operation has not always been sufficient to deter hostile action. Duty in areas of danger can never be risk-free; United Nations personnel must expect to go in harm's way at times. The courage, commitment and idealism shown by United Nations personnel should be respected by the entire international community. These men and women deserve to be properly recognized and rewarded for the perilous tasks they undertake. Their interests and those of their families must be given due regard and protected.³⁷

There was a quick and positive response to *An Agenda for Peace*, illustrating that the protection of personnel involved in peace support operations was an area of concern in many quarters. For example, the President of the Security Council issued a statement on this situation on March 31, 1993, stating the unacceptability of attacks on UN personnel and asking States to prosecute the attackers³⁸. Another important response to the situation was the letter from the New Zealand representative to the Secretary-General³⁹, calling for the protection of UN personnel to be discussed at the 48th session of the General Assembly. Annexed to this letter was a memorandum highlighting the major problems regarding the protection of United Nations personnel and suggesting the drafting of a Convention to try to combat the problem. The Secretary-General responded to this letter on 27 August, 1993, in a report that he presented to the Security Council

³⁶ A / 47 / 277 - S / 24111, par. 66.

³⁷ Ibid, par. 67.

³⁸ See Press Release GA / / PK / 125; 11 April 1994, p.5. UN Doc. S / 25493.

³⁹ UN Doc. S / 25667 (1993)

regarding the protection of forces on peace support operations. In this report, the possibility of a Convention was referred to, which would codify and consolidate existing law on the matter⁴⁰. Following this lead, the Security Council adopted Resolution 868 on the 29 September, 1993, which discussed certain safety measures in the setting up of future peace support operations regarding the protection of personnel of the UN⁴¹. Following New Zealand's suggestion, in the letter to the Secretary-General, the question of the protection of UN personnel on peace support operations was discussed at the 48th session of the General Assembly in 1993. The question was referred to the Sixth (Legal) committee which set up an *ad hoc* Working Group on the matter. It was agreed that a Convention should be drafted. Both New Zealand⁴² and the Ukraine⁴³ submitted draft conventions for consideration. Their approaches differed but their aim was similar, i.e. better protection for UN forces:

The underlying approaches of the two drafts were different, albeit not incompatible. The New Zealand text focused on the individual responsibility of perpetrators of attacks on UN and associated personnel, while the Ukrainian text treated the question of the safety of such personnel from a broader perspective, addressing their status as well as the rights and obligations of States in this area.⁴⁴

The General Assembly then, in Resolution 48 / 37, stated their concern with regard to the increase in attacks on UN personnel and invited suggestions from all states on the matter and called for the establishment of an *ad hoc* committee. The Ukraine and New Zealand agreed to merge their two draft documents in March of 1994 and this composite document combined with suggestions made by the Nordic countries and a document on the matter issued by the Secretary-General⁴⁵ formed the basis for the commencement of deliberations of the *ad hoc* committee. The first session of discussions started on 28 March 1994 and the final session ended on 8 November of the same year. Many of the articles in the final convention were taken almost directly from the draft convention proposed by the Ukraine and New Zealand. The three most difficult articles to draft were

⁴⁰ UN Doc. A / AC.242 / 1. Note by the Secretary-General, 25 March, 1994.

⁴¹ See UN Doc. A / AC / 241 / 1.

⁴² UN Doc. A / C.6 / 48 / L.2.

⁴³ UN Doc. A / C.6 / 48 / L.3.

⁴⁴ Bourloyannis-Vrailas 1995, 562.

Article 1 regarding definitions of United Nations personnel, Article 2 regarding the scope of application of the Convention and the savings clause of Article 20. The report of the working Group was introduced on 8 November 1994 at a plenary meeting of the Sixth Committee and the draft Convention⁴⁶ was submitted to the General Assembly on the 9 December and was adopted by consensus on the same day.

(b)The Terms of the 1994 Convention

The Preamble of the Convention uses strong language and fine words to highlight the many dangers faced by UN and associated personnel and the unacceptability of attacks against them, e.g.:

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...

Recognizing...that existing measures of protection for United Nations and associated personnel are inadequate...

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks...

Article 1 deals with definitions of 'United Nations Personnel', 'Associated Personnel', 'United Nations Operation', 'Host State' and 'Transit State' for the purposes of the Convention. One of the most important provisions in the Convention is Article 1 (c)

⁴⁵ UN Doc. A / AC / 242 / 1, 25 March 1994.

⁴⁶ UN Doc. A / C. 6 / 49 / L. 9.

which defines a United Nations operation. This definition is of the utmost importance because some of the other important definitions refer back to it. Article 1 (c) defines a UN operation as one:

...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.

The definitions of UN and Associated Personnel set down who is to be afforded protection under the Convention, i.e. those who are working 'in support of the fulfilment of the mandate of a United Nations operation'. Included in the definition of UN personnel are those who are deployed by the UN Secretary-General as military / police / civilian as part of a UN operation. These personnel would be considered to be 'traditional' peacekeepers. Others included in the definition are UN officials / experts who are present in an official capacity in the area of the UN operation. The term 'associated personnel' encompasses those who are assigned by the Secretary-General or an intergovernmental organisation e.g. NATO. Those 'engaged' by the Secretary-General, a specialised agency or the International Atomic Energy Agency are also seen as 'associated personnel' for the purposes of this Convention, as are those deployed by humanitarian NGO's by agreement with the Secretary-General, specialised agency or the IAEA. Therefore, quite a few groups are covered by the definitions 'UN and Associated Personnel'. However, not all those who are working in the name of peace are covered by these definitions, with the protected categories being required to be part of a 'UN operation', the definition of which is set out above. Bloom is of the opinion that

The coverage of personnel is more restricted than was sought by many UN agencies, NGOs and governments, which felt that all their employees in the field should be included.⁴⁷

⁴⁷ Bloom 1995, 624.

Bloom also comments on the limitation of protection to those involved in UN operations only as being:

...a limitation that excludes large numbers of UN employees and others representing the United Nations in activities all over the world.⁴⁸

He also states that this limitation illustrates that despite the title of the Convention, it ultimately concerns peacekeeping and the protection of peacekeepers rather than associated personnel. This is because the obligation of universal jurisdiction would only be accepted if it would be protecting UN peacekeepers. Certain states were adamant that the convention should primarily concern the protection of peacekeepers rather than any other category of UN personnel. They felt that the protection of peacekeepers would justify an intrusion on their state sovereignty by means of the universal jurisdiction obligation in the convention, but that this intrusion would not be acceptable regarding any other activities of UN Personnel other than peacekeeping⁴⁹.

Article 2 of the Convention deals with the scope of application of the Convention. Again, the definition of a UN operation is referred to here. Article 2 (1) states:

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

Article 2 (2) goes on to state:

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.

Both Article 1 (c) and Article 2 have to be taken into consideration before it can be ascertained whether certain actions or categories of personnel fall within the ambit of the Convention. Firstly, for the Convention to apply to forces of a particular operation, that

⁴⁸ Ibid.

operation has to be conducted under UN authority and control. Therefore, other operations which are authorised by the Security Council but are not carried out under the command and control of the UN, but rather under the control of one or more States, are not covered by the Convention. However, as Bourloyannis-Vrailas points out:

...persons participating in such national or multinational operation may, in certain cases, qualify as associated personnel...if they perform their functions in support of a separate *UN* operation.⁵⁰

Other preconditions to the application of the Convention were seen above in Article 1 (c). This provision limits the field of application of the Convention quite a bit. Article 1 (c) (ii) is also quite unclear regarding the precise meaning of 'exceptional risk'. As Bourloyannis-Vrailas points out:

...although personnel may be operating under similarly hazardous conditions, for some the Convention is automatically applicable, while this is not the case for others.⁵¹

There is also the issue of declaration of the risk. It is up to the Security Council or the General Assembly to decide and declare that an exceptional risk is apparent. But, as Bourloyannis-Vrailas comments:

In the absence of a precedent whereby the applicability of a binding international instrument is triggered by a declaration of the General Assembly or the Security Council, one has to wait and see how this will operate in practice, and whether such declarations will indeed be forthcoming as the need arises.⁵²

With regard to Chapter VII enforcement action operations, articles 1 and 2 must be read together before the scope of application of the Convention over operations of this type can be ascertained. Article (c) (i) quoted above would seem to dictate that if a Chapter VII enforcement mission is deployed on the grounds of maintaining or restoring international peace and security, that it would come within the protective system of the Convention. However, as seen above, article 2 (2) changes this situation. From this

⁴⁹ See Bloom *ibid*, 624.

⁵⁰ Bourloyannis-Vrailas 1995, 567.

⁵¹ *Ibid*, 568.

provision, we can see that if any of the members of the UN Chapter VII enforcement mission acts as a combatant and the other conditions of article 2 (2) are met, then the whole force is excluded from the scope of the Convention. When this occurs, it is the laws of war regarding international armed conflict which apply. However, the 1994 Convention and the protection conferred by it will still apply to UN personnel who use force in self-defence, whether they are traditional peacekeepers or are Chapter VII mandated, if the other conditions set out in Article 2(2) are not met. The moment any element of the UN force acts as a combatant, this action brings the entire operation outside the remit of the Convention and with the ambit of the laws of war. Acting in self-defence does not exclude the UN personnel from the benefit of the protective provisions of the Convention, but if self-defence becomes conflict, turning non-combatants into combatants, it is exclusively humanitarian law which will apply. It can be seen therefore, that the protection of peacekeepers is of a very different nature from the protection of peace enforcers who are acting as combatants under the Convention. When the Convention was being drafted, some countries such as the United States, wanted a 'blanket protection' for all UN personnel, but this was unacceptable because it would undermine international humanitarian law, if one set of combatants in a conflict were protected by special provisions under the Conventions, i.e. UN personnel, but the other combatants were not. It was feared that this would result in the non-UN combatants failing to comply with any of the laws of war. Peacekeepers, on the other hand, are not combatants, and therefore can be afforded the protection offered by the 1994 Convention. Bloom points out that the differentiation between the protective regimes of peacekeepers and peace enforcers was necessitated...

...so that UN and associated personnel and those who attack them would be covered under one regime or the other, but not both. One important reason for this was to avoid undermining the Geneva Conventions, which rely in part for their effectiveness on all forces being treated equally. It was widely held that the new Convention should not criminalize attacks on UN forces engaged as combatants in an international armed conflict, as this would (by making the very act of waging war against the United

⁵² Ibid, 568.

Nations a criminal offense, and thus favoring one side over the other) lessen the willingness of opposing forces to adhere to the laws of war.⁵³

Some of the other articles of the Convention are quite straight-forward and do not require much explanation e.g. Article 3 of the Convention concerns the identification of UN and Associated Personnel and the requirement of these personnel to wear distinctive identification.

...while clear identification of UN personnel normally contributed to their safety, there were also instances in which such identification had the opposite effect.⁵⁴

Article 4 states that the UN and the host State should, as soon as possible, conclude an agreement on the UN operation and on the personnel involved. Article 5 requires the co-operation of transit states in the movement of UN and associated personnel and equipment to the host state. Article 6 requires that UN and associated personnel respect the laws and regulations of host and transit states. Article 7 and 8 concern the obligations of the host States to the UN operation.

Article 9 list the acts which amount to breaches of the Convention, e.g., kidnapping, murder. Along with the commission of such acts, attempts to, and complicity in the carrying out of the acts are also prohibited. These acts must also be criminalised under national law of the States Parties.

Article 10 requires each State Party to act to establish jurisdiction over the acts prohibited in Article 9. Article 11 requires States Parties cooperation in the prevention of the crimes listed in Article 9. Article 12 requires States Parties to provide information to the Secretary-General regarding alleged violators of Article 9. Article 13 requires States Parties to take measures to ensure the prosecution or extradition of alleged violators of the Convention. Article 16 concerns the mutual assistance of States Parties in respect of the list of crimes set down in Article 9.

⁵³ Bloom 1995, 625.

⁵⁴ Bourloyannis-Vrailas 1995, 569.

Article 14 and 15 concern the applicability of the principle of *aut judicare aut dedere* to the Convention. This principle obliges all States to ensure that all crimes which are defined in the Convention are, in fact, punishable under their domestic law. The State in which the alleged crime is committed is obliged to establish their jurisdiction over such a crime. All other states are also under this obligation in case the primary state does not wish to prosecute itself. The State in which the alleged criminal is found is then obliged to either extradite that person to a State that has a connection with the alleged crime or to begin proceedings to prosecute the alleged criminal itself. The inclusion of this principle in the Convention reflects the grave concerns of the international community with regard to attacks on UN personnel. Bourloyannis-Vrailas says of this:

Crimes against UN and associated personnel are crimes against persons who act on behalf of the international community, and therefore of concern to all States. The Convention recognizes this fact by establishing that the principle of *aut dedere aut iudicare* will apply in respect of such crimes.⁵⁵

Article 14 obliges a State Party in whose territory a crime under the Convention has been committed to prosecute speedily. Article 15 requires the extradition of alleged offenders who have not been prosecuted under Article 14. Article 17 is concerned with the fair treatment of alleged offenders. Article 18 stipulates that the outcome of proceedings following from violations of the Convention must be communicated to the Secretary-General who will pass on the information to other States Parties. Article 19 requires States to disseminate the Convention and to include study of same, and principles of International Humanitarian Law in military instruction programmes.

Articles 20 and 21 contain the savings clauses of the Convention. There are 5 savings clauses in Article 20, e.g. regarding the rights of personnel-contributing states etc. Article 21 states that nothing on the Convention can be construed to derogate from the right to self-defence. Article 22 contains a dispute settlement clause. Article 23 provides for a review of the Convention and implementation problems at the request of one or more of the States Parties.

⁵⁵ Bourloyannis-Vralais 1995, 589.

Articles 24 - 27 are concerned with the signing and ratification of, accession to and entry into force of, the Convention and Article 28 describes the denunciation procedure. The final article, Article 29, is concerned with the authenticity of texts.

(c) The Protection of UN Personnel under Irish Law

The White Paper on Defence⁵⁶ which was published in February 2000 discusses the important role played by Irish soldiers in UN peace support operations since 1958. Ireland's contribution to peace support operations of the United Nations has been significant over the years. In fact, the White Paper notes that our contribution could be considered as being disproportionate to our size⁵⁷, with approximately 9% of our army strength now serving on UN operations⁵⁸.

While Irish troops have been mainly deployed in traditional peacekeeping roles, the Irish Government passed the Defence (Amendment) Act in 1993 which allowed Irish forces to serve on peace enforcement missions also, e.g. UNISOM II in Somalia in 1993 - 4. Thus, with this expansion of roles and with the ever-increasing complex situations involved in peace support missions, the dangers and risks to be faced by Irish personnel on UN duty are increasing and the need for protection for these troops is clear. Since the first peace support operation 80 members of the Irish Defence forces have died while serving on UN peace support operations, with thirty six of these being killed as a 'direct result of hostile action'⁵⁹. The UN *Convention on the Safety of UN and Associated Personnel* was seen by Ireland as a means of providing more protection for their forces who undertake missions on peace support operations and of ensuring punishment for those who would commit attacks on these forces. The Convention came into force on the 15 January 1999. On the 10 March 1999, the Irish Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue T.D., announced that the Government had gained approval for the drafting of a Bill which would allow Ireland to accede to the UN Convention. The resultant Act is

⁵⁶ Department of Defence - White Paper on Defence, February 2000.

⁵⁷ See White Paper on Defence, February 2000, Section 6.3.2.

⁵⁸ Ibid, Table 6.1.

⁵⁹ Ibid, Section 6.1.1.

entitled *An Act to Give Effect to the Convention on the Safety of United Nations and Associated personnel Done at New York on the 9th Day of December, 1994, and for that purpose to amend certain enactments and to provide for related matters*, or, more simply, the *Criminal Justice (Safety of United Nations Workers) Act 2000*. This act provides that if a person commits, outside the State, the murder, manslaughter, rape or any offence such as assault, assault causing harm, assault causing serious harm, threatening to kill or cause serious harm, poisoning, endangerment, or false imprisonment or sexual assault, aggravated sexual assault, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990, or any offence under section 2 of the Explosive Substances Act, 1883 (i.e. causing an explosion likely to endanger life or damage property) or any offence under section 2, 3 or 4 (i.e. damaging property, threatening to damage property and possessing anything with the intent to damage property) of the Criminal Damage Act 1991, to, or in relation to, a United Nations worker which would constitute an offence if committed within the State, then he / she will be guilty of the offence and will be liable to the same punishment as if he / she had committed the offence within the State. The alleged crimes are deemed to have been committed within the area of the Dublin Metropolitan District. This act also had the effect of amending other Irish legislation e.g. the Defence Act of 1954, the Criminal Procedure Act, 1967, the Schedule to Extradition (Amendment) Act, 1994 and the Criminal justice (United Nations against Torture) Act of 2000 to ensure proper protection for UN personnel and punishment of those who commit offences against UN personnel under Irish law. The Irish Government understood the need for legislation to ensure the safety of our Defence Forces personnel on UN peace support operations and put their faith in the 1994 Convention to provide this safety by acceding to it and by enacting domestic legislation to implement it. Hopefully, their faith has not been misplaced.

Conclusion

(a) Analysis of the 1994 Convention

In the early 1990's, the need for action by the UN in the field of protection of peacekeepers was obvious and urgent because of the gaping void in international

humanitarian law discussed above, and the Convention adopted in 1994 has helped to raise the protection level. As Bloom points out:

The United Nations, in particular the members of the Sixth Committee and the ad hoc committee, made a significant contribution to international law and peacekeeping by virtue of this Convention. The many thousands of UN peacekeepers and others serving under UN mandates have dangerous jobs, and too often are injured or killed because groups opposing the United Nations' objectives do not hesitate to mistreat or attack them, in blatant disregard of the peacekeepers' status as representatives of the international community.⁶⁰

Since the entry into force of the Convention in 1999, peacekeepers have been afforded better protection than ever before. Combatants whose conduct was always regulated by the Geneva Conventions and related norms, are not now the only category of peace support operation forces who are protected by humanitarian law. However, the Convention, and thus, the protection regime afforded to UN and Associated Personnel is not perfect. As Bouvier notes:

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. 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.⁶¹

Ireland has taken an important step in this regard, by enacting quite comprehensive domestic legislation which will hopefully ensure that the Convention will properly implemented.

Bouvier also points out that one of the main faults of the Convention is the inadequate treatment of...

...problems specific to 'hybrid' operations combining both peace-keeping and peacemaking mandates, in which the forces engaged by the United Nations (or under its auspices) are entrusted with extremely diverse tasks.

⁶⁰ Bloom 1995, 630.

⁶¹ Bouvier 1995.

The complex operations carried out in Somalia and in the former Yugoslavia are example enough of such problems.⁶²

'Hybrid' operations are complex in composition and in character and can include personnel deployed both as combatants and non-combatants. As discussed above, this does not automatically exclude the force from the protection of the 1994 Convention but if any member of the mission acts as a combatant and the other requirements set out in Article 2 (2) are met, then the whole mission will fall outside the Convention's scope, even those deployed and acting as peacekeepers in the traditional sense. The only protective measures then available to the UN force are the laws of war, which do not offer the same standard of protection as the Convention.

Another weakness of the Convention is the narrowness of its scope. As already pointed out, not all people working for the maintenance of peace and security are covered by the Convention - they are not protected unless they are working on a 'UN Operation' as defined by the Convention of 1994. While the argument that the universality of jurisdiction obligated by the convention would impinge too much on state sovereignty if the scope of those protected by the convention was expanded to those performing tasks other than peacekeeping is understandable, the alternative is that there are many UN personnel performing very dangerous tasks on behalf of the world community in the name of international peace and security who are not protected by any legal instrument which is a very unsatisfactory situation.

There are also concerns regarding how well the principle of *aut dedere aut iudicare* will operate with regard to the crimes set out in Article 9 of the Convention. As Bourloyannis-Vrailas points out:

The well-established mechanism based on the principle of *aut dedere aut iudicare* is indeed useful in denying a safe haven to criminals who travel extensively, such as terrorists. A person attacking UN or associated personnel, on the other hand, is not very likely to leave the country where

⁶² Ibid.

the operation is being conducted, in particular if he or she is involved in an internal armed conflict to which no end is in sight.⁶³

The principle of universal jurisdiction over violations of humanitarian law is a very noble idea indeed - the idea that any state can have jurisdiction over crimes which are an affront to the world community is to be welcomed. The problem with this however, is that what is noble in theory is very difficult to implement in reality⁶⁴, and the world still awaits the first prosecution for crimes committed under the 1994 Convention.

Another flaw in the Convention is that the concept of an 'exceptional risk' in Article 1 (c) (ii) is not defined. Neither are the criteria which the Security Council or the General Assembly will use to determine the existence of and declare such a risk which would then trigger the application of the Convention. Again, we still await clarification of this provision, which may only come when a situation of 'exceptional risk' arises.

It is clear, therefore, that while the Convention is to be very much welcomed, some questions still have to be raised as to how successful and effective it will, in fact, be. Because the Convention only entered into force in 1999, it is as yet too early to come to conclusions regarding its effectiveness as a deterrent to and means of punishment of perpetrators of attacks on UN and Associated Personnel. The UN has made a very positive effort to afford greater protection to its personnel by means of this Convention, it is now up to the States Parties to implement it in the proper manner to ensure the better protection of UN personnel. Bourloyannis-Vrailas comments that:

In the final analysis, the effectiveness of an international instrument, no matter how modest, depends on its implementation.⁶⁵

(b)The Rome Statute

More positive measures may need to be taken however, if the Convention is not effective and does not lead to increased protection and safety of UN and Associated Personnel in

⁶³ Bourloyannis-Vralais 1995, 589.

⁶⁴ See Scheffer 2001, 233.

⁶⁵ Bourloyannis-Vralais 1995, 590.

the face of today's complex multidimensional peace support operations. As Weiner & Ní Aoláin point out:

Shortcomings in the legal framework governing peacekeeping operations require expansive and imaginative thinking. Instead of merely extending traditional peacekeeping roles on the ground, there is a need to firmly establish concrete legal principles within which to anchor the practical reality of increased intervention.⁶⁶

The 1994 Convention is not the only recent measure taken by the international community with a view to criminalising attacks on peacekeepers, however. The 1998 Rome Statute of the International Criminal Court also refers to the protection of United Nations Personnel. Article 8 of the Statute concerns war crimes and the jurisdiction of the court over them. Paragraph 2 of this article defines war crimes for the purposes of this Statute. Included among the list of war crimes in Article 8 (2) (b) (iii) is:

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

Article 8 (2) (b) (vii) states that:

Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury....

is also a crime under the Rome Statute.

Both the 1994 Convention and the 1998 Statute are positive developments in the amelioration of the system of protection afforded to peacekeepers which will hopefully lead to a decrease in attacks on, and an increase in the safety of, UN and Associated Personnel. As illustrated above, the pre-1994 protection of peacekeepers was almost non-existent and was totally inadequate in modern conflict situations. There is no doubt that UN and Associated Personnel make an immense contribution to the maintenance of

international peace and security and indeed, even those who would criticise the UN would praise the organisation for its peacekeeping activities.⁶⁷ - the need to protect these personnel is obvious. As Weiner & Ní Aoláin point out:

The essential function of peacekeeping missions is not only to preserve peace, but also to protect.⁶⁸

Humanitarian law seeks to limit the casualties and damage caused by war. It is quite ironic, therefore, that it is those people who aim to preserve and maintain peace and to protect who were offered the least protection by this law. This situation was improved by the 1994 Convention, but as illustrated above, many difficulties and voids remain in the application of humanitarian law to UN personnel, and improvements are quite obviously needed. The concept of peace support operations is still evolving as the UN try to keep pace with the ever-changing face of world conflict. If these operations are to be successful in the maintenance of international peace and security and in the protection of civilians, then the maintainers and protectors themselves have to adequately protected by international humanitarian law. Indeed, if the international community fails to protect the peacekeepers themselves, by means of humanitarian law, how can we expect the peacekeepers to adequately protect anyone else?

⁶⁶ Weiner & Ní Aoláin 1996, 331.

⁶⁷ Rikhye 1984, 219

⁶⁸ Weiner & Ní Aoláin 1996, 317.

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