

Statement by Dr. M. Gandhi, Counsellor, in the Ad Hoc Working Group Meeting on the Scope of Legal Protection under the United Nations Convention for the Safety of United Nations and Associated Personnel on March 24, 2003.

Mr. Chairman,

India attaches highest importance to scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel. The Convention is very young and has 63 parties. Some of the provisions of the Convention are still ambiguous. One such provision, which has been in doubt, according to the Secretary General's Report A/55/637, is the scope and application of the provision of the Convention dealing with the humanitarian non-governmental organizations and locally recruited personnel. Another provision that has been the source of difficulties is the provision concerning declaration by the Security Council and General Assembly, for the purpose of the Convention, when there exists an exceptional risk to the safety of the personnel participating in the operation.

Mr. Chairman,

The Secretary General's report suggested "the inadequacy of conditioning the applicability of the Convention to the United Nations non-peace keeping operations on a "declaration" of an exceptionally risky situation. However, the report does not delve into the constraints of the Secretary General in making a request to the General Assembly or to the Security Council to declare the existence of exceptional risk. In view of the fact that the provisions of the convention have not been fully tested in practice, the inadequacies indicated seem to be based on assumptions rather than facts and figures.

Mr. Chairman

We believe that the General Assembly and the Security Council being political bodies are in a better position to make a declaration of exceptional risk than the Secretary General. It is well known that the Article 1(b)(iii) of the Convention was the result of a compromise and any attempt to remove the contractual link condition would upset the delicate balance achieved in the Convention and may work as a disincentive to States who have been in the process of considering to become parties to the Convention.

We believe that the Convention has been adopted only recently and the provision concerning declaration of exceptional risk has not been fully tested in practice. We also believe that the Convention when fully put into effect could settle many doubtful provisions including the scope of application of the Convention on Humanitarian Non-Governmental Organization and locally recruited personnel.

In our view, finding reasons for the slow ratification of the Convention and removal of ambiguities surrounding the provisions of the Convention by a settled practice are necessary steps which constitute measures to enhance the existing regime of legal protection.

The recent General Assembly resolution on this item recommends the inclusion of the key provisions of the Convention in the SOMAs and SOFAs. It also recommends the Secretary General to advise the Security Council and the General Assembly where in his assessment circumstances would support declaration of exceptional risk. The resolution also requested the SG to prepare a model or standardized provision for incorporation into the agreements concluded between the United Nations and humanitarian NGOs. These are all indications that we are in the process of finding ways and means for the implementation effective regime of legal protection. We believe that these short-term measures are steps in the right direction.

Mr. Chairman,

On the New Zealand proposal we have a few preliminary comments to offer. The New Zealand proposal is claimed to be aiming at

providing an “adequate legal regime” concerning the protection of United Nations and Associated personnel. The proposal (the draft protocol) attempts to replace article 1 (c) of the Convention, which defines “United Nations Operations”. Although apparently the draft protocol looks like suggesting a small amendment by deleting an undesirable portion of a text, on a closer look one may not fail to understand the thrust of the proposal - to change the entire legal landscape of 1994 convention. My delegation is open minded and willing to weigh the reason behind the proposal. But my delegation doubts very much that the Ad Hoc Committee has a mandate to create entirely a new legal regime. The recent General Assembly resolution, which authorizes the establishment of this Ad hoc Committee, says that the Committee “shall continue the discussion on measures to enhance the *existing protective* legal regime” that means the regime created under the 1994 Convention. The mandate, in our view, is unambiguous. The mandate is not to modify or vary the existing legal regime it is only to enhance the existing protective legal regime.

Thank you Mr. Chairman

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