

Protection of Places with The UN Flag (UN Premises) During Armed Conflicts in The Framework of the Contrast Between International Humanitarian Law And UN Regulations

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Abstract

Given that the UN has increased its humanitarian activities over the past years and sometimes uses its own places and bases to shelter displaced civilians, the protection of such places during armed conflicts is an issue that can be a subject of an independent study. International humanitarian laws, both customary and conventional, call for the places with a UN flag to be granted immunity. The statute of the International Criminal Court has, particularly, taken the issue into consideration. The UN regulations, including the Convention on the Privileges and Immunities of the United Nations (1946), too, have taken into account the issue to a greater extent. Still, there remain certain contradictions between the aforementioned legal instruments that will be discussed in the current paper. Nonetheless, the international humanitarian laws and the UN regulations, aimed at protecting the UN flag, have been sadly trespassed during recent wars and armed conflicts worldwide.

Keywords: UN Premises, Humanitarian Law, Customary Law, 1946 Convention, Immunity.

I.Introduction

Humanitarian assistance is one of the missions the UN has undertaken since its establishment in 1945 although it has not been defined in its Charter. It is regarded as one of the duties of the International Committee of the Red Cross (ICRC) to provide assistance during

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natural disasters and wars; however, the past historical experiences show that the UN has always been involved in the process of humanitarian assistance in emergency situations. Yet, the world body has come up with a number of professional agencies in order to conduct assistance programs better. On the other hand, the international humanitarian law, in order to protect some places, has designed a series of symbols that are indicated in the appendices of the 1949 Geneva Conventions as well as the Additional Protocols of 1977 and 2005. However, the UN flag and the emblem are not among the protected signs of the International Committee of the Red Cross or the humanitarian law. Since, many states lose their control during attacks or armed conflicts, the UN flag has found to be increasingly unfurling over protected buildings. During the last two Israeli wars on the Gaza Strip in 2008 and 2014, the UN flagged a number of schools as secure places in order to protect civilians, and informed the two parties about the necessity to protect those places, and asked them not to target them. The measure helped the UN give shelter to thousands of displaced Palestinian civilians. Nevertheless, in both wars as well as in previous similar conflicts, the respect of the places with the UN flag was violated repeatedly. There are several instances when Israel launched deadly attacks on places the UN had declared as safe for humanitarian affairs.

In fact, the legal instruments governing the UN have conferred a wide immunity upon this organization since its very inception. The adoption of the Convention on the Privileges and Immunities of the United Nations (1946) declares that any attack on places with the UN flag, including its missions and assistance facilities, will be deemed contrary to the UN regulations. These instruments make no distinction between war and peace times.

In this article, the author seeks to assay as to how far the places with the UN flag and the UN assistance facilities are protected by the international humanitarian law, in general and the special instruments of the UN, in particular? What contradiction does exist between these two groups of instruments and which one shows greater support for places with the UN flag and humanitarian assistance? Finally, the study intends to show the legal solutions that can enhance the support to such places and facilities.

II. International Humanitarian Law's Support for Places with UN Flag

Its well-known fact that places and facilities of the UN and its affiliated agencies including UNHCR (the United Nations High Commissioner for Refugees), UNICEF (the United Nations Children's Fund), WFP (the World Food Program), OHCHR (the Office of the United Nations High Commissioner for Human Rights), OCHA (the United Nations Office for the Coordination of Humanitarian Affairs), UNDP (the United Nations Development Program), and UNRWA (the United Nations Relief and Works Agency for Palestine Refugees in the Near East), are sometimes used to provide assistance to civilians entangled in an armed conflict. Since, those places and facilities are for non-military purposes, they have to be protected under the international humanitarian law. In other words, the parties to the conflict must always distinguish between civilian and military places before directing their attacks. This is a principle that has its origin in Article 48 and the second clause of Article 52 of the First Additional Protocol of 1977 to the 1949 Geneva Convention that insist on the necessity of making a distinction between civilian and military targets.¹

Aside from the high number of member states (more than 174)² ratified the First Additional Protocol to the Geneva Convention of 1977 necessitating the observation of this principle based on the conventional law, its distinction can be considered as a customary rule of the international humanitarian law. The International Court of Justice (ICJ) identified this principle as one of the basic rules of the humanitarian law. It has also been regarded as one of the inviolable principles in Paragraph 179 of the 1996 Advisory Opinion of Nuclear Weapons.³

1 Additional Protocol 1 (1977) of the Geneva Conventions.

2 [https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties & xp_treatySelected=470](https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470)

3 ICJ, *Nuclear Weapons Case (1996)*, Advisory Opinion, Para.78.

Many states that are yet to ratify the additional protocol had mentioned the importance of distinction as a significant legal principle in their respective statements regarding the aforementioned advisory opinion. One of the striking examples of these statements is the one issued by Egypt⁴, Iran⁵, Japan⁶, Sweden⁷, and the UK⁸. The ICRC has also recognized this principle as one of the customary rules of the international humanitarian law.⁹

However, the principle of distinction enjoys a strong conventional support only in international armed conflicts (though a number of actors like the US, Iran, and Israel have not joined the First Additional Protocol yet). Thus, places with the UN flag are undoubtedly protected and prevented against attacks during international armed conflicts; but, there are certain doubts with regard to the observation of this principle in non-international conflicts. What is certain is that the principle of distinction is not explicitly mentioned in the Second Additional Protocol to the Geneva Conventions of 1977, which is specific to non-international conflicts, although Article 13, Paragraph 1 broadly emphasizes on types of conflicts.¹⁰ The attacks against civilian targets during non-international armed conflicts have also been prohibited in the revised protocol of the Convention on the Prohibition of Certain Conventional Weapons¹¹. A reference is made to this principle in the amendment to Article 1 of the same convention adopted by a consensus in 2001 and is irrevocable as to non-international armed conflicts.¹²

4 Egypt, Written statement submitted to the ICJ, *Nuclear Weapons Case*, June 20, 1995, p.17

5Iran, Written statement submitted to the ICJ, *Nuclear Weapons Case*, June 19, 1995, p. 2

6 Japan, Oral pleadings before the ICJ, *Nuclear Weapons Case*, November 7, 1995, Verbatim RecordCR 95/27, p. 36

7 Sweden, Written statement submitted to the ICJ, *Nuclear Weapons Case*, June 20, 1995, p. 3

8 UK, Written statement submitted to the ICJ, *Nuclear Weapons Case*, June 16, 1995, p. 3.67

8Henckaerts and Doswald-Beck, 2009, *Customary International Humanitarian Law*, ICRC, Cambridge University Press, p.25.

10 Additional Protocol 2 (1977) of Geneva Conventions.

11 Amended Protocol II to the Convention on Certain Conventional Weapons (CCW), Article 3(7).

12 Protocol III to the Convention on Certain Conventional Weapons (CCW), Article 2(1).

Separately, the UN Security Council strongly condemned any attack on targets protected by international law in Paragraph 2 of Resolution 1265 of 1999 on protecting civilians during armed conflicts without any reference to international or non-international.¹³ Based on the language used by the ICJ in the Nuclear Weapons Advisory Opinion¹⁴ as well as its Criminal Tribunal for former Yugoslavia, in several cases, including Kupreskic¹⁵, Cerkez, and Kordic¹⁶, one can easily recognize the customary nature of the principle of distinction. The ICRC also insisted on the absolute prohibition of civilian casualties (without distinguishing between domestic and international conflicts) in the Action Plan for the years 2000-2003, adopted by the 27th International Conference of the ICRC in 1999.¹⁷ Thus, it seems that the international humanitarian law protects the United Nations' places during non-international armed conflicts and endorses the need for observing the principle of distinction. However, it is important to note that most cases of the violation of the immunity of the places with the UN flag occurred during non-international armed conflicts. For example, there were several attacks on such places during the Gaza wars on December 27, 2008, and January 19, 2009, and 2014. On July 30, 2014, one of the UNRWA schools, while it was hosting more than 3,300 civilians in Jabalia, was attacked by an Israeli rocket.¹⁸ On August 3 of the same year, an Israeli missile struck a place about 5 meters from the main gate of

13 UN Security Council, Res. 1265, September 17, 1999, Para. 2

14 ICJ, Nuclear Weapons Case (1996), Advisory Opinion, Para. 78

15 ICTY, Kupreskic Case, Judgment, January 14, 2000, Para. 521

16 ICTY, Kordic and Cerkez Case, February 26, 2001, Section V, Disposition

17 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October–6 November 1999, Res. I, Annex 2, Plan of Action for the years 2000–2003, Actions proposed for final goal 1.1, Para. 1 (a)

18 See Human Rights Watch, 'Israel: In-depth Look at Gaza School Attacks' (September 11, 2014), available at

<http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks>

the UNRWA school in Rafah, which also bore a UN flag. The school had 2,700 civilians and the attack left some of them killed and injured.¹⁹

On the other hand, the protection of places with the UN flag is not merely a subject to the principle of distinction, but the international humanitarian law, too, seeks to protect them through the support of Humanitarian Sites and Facilities dedicated to just humanitarian affairs in general (Not especially for UN affairs), for example those created by a government or an NGO. In the 1949 Geneva Conventions, there was not a single article or argument on the protection of humanitarian sites and facilities, let alone supporting the UN bases. The only issue that has been addressed in these conventions is the obligation of occupying powers to provide relief to occupied lands or the prescription of such a work²⁰ that lies outside the limits of the current study.

However, Article 70 of the First Additional Protocol of 1977, which was also passed unanimously, orders the parties to facilitate and support the transit of relief equipment.²¹ Article 71 has also sought the support for relief workers²², but the issue of supporting the United Nations flag and facilities for relief operations is not specifically addressed. As such, the conventional law does not apply here. Nonetheless, the customary international law has become more active in this regard and will help us more. As it has been stated in Rule 32 of the Customary International Humanitarian Law, provided by the ICRC, the property used in humanitarian operations should be respected and protected during armed conflicts.²³

In line with the United Nations Charter, the Rule 33 of the same set of the Customary International Humanitarian Law prohibits any attack on employees and properties involved in peacekeeping missions as long as they enjoy the right to immunity allocated for civilians and properties

19 Ibid

20 Article 59 of the Fourth Geneva Conventions 1949

21 Article 70 of Additional Protocol 1 (1977) of Geneva Conventions

22 Article 71 of Additional Protocol 1 (1977) of Geneva Conventions

23 Henckaerts and Doswald-Beck, op-cit, p.109

under the international humanitarian law.²⁴ Although this rule addresses the property involved in peacekeeping operations, it is very content denotes that the property used by the United Nations in operations for humanitarian causes is subject to the support of the customary international humanitarian law. No official procedure has ever been found against this rule. Also, the member states have generally condemned the attacks on personnel and property related to peacekeeping operations.²⁵ The United Nations²⁶ and other international organizations²⁷ have condemned such attacks too. In some of these condemnations, the aforementioned attacks have been described as criminal action.²⁸ Through numerous resolutions, besides direct attacks, the United Nations has also condemned other acts of violence against peacekeepers, including harassment, abuse, and threats, and asked the parties involved in the conflict to ensure the safety, security and freedom of the movement of forces.²⁹ For example, in 1996, the Security Council called on the parties involved in the Angolan conflict to guarantee the safety of humanitarian relief supplies

24 . Ibid,p.112

25 See, e.g., Australia, Statement before the UN General Assembly, UN Doc. A/50/PV. 116, April 25,1996, p. 6 and See,e.g., Germany, Law Introducing the International Crimes Instruments (2002), Article 1 and See.e.g., Canada, Crimes against Humanity and War Crimes Act (2000), Section 4(1) and (4)

26 See, e.g., UN Security Council, Res. 757, May 30, 1992, preamble, UN Security Council, Res. 788, 19 November 1992, Para. 4, UN Security Council, Res. 1173, June 12, 1998, Para. 5, UN General Assembly, Res. 47/121, 18 December 1992, Preamble, UN Commission on Human Rights, Res. 1995/89, 8 March 1995, Para.17

27 See, e.g., EU, Statement before the UN Security Council, UN Doc. S/PV.3367, April 21, 1994, p. 13, OIC, Conference of Ministers of Foreign Affairs, Res. 1/6-EX, December 1–2, 1992

28 See, e.g., UN Security Council, Res. 587, 23 September 1986, Para. 1 and 2 and UN Security Council, Res. 1099, March 14, 1997, Preamble and Para. 4

29 See, e.g., UN Security Council, Res. 1036, January 12, 1996, Para. 8, UN Security Council, Res. 1313, 4 August 2000, preamble, UN Commission on Human Rights, Res. 1995/91, March 8, 1995, Para. 3

throughout the country.³⁰ It is noteworthy that the Rule 33 of the customary international humanitarian law provided by the ICRC is concerned with the protection of the employees and property involved in peacekeeping operations during international and non-international armed conflicts.³¹

Perhaps the most important international human rights document in support of those places that are used by the United Nations for humanitarian causes is the Rome Statute of the International Criminal Court (ICC). In accordance with Paragraph 2(B) of Part 3 of Article 8 of the statute, intentional attacks on facilities, materials, units or vehicles involved in the humanitarian assistance mission, as long as the property is of immunity allocated for civilians, is considered to be a war crime in the international armed conflict.³² In Paragraph 2(E), Part 3 of the same article, such attacks against facilities and the like, involved in humanitarian operations in non-international armed conflicts are considered to be war crimes too.³³ According to the Sierra Leone Tribunal's Statute, the attacks mentioned above are declared to be examples of a war crime.³⁴ It is needless to say that in order to prove that the attacks against UN humanitarian facilities are war crimes, the reference to Paragraph 2(B) of Article 8 of the Statute of the ICC may also be sufficient according to which, deliberate direct attacks against civilian targets should be declared examples of war crime. However, there is inefficiency of general statements of the civilian character of the UN humanitarian organization to the effect that such attacks in non-international conflicts has not been considered war crimes in accordance with the Statute of the ICC. In fact, according to the ICC Statute, intentional attacks during non-international armed conflicts against civilians are a war crime, not the deliberate target of civilian "facilities". On the other hand, as the ICC Statute says, the deliberate attack on buildings with signs mentioned in the Geneva Conventions is

30 UN Security Council, Res. 1075, 11 October 1996, Para. 18 and UN Security Council, Res. 1087, December 11, 1996, Para. 16

31 J.M Henckaerts and L Doswald-Beck, op-cit, p.112

32 ICC Statute, Article 8(2)(b)(iii)

33 ICC Statute, Article 8(2)(e)(iii)

34 Statute of the Special Court for Sierra Leone, Article 4(b)

a war crime during non-international armed conflicts, but the problem is that the UN flag is not amongst the official signs mentioned in the Geneva Conventions (Article 8, Part E, Clause 2 of the Statute). Therefore, it seems better to protect the places with the UN flag during non-international armed conflicts by supporting them in the form of humanitarian facilities and by avoiding general protection of civilian property.

I.UN Regulations in Support of Places with its Flag

The United Nations Charter is the key source regarding the protection of places with the UN flag. According to the Paragraph 1 of Article 105 of the Charter, "the organization shall enjoy in the territory of each member such privileges and immunities as are necessary for the fulfillment of its purposes". Paragraph 3 of this article stipulates that "the General Assembly may make recommendations with a view to determining the details of the application of Paragraphs 2 and 1 of this article or may propose conventions to the members of the United Nations for this purpose." In the implementation of Paragraph 3 of Article 105 of the Charter, the General Assembly in 1946 approved the Convention on the Privileges and Immunities of the United Nations and asked the member states to join it.³⁵ So far, 162 states have joined this convention. Most of the humanitarian organizations affiliated to United Nations, including UNHCR, UNICEF, WFP, OHCHR, OCHA, UNDP, and UNRWA, are subject to the 1946 convention and support by this, and thus the aforementioned convention makes a special contribution to the world body's humanitarian operations by endowing certain privileges and immunities. There is a key article in the convention, according to which "the premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever

35 UN general assembly Res 22 (I) A 'Relating to the Adoption of the General Convention on Privileges and Immunities of the United Nations, and Text of the Convention' (February 13, 1946)

located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by the executive, administrative, judicial or legislative action.”³⁶It is noteworthy that no country has issued any clauses or declarations regarding this article of the 1946 Convention.³⁷ UNRWA, at a conference of States Parties to the Fourth Geneva Convention, convened on December 17, 2014, stated that “humanitarian law and international criminal law provide important protection for civilians and civilian targets, including humanitarian personnel. Moreover, according to the 1946 Convention, the United Nations premises are inviolable. The convention has determined the details of the application of the privileges and immunities mentioned in Article 105 of the United Nations Charter. The convention is operational at all times.”³⁸

The inviolability of UN premises according to the 1946 Convention implies that no one is allowed to enter places with the UN Flag, and the United Nations has the right to control the activities detected in its premises unless the organization itself requests local authorities to intervene. The inviolability also obligates the states to protect and guard such premises against threats and unrest that may affect them. This commitment of the states is absolute and it covers both the time of peace and war/conflict. The violation includes entering UN premises by the forces of warring sides or any attack targeting them by light or heavy weapons. Today, it seems that the Convention on the Privileges and Immunities of 1946 has turned into a customary international rule and despite the fact that more than thirty member UN states have not yet joined this convention; it is applying in the territory of all members. In other words, there is seemingly a kind of international consensus on the customary nature of the content of this convention (the convention

36 Art. ii Section 3 of the 1946 Convention

37 Bartholomeusz, (2014) *The Legal Framework for Protection of United Nations Humanitarian Premises during Armed Conflict*, Max Planck Yearbook of United Nations Law Online, Volume 18, p.73

38 UNRWA ‘Conference of High Contracting Parties to the Fourth Geneva Convention: Statement by UNRWA (December 17, 2014), available at [http:// www.unrwa.org/newsroom/official-statements/conference-high-contracting-parties-fourth-geneva-convention](http://www.unrwa.org/newsroom/official-statements/conference-high-contracting-parties-fourth-geneva-convention).

approved by 162 of the total 193 UN members). The frequent references made to this convention, particularly about the attack on UN premises during the 2009 and 2014 Gaza wars, confirm this claim.

The United Nations Office of Legal Affairs in 2003 reacted against the inspection of UN vehicles in Afghanistan and announced, "The 1946 Convention contains nothing that could affect the privileges and immunities that have been highlighted by the convention in internal unrest or even during armed conflicts. This convention shall be applicable in all circumstances, like peacetime, and the privileges and immunities that are endowed under this convention cannot be revoked on grounds of military and security considerations."³⁹ The report prepared by the United Nations Secretary-General's delegation on the events of the Gaza Strip in 2008 and 2009 states: "The delegation notes that the UN premises are inviolable. This inviolability cannot be ignored by any of the member states under the pretext of conflict situations, or under the pretext of contingent military warranties or nullification." The report also notes that UN property and assets are immune from any form of intervention and this immunity cannot be nullified under such pretexts.⁴⁰

The General Assembly has also noted in this regard: "Israel is obliged, in accordance with Articles 100, 104 and 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, to ensure the security of UN personnel, to protect its facilities and provide security to the organization's facilities in the occupied Palestinian territories, including East Jerusalem."⁴¹ The armed conflict in the Gaza Strip in July and

39 United Nations Juridical Yearbook 2003, 521–523

40 UN Security Council 'Letter Dated 4 May 2009 from the Secretary General Addressed to the President of the Security Council' (May 15, 2009) UN Doc A/63/855–S/2009/250, Para. 16

41 UN General Assembly Res. 64/89 'Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East' (January 19, 2010) GAOR 64th Session, Preamble, Para.15

August 2014 was a strong test, and of course, a strong threat to the rule of inviolability of UN premises. In seven separate incidents, UNRWA schools that were used as emergency civilian shelters were targeted by ballistic missiles and other ammunition and they, in three cases, killed and injured civilians in these schools.⁴² All of those attacks were condemned by various institutions of the United Nations and state entities, based on the 1946 Convention on the Privileges and Immunities. The High Commissioner of UNRWA declared the attack on the school with the UN Flag in Jabalia, that occurred on July 30, 2014, a clear violation of international law and the White House too strongly condemned the incident.⁴³ Separately, the spokesman for the General Assembly condemned the missile attack just 5-meter away from the UNRWA school in Rafah, where 2700 civilians were sheltered and 12 of whom were killed and 27 wounded, and clearly asked the parties of the conflict to ensure the safety of UN staff and premises.⁴⁴ The US State Department strongly condemned the attack too.⁴⁵ In December 2014, the General Assembly issued a resolution regarding the schools affiliated to UNRWA that work under the United Nations flag, and noted that the attacks were an unlawful violation of the inviolability of UN premises.⁴⁶ The assembly also noted that the

42 Human Rights Watch conducted its own investigation into the three strikes on UNRWA schools in BeitHanoun, Jabaliya and Rafah. See Human Rights Watch, 'Israel: In-depth Look at Gaza School Attacks' (September 11, 2014), available at <http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks>

43 Statement of B. Meehan, US National Security Council Spokesperson, 'Update: White House Condemns Shelling of United Nations School' (July 30, 2014) The Wire: News from the Atlantic, available at <http://www.thewire.com/global/2014/07/israel-offers-humanitarian-window-after-15-killed-at-un-gaza-school/375290>

44 UN News Center, 'Gaza: Deadly Shelling of another UN School Draws Condemnation, Calls for Ceasefire' (July 30, 2014), available at <http://www.un.org/apps/news/story.asp?>

45 Ibid

46 UN General Assembly Res. 69/88 'Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East' (December 16, 2014) GAOR 69th Session Preambular Para. 12

obligations contained in Article 105 of the Charter and the 1946 Convention are binding at all times.⁴⁷

The UK also underlined the inviolability of UN premises at the 21st conference of the Human Rights Council on July 23, 2014.⁴⁸ On August 6, 2014, the Council of Europe, at an informal meeting of the General Assembly, emphasized that "the inviolability and impartiality of United Nations premises should always be respected by all."⁴⁹

It is noteworthy that the immunity of UN premises does not necessarily require that a specific sign should be installed on them, and notified to the parties involved in the conflict because the text of the 1946 Convention does not specify such a necessity. Nevertheless, when the UN closes its premises for security reasons, such as the occurrence of a conflict in a place, or decides to use those sites for purposes that are completely unrelated to the purposes of the United Nations, or if they are given to a contractor or tenant, certain doubts are cast about the continuity of the inviolability of these sites, although it cannot be assistance that the immunity of these sites can be ruled out completely. The fact is that many believe that the cessation or inviolability of UN premises is merely decided by the UN itself and the parties involved in the conflict do not have any right to comment on this issue.⁵⁰

The continuation of the immunity of premises depends more on the UN's own function, in the sense that according to "the 1994 Convention on the Safety of United Nations and Associated Personnel, the UN staff in general and the Secretary-General in particular, should avoid all types of activity that is unrelated to the impartial and international nature of the UN, and this convention urged the Secretary-General to

47 UN General Assembly Res. 69/88, operative, Para. 17

48 See UNHR Council, 'UK Statement on Gaza' (July 23, 2014), available at [https:// www.gov.uk/government/world-location-news/twenty-first-special-session-of-the-human-rights-council-geneva-23-july-2014](https://www.gov.uk/government/world-location-news/twenty-first-special-session-of-the-human-rights-council-geneva-23-july-2014)

49 UN General Assembly, 'Statement of Deputy Head of Delegation: Situation in Gaza' (August 6, 2014), available at http://eu-un.europa.eu/articles/en/article_15350_en.htm

50 Bartholomeusz, (2014), op-cit, p.86

take all necessary steps to ensure the monitoring of these obligations.⁵¹ The General Assembly also issued a resolution on the necessity of preservation of the impartiality and inviolability of the United Nations' premises, assets, and property at all times.⁵² Accordingly, UN humanitarian agencies typically observe the policy of "NO WEAPONS" in their premises as they seek to ensure that no weapons or militias would ever enter the places; particularly when they use these places as civilian shelters. Moreover, the UN should not allow its buildings to host the wanted people who are escaping from justice, but using the premises to shelter people involved in a conflict is not a breach of the immunity of the UN because these people are not escaping justice.⁵³

It is necessary to note that the 1994 Convention on the Safety of United Nations and Associated Personnel, which also highlights the prohibition of attacks on UN premises, and the 2005 Optional Protocol, has not shown the necessary support of humanitarian Institutions affiliated to the United Nations. The reason is that, first, the convention does not have many members; secondly, the convention applies only to UN operations, whether aimed at restoring international peace and security, or made in a place where the General Assembly or the Security Council found certain risks to UN staff. The Optional Protocol to this convention, which came into force from 2010, is extremely limited and even modifies some of its provisions on conditions for the declaration of emergency and the extension of the provisions of this protocol to the United Nations' emergency humanitarian assistance missions.

I. The Contrast Between International Humanitarian Law and The UN Regulation on the Protection of UN Premises

As found, both the international humanitarian law and the UN regulations seek to protect UN premises during armed conflicts.

51 1994 Convention on the Safety of United Nations and Associated Personnel (1994 Convention), Art.6

52 UN General Assembly Res. 69/88 'Operations of the United Nations Relief and Works Agency for Palestine

Refugees in the Near East' (December 16, 2014) GAOR 69th Session Preambular Para. 27.

53 Bartholomeusz,(2014),op-cit,p.88

However, the point here is that in some cases, these two legal instruments are in conflict. One of the first possible contrasts between the two is the discussion about the accidental damage to civilian targets because the international humanitarian law does not prohibit the attack that may cause accidental damage to civilian targets and is simultaneous with direct military benefits. This issue has been discussed in Rule 14 of the Customary International Humanitarian Law provided by the ICRC⁵⁴ and the First Additional Protocol.⁵⁵ However, the UN's general approach suggests that targeting even places close to UN premises that may cause accidental damage could be declared an example of the violation of the UN law. For instance, with regard to the attack on the UN school in the Gaza Strip's Rafah neighborhood on August 3, 2014, an Israeli government spokesman then claimed that Tel Aviv intended to attack militants on a motorcycle near the school gate. In view of definite and direct military advantaged, it is likely that the damage to the lives of civilians in such circumstances is not prohibited under international humanitarian law, provided that other rules related to the actions of the parties to the conflict are observed. However, the Rafah attack caused widespread outrageous reactions from the United Nations itself and other international organizations, with all insisting on the UN regulations.

The second possible conflict between the international humanitarian law and that of the United Nations emerges when we see that according to the humanitarian law, using some places to influence military operations can imply that they are no longer civilian spots and lose their immunity.⁵⁶ Storing weapons at a UN premise can imply having an effective impact on military operations. While, under the UN law, such premises are still protected by the inviolability instrument, even if some weapons are hidden there.

54 Henckaerts and Doswald-Beck, op-cit, p.46

55 Additional Protocol 1 (1977) of Geneva Conventions Arts. 51 (5) (b) and 57 (2) (a) (iii)

56 Ibid, Art. 52 (2)

Another example of the conflict between the aforementioned instruments can be found in the case of relief supplies. According to Article 70, Paragraph 3, of the First Additional Protocol, "the parties to the conflict and each of the major contracting states, which authorize the transit of goods, equipment and ammunition, shall have the right to carry out the technical planning of the passage including a search that endorses the passage."⁵⁷ However, the right of the parties involved in the conflict to search does not apply to United Nations relief supplies, because this is the violation of the immunity of UN property from inspection under Article 2, Section 3 of the 1946 Convention on the Privileges and Immunities of United Nations, hence; the UN is allowed to freely move its relief supplies.

Another example of this contrast is Article 71, Paragraph 1, of the Additional Protocol, which states: "In emergency cases, the staff shall form part of relief efforts, in particular in the transportation and distribution of relief supplies. The participation of these staff is contingent upon the agreement of the party that they will perform in their area of jurisdiction." Nevertheless, in the United Nations law, the right of one party of the conflict to approve the participation of relief personnel is not applicable regarding the United Nations staff, and this is inconsistent with the right granted to the Secretary-General under Article 100 of the Charter, according to which he can dispatch his staff to any place where he wishes them to be deployed, and also it is in sheer contrast with the obligation of states as regards issuing rapid travel facilities to the UN's "laser passer" holders under Article 7 of Section 25 of the 1946 Convention on the Privileges and Immunities of the United Nations.

Article 103 of the UN Charter states: "In the event of a conflict between the obligation of the members of the United Nations under the present charter and their obligation under other international agreements, their obligations under the present charter shall prevail." Therefore, the inviolability of the United Nations' premises under

57 Ibid

Article 2, Section 3 of the 1946 Convention, which no state has placed any condition regarding it and issued no declaration thereon⁵⁸, is a pledge under the UN Charter, since the text of the 1946 Convention has been ratified in accordance with the provisions of Paragraph 3 of Article 105.

Accordingly, under Article 103 of the Charter, in the event of a conflict between the international humanitarian law and the obligation of states, on the one hand, and the obligation of states under the UN Charter, on the other, the priority should be given to the one under the UN Law. Thus, the privileges and immunities granted to UN premises under the Charter and the 1946 Convention cannot be suspended or abolished under military pretexts.

II. Conclusion

Considering an ever-increasing role of the United Nations in international affairs, particularly during armed conflicts, its premises are at greater risk today, especially the violation of their immunity by different factors. In fact, the immunity from its outset was rooted in the UN itself and it got prominence during the negotiations on the Ratification of the United Nations Charter. The customary international law, of course, specifies the nature of the immunity to the United Nations, its staff, and premises, but numerous attacks on UN buildings, particularly in 2009 and 2014, created a doubt that probably the existing rules do not have the necessary legal strength to confront such violation. Nevertheless, the author believes that the international legal instruments, including that of the United Nations, are of necessary strength. In other words, the public acceptance of the issue of the immunity to the UN, its property and assets as such confirms this very claim; because the ratification of the UN Convention on the Privileges and Immunities by more than 160 members indicate the universality and general legitimacy of this convention. Only some thirty states failed to ratify the convention but gave a green light to the continuation of UN

58 Bartholomeusz,(2014),op-cit,p.93

activities in their territories. On the other hand, the international humanitarian law also establishes certain customary rules in order to differentiate military from those of civilians and to support relief supplies which are yet strength to the immunity of the United Nations premises. Although the condemnation of violation of such immunity during the Gaza wars by various institutions affiliated to the United Nations on the one hand and member states on the other, there's no conflict with international legal responsibility of the parties involved in the attacks. It seems that a judicial procedure defining the issue will increase not only its richness but the issue of immunity of UN premises will be more acceptable from the general perspective of the international community. In so far as, in the case of diplomatic spots, these very judicial procedures have uprooted everyone's doubts regarding the immunity of diplomatic places and even in the domestic criminal instruments of many countries, some allusions have been made to the issue of the security of diplomatic places. The International Criminal Court, in particular, with its fairly complete statute, can play a significant role in establishing this judicial procedure, because this court is declaring the attacks on United Nations premises and equipment a war crime and in doing so have addressed various aspects of the attack on these premises. Of course, if such a case takes place, the limitations of the judicial authority of the court do not impede the inspections of this international judicial institution.

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