

The UNHCR has adopted the following criteria for its own involvement with any internally displaced situation:

- (a) UNHCR's involvement must not in any way detract from the possibility to seek and obtain asylum;
- (b) UNHCR must have full unhindered access to the affected population;
- (c) adequate provision must be made for the security of staff of UNHCR and its operating partners and for acceptable operating conditions; and
- (d) UNHCR's involvement should have the consent of all concerned parties and enjoy the support of the international community.

Mr. Studer Meinrad, the Deputy Regional Director of ICRC, New Delhi, in his statement on behalf of the International Committee of the Red Cross observed that the creation of a protected zones within the framework of International Humanitarian Law must be contemplated first and foremost as an instrument serving the general requirement of providing the best possible protection and assistance to populations during arms conflicts. To that effect the creation of a protected zone must in no way lessen the protection of the populations not in those zones. He observed that practice has demonstrated the importance of remaining very flexible as to the form and definition of such zones, which must be adopted to the requirements of the moment. In his view the misgivings of States with regard to the preparation in peacetime of places which might serve as protected zones in wartime are therefore understandable. He pointed out that while the express agreement of the parties in conflict may be difficult to secure it must nonetheless be understood that such agreement is essential for obvious security reasons. Those seeking to set up a protected zone bear a heavy responsibility in that respect. He further emphasized that the creation of protected zones must be accompanied by clear information to the potential beneficiaries, who must not be misled by false hopes, in particular, refuge in a Safety Zone does not bestow any right to amnesty; and whenever populations have been caught up in a process of mutual hatred, the possibility of creating protected zones must be considered with special attention to their political implications and security.

Mr. B. Sen the former Secretary-General of the AALCC was of the view that the proposal of the Government of Thailand for the establishment of a Safety Zone in 1986 before the United Nations and then to the AALCC was essentially then seen in the context of preventing refugee situations from arising, and was linked in a way to the doctrine of State

responsibility. It was a novel idea at that time and it is still regarded as a new concept yet to be accepted into international law. In his view the following issues and questions needed to be examined—

- (i) What are the objectives and purposes for which the establishment of a safety zone may be deemed necessary?
- (ii) In what situation could a state be expected to establish safety zone within its territory having regard to the objectives and purposes for establishment of such zones?
- (iii) What modalities should be adopted in the establishment of a safety zone; and
- (iv) What kind of a legal regime should be applicable to the administration of a safety zone.

Prof. P.K. Das of the Jawaharlal Nehru University addressed himself to the question as to how safe were these Safety Zones? In his opinion the Safety Zones themselves were controlled by warring political parties and unless the political differences were settled it would be as difficult for refugees to stay within them or outside. Secondly, unless the Safety Zone is politically neutralized, it would be very difficult to enforce the regime of Safety Zone. He favoured the establishment of a permanent International Criminal Tribunal having jurisdiction over crimes against humanity.

Dr. P.S. Rao, Joint Secretary, Ministry of External Affairs, Government of India, pointed out that the Safety Zones which had been established so far had been created on individual basis, hence no firm conclusions should be drawn as to the status of the concept of Safety Zones in International Law. Any attempt towards codification of existing principles would be fraught with difficulties, and such codification could well be detrimental to the cause of the suffering people. What was actually required was to have an extremely cautious view on the legal front. Safety Zones did serve a humanitarian need but in the creation of Safety Zone it was absolutely necessary to have the consent of the state concerned particularly where a Government was in a position to do so. On the question of establishment of an international criminal court, he expressed the views that it was necessary to have a court as the instance of genocide was increasing as is illustrated by the examples of Bosnia, Rwanda, Cambodia etc.

Dr. Salama, First Secretary from Egyptian Embassy in New Delhi agreed with Dr. Rao and stated that the legal framework for a safety zone



should not be confused with the humanitarian needs of people in distress. International Law does not recognize the status of Safety Zones and what exists is only the protection of the 1949 Geneva Convention. In the post-cold war period what is required is flexibility and not rigidity and the consent of the State is the cornerstone of the establishment of the Safety Zone and what is actually required is to bring Safety to people and not people to Safety.

Mr. Tom George, Minister from Nigeria High Commission emphasized the relevance of the work of the AALCC in the progressive development of international refugee law relating to the establishment of Safety Zones. The AALCC had all along held the view that displaced persons were different from refugees. A safe Place was required for persons displaced by armed conflicts. An international criminal court was necessary to ensure that the perpetrator of genocide would not go unpunished.

Mr. I.B. Ojobo, First Secretary of Nigeria High Commission, New Delhi, observed that just as the 1951 Refugee Convention, 1969 OAU Convention and the 1984 Cartagena Declaration, had been adopted and enforced to protect refugees, similarly displaced persons who were victims of armed conflicts required Safety Zones. The principles applicable to the Safety Zones should be recognized and regularized. The needs of the internally displaced persons had to be safeguarded.

Mr. Paitoon Songkhaeo, Second Secretary from Embassy of Thailand stated that it was at the request of his Government that the topic was taken up at the Kathmandu Session of the AALCC and that at present there were no refugees in his country as all of them had voluntarily returned to their own country.

Mr. Bari, Chief of the Mission, UNHCR, reiterated that though the time was not yet ripe to codify the principles on the creation of a Safety Zone, but there was a recognized need to consider the application of the idea in various situations which present themselves. In his view what was required were operational guidelines similar to those which had been adopted by the UNHCR, and that the Safety Zones should not be used for ulterior purposes.

The delegate of ICRC stated that it was necessary that existing international humanitarian law be applied and respected in a better manner. Pending the codification of the principles and rules applicable to Safety Zones, there was a need to ensure better respect for existing international law.

Mr. Iwanami (AALCC) pointed out that while it certainly was not easy to codify principles for the establishment of Safety Zone, what was desirable was a model framework which provided minimum standards of protection for the internally displaced. At the same time there was a need to define situations where the concept of Safety Zone would be applicable.

The AALCC Secretary-General thanked the participants for their valuable views and observed that these would help the Secretariat in its future work on the subject.

## **V. Agenda for Peace : Convention on the Safety of United Nations and Associated Personnel : An Overview**

### **(i) Introduction**

The item Agenda for Peace: Convention on the Safety of the United Nations and Associated Personnel has been on the agenda of the Committee since the Kampala Session (1993). At the Tokyo Session (1994) the Committee approved the Secretariat's proposal to initiate preparation of detailed studies on two specific issues raised in the United Nations Secretary-General's report entitled "Agenda for Peace" namely, (i) examination of legal issues in the context of demining and (ii) developing the framework of an International Convention on the Protection of personnel engaged in peace-making, peace-keeping and other humanitarian activities undertaken by the United Nations.

With regard to the second issue, it will be recalled that on 9th December 1994, the General Assembly on the recommendation of the Sixth Committee adopted and opened for signature the Convention on Safety of United Nations and Associated personnel. The Convention will enter into force 30 days after the deposit of the twenty-second instrument of ratification or accession. The Secretariat Brief prepared for consideration at the Doha Session contains a note on this Convention including its legislative history and brief comments on its substantive provisions.

### **Thirty-fourth Session: Discussions**

The Assistant Secretary-General (Mr. Asghar Dastmalchi) introducing the Document AALCC/XXXIV/Doha/95/9 stated that this item has been under consideration of the Committee since the Kampala Session. Against the background of the recommendations made in the United Nations Secretary-General study "Agenda for Peace" submitted to the 47th Session of the General Assembly, the Committee at its Kampala Session established



a Working Group to consider and advise the Secretariat in the Preparation of a Study, which, it was envisaged, could be a contribution of the AALCC to the Commemoration of the Fiftieth Anniversary of the United Nations. The Working Group met only once and held preliminary discussion.

At the Tokyo Session, the Committee directed the Secretariat to prepare studies on two specific issues namely (i) examination of legal issues in the context of demining and (ii) developing the framework of an international convention on the Protection of Personnel engaged in Peace-making, Peace-keeping and other humanitarian activities undertaken by the United Nations.

With regard to the first item, the Secretariat prepared a detailed note which was included in the Brief submitted for the consideration of the AALCC's Legal Adviser's Meeting held in New York on 27th October 1994.

As for the second item, the Secretariat, taking into account the discussions at the Sixth Committee during the 48th Session of the General Assembly, prepared a note which was also included in the Brief for the AALCC's Legal Advisers Meeting.

Subsequently, in the light of the developments at the 49th Session of the General Assembly, which culminated in the adoption of the "United Nations Convention on Safety of United Nations and Associated Personnel", the Secretariat prepared an Overview of the Convention. This could be found in the Document referred to earlier.

As for the Preparation of a Study for submission on the occasion of the Fiftieth Anniversary of the United Nations, the Secretariat proposed that a study entitled "AALCC's Supportive Role to the United Nations" be undertaken. In that study besides a compilation of the AALCC's various initiatives over the last 15 years in relation to the work of the United Nations and its Agencies, its future role in this context could be considered. It will be a 25 to 30 pages booklet, which could be circulated on the occasion of Fiftieth Anniversary. He placed this proposal for the consideration and approval of the Member Governments.

The *Delegate of Japan* welcomed the adoption of the Convention on the Safety of United Nations and Associated Personnel as a step for increased international cooperation in preventing the danger and in establishing the framework to punish those who violated laws. He said that the Convention should be applied not only to the personnel of the U.N. Peace-keeping operations, but also to those who were involved in other activities for humanitarian purposes, and also to the members of

non-governmental organizations which support the activities of the United Nations. Therefore, a declaration by the Security Council or the General Assembly, as stated in the Article 1, (c)(ii) of the Convention, should be actively and flexibly utilized in order to ensure the applicability of this Convention to the aforementioned personnel.

In addition, the assurance of the effect of this Convention in the host country was also crucial. In that respect, he emphasized the importance of the cooperation with the United Nations and other State Parties in case a Host State was unable itself to take the required measures and intended to actively participate in such cooperation.

On the issue of mines, he mentioned that Japan contributed 2.5 million dollars to CMAC (Cambodia Mine Action Center) last March. He believed that this is an important exercise and his Government would continue to support the on-going preparation for the review conference on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, in order to restrict the use of anti-personnel mines and to promote general acceptance of the obligation of mine clearance in the International Community. Lastly, the Government of Japan welcomed the "Supplement to an Agenda for Peace", and hoped that those principles would be respected in the International Community as essential elements for the successful Peace-keeping operation.

## **(ii) Decesion on “Agenda for Peace”**

(Adopted on 22nd April 1995)

### **The Asian-African Legal Consultative Committee at its Thirty-fourth Session:**

*Having considered* Document No. AALCC/XXIV/DOHA/95/9 which contained a preliminary analysis of the Convention on the Safety of the United Nations, and Associated Personnel;

*Taking Note* of the Secretariat initiative to undertake preparation of study on Legal Issues concerning demining;

1. *Directs* the Secretariat to consider initiating joint programme in co-operation with the International Committee on Red Cross (ICRC) and other organizations engaged in similar work;

2. *Decides* to include on the Provisional Agenda of its Thirty-fifth Session, the item entitled “Agenda for Peace and Related matters”.



**(iii) Secretariat Brief**  
**Agenda for Peace : Convention on the Safety of**  
**United Nations and Associated Personnel :**  
**An Overview**

The Secretary-General of the United Nations in his Report entitled "An Agenda for Peace" made several recommendations with a view to strengthening the role and capacity of the United Nations in four areas namely, Preventive diplomacy, Peace-making, Peace-keeping and Peace-building. He drew attention to the issue of the Safety and Security of Personnel involved in these operations. In a resolution adopted at the 47th Session, the General Assembly endorsed the concern expressed by the Secretary-General and condemned any hostile actions against United Nations personnel, including deliberate attacks against United Nations peace-keeping operations and those engaged in humanitarian operations. It requested the Secretary-General that while planning future peace-keeping operations and in making recommendations for their deployment, to give particular attention to adequate protection for peace-keeping and other United Nations personnel.<sup>1</sup>

Subsequently, the President of the Security Council in his statement made on 31 March 1993, on behalf of the Security Council recognized the need for all relevant bodies of the Organization to take concerted action to enhance the safety and security of United Nations forces and personnel.<sup>2</sup>

The Secretary-General submitted a report to the General Assembly's

1. U.N. General Assembly Resolution 47/72, 14 December 1992.

2. U.N. Security Council S/25493.



forty-eighth session entitled "Security of the United Nations Operations"<sup>3</sup>. He recognized that there were certain gaps in the existing system which needed to be strengthened in certain areas. He observed:

"The main new development concerns the kind of conditions in which United Nations personnel are expected to operate and the level of risk considered acceptable. In fulfilment of the responsibilities entrusted to them by Member States, the personnel of the organizations of the United Nations system have increasingly been required to perform their functions in extremely hazardous conditions where decisions regarding their safety assume an immediacy not normally encountered in the past. This is particularly true in areas where government authority is not adequately exercised or is lacking altogether. Whereas in the past personnel were assured protection by virtue of their association with the work of the United Nations, this is no longer the case. On the contrary, personnel are more and more often at risk because of such association."<sup>4</sup>

Further, in his view:

"Another development, which has brought to light gaps in the existing security system, is the establishment of multidimensional operations involving military operations, humanitarian assistance, electoral assistance, human rights monitoring and development projects. In order to achieve a coherent approach to the security of those operations, a number of practical issues regarding differing priorities between the various components have to be resolved in each case."<sup>5</sup>

The Secretary-General outlined various measures, both long-term and short-term, including elaboration of a new international instrument in order to codify and further develop international law relating to security and safety of the United Nations forces and personnel.

#### Consideration at the Forty-eighth Session of the General Assembly

At the initiative of New Zealand, an item entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice" was placed on the agenda of the Forty-eighth Session of the General Assembly. Item 152 was allocated to the Sixth Committee. During

the consideration of the item in the Sixth Committee, *New Zealand* submitted a "Proposal for a draft Convention on responsibility for attacks on United Nations personnel" (A/C.6/48/L.2) and *Ukraine* submitted the text of "the Draft International Convention on the Status and Safety of the personnel of the United Nations Forces and Associated Civilian Personnel." (A/C.6/48/L.3). After general statements by several delegations it was decided to constitute a Working Group which met under the Chairmanship of Mr. Kirsch from Canada. The Chairman in his Report drew attention to the various issues raised in the context of the conclusion of an international legal instrument.

By its resolution adopted on 9 December 1993, the General Assembly expressed grave concern at the increasing number of attacks on United Nations personnel that have caused death or serious injury. It recalled the reports of the Secretary General, the report of the Special Committee on Peace-keeping Operations and the resolution of the Security Council 868 of 29 December 1993, and noted with appreciation the oral report of the Chairman of the Working Group and the draft proposals submitted by the delegations of New Zealand and Ukraine. It decided to establish an *Ad Hoc* Committee open to all Member States to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel. It authorized the *Ad Hoc* Committee to hold a session from 28 March to 8 April 1994 and if necessary a further session from 1 to 12 August 1994 to prepare the text of a draft Convention taking into account any suggestions and proposals from States as well as comments and suggestions that the Secretary-General may wish to provide. Finally, it requested the *Ad Hoc* Committee to report to the General Assembly at its Forty-ninth Session on the progress made towards the elaboration of the draft convention. (Resolution 48/37).

#### Work of the Ad Hoc Committee

In a Note submitted by the Secretary-General for the consideration of the *Ad Hoc* Committee, he referred to the General Assembly Resolution 48/37 and observed that "the Assembly has made it clear that the subject matter of the future convention should not be limited to the issue of responsibility for attacks on the said personnel, and it has mandated the Committee to broaden the approach, reflected in the draft submitted by New Zealand by giving consideration to other ideas, including those contained in the draft put forward by Ukraine." (A/AC.24/1). The Secretary-General was of the view that the proposed Convention "should incorporate the set of principles and obligations contained in current multilateral and

3. U.N. G.A. A/49/349.

4. U.N. G.A. A/48/340.

5. U.N. G.A. A/48/349.



bilateral treaties and codify customary international law as reflected in the recent practice of the United Nations and Member States." (AVAC.242\1). In that context, he drew attention to the model Status of Forces Agreement, which is being used by the United Nations as a basis for concluding bilateral agreements with the Member Governments on the matters concerning United Nations operations.

The *Ad Hoc* Committee held its First Session from 28 March to 8 April 1994. Apart from the Note submitted by the Secretary-General, it had a set of proposals for consideration. New Zealand and Ukraine jointly submitted a draft combining their respective proposals submitted earlier. Another working document was submitted jointly by Denmark, Finland, Iceland, Norway and Sweden. This document contained a set of elements which the sponsors believed should be included in any new legally binding instrument concerning the safety and security of the United Nations and associated personnel.

The *Ad Hoc* Committee decided to constitute itself as a Working Group of the whole for consideration of various proposals before it. During the meetings of the Working Group, a number of amendments and proposals for new articles were submitted by delegations which included, India, China, Guyana, Russian Federation and the United States. The Working Group established two consultation Groups which prepared a "Negotiating text" consisting of articles 3 to 27, as no text could be prepared on article 1 (definitions) and 2 (Scope of the Convention).

The *Ad Hoc* Committee's second Session was held from 1 to 12 August 1994. The 'Negotiating text' prepared earlier at the first session was taken as a basis for further discussion. It established an open-ended informal Working Group with the mandate to negotiate the texts of articles 1 and 2. At the 5th meeting of the Working Group, the Chairman of the informal Working Group submitted a single article on scope and definitions which paved the way for the preparation of a consolidated negotiating text which contained the texts of article 1-2 and articles 3 to 27 of the negotiating text as prepared at the first Session of the *Ad Hoc* Committee.

### Consideration at the Forty-ninth Session

During the 49th Session of the General Assembly, the Sixth Committee at its third meeting on 26 September 1994, re-established the Working Group which took up for consideration a "Revised negotiating text". The Working Group in its 11 meetings held between 3 to 14 October, elaborated a draft preamble and reviewed the articles in the "Revised negotiating text". Apart from the editorial and technical changes, the Working Group also agreed to make certain structural changes in the text under negotiation.

At its 11th meeting on 14 October 1994, the Working Group decided to submit to the Sixth Committee the text of the draft Convention for adoption. On the recommendation of the Sixth Committee the General Assembly on 9th December 1994 adopted the text of the Convention on the Safety of United Nations and associated personnel.

### The Convention on the Safety of United Nations and Associated Personnel

As the title indicates the Convention deals with the Safety of the United Nations and Associated Personnel. The elaboration of a legal instrument against the backdrop of growing concern over the attacks on United Nations and associated personnel is a significant step towards the codification and progressive development of international law. The preamble of the Convention among other things acknowledges the important contributions that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peace-making, peace-keeping, peace-building and humanitarian and other operations. It recognizes the urgent need to adopt appropriate and effective measures for the prevention of attacks against United Nations and associated personnel and for the punishment of those who have committed such attacks. In order to achieve this two-fold objective the Convention contains a set of 28 articles which elaborate certain preventive measures and the parameters within which an international legal regime could operate effectively.

The scope of the Convention extends to the protection of broad categories of personnel which are grouped as United Nations and associated personnel. "United Nations personnel" as defined in article 1(a) comprises various categories of personnel engaged or deployed by the Secretary-General of the United Nations which include military, police, civilian and other officials and experts on Missions of the United Nations, its Specialized Agencies or the International Atomic Energy Agency. Article 1(b) stipulates the definition of "associated personnel" comprising three categories of personnel namely, (i) those assigned by a Government or an inter-governmental organization pursuant to an agreement of the competent organ of the United Nations; (ii) those engaged by the Secretary-General of the United Nations or by a Specialized Agency or by the International Atomic Energy Agency; and (iii) persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations.

A key provision dealing with the scope of the Convention is article 1(c) containing the definition of "United Nations Operation". It means an