



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**41st Annual Seminar for Diplomats on
International Humanitarian Law
jointly organized by the International Committee of the Red Cross and
New York University School of Law**

Statement

by

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Under-Secretary-General for Legal Affairs and
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20 March 2024, 10:00 am (New York time)

Arthur T. Vanderbilt Hall

Professor Meron,

Ms. Spoljaric,

Ladies and Gentlemen,

I would like to thank the NYU Law School and the ICRC for again inviting the Office of Legal Affairs to this event. As just highlighted by Ms. Spoljaric, this is the 75th anniversary of the Geneva Conventions. Unfortunately, we are reminded every day, these days, of the importance of international humanitarian law in general, and of the four Geneva Conventions in particular. It is crucial that we add our voices to the calls for full implementation of these instruments and of the



philosophy at their core. Events such as this annual seminar significantly contribute to the call for the respect for international humanitarian law.

Lately, and especially in the last couple of years, the debates on matters concerning both international humanitarian law and the prohibition on the use of force have been numerous and lively, to say the least. It is generally not for the Office in which I have the privilege to serve to offer academic views on such matters. Our role is to advise the Secretary-General and our colleagues – and to do so mostly in a confidential manner.

Nevertheless, the multiplication of conflicts in places where the United Nations is present and operates has given rise to a number of questions – that happen in real time – related to the intersections between the legal framework that is specifically applicable to the United Nations and the law of armed conflict itself.

Our specific legal framework was designed to make sure that the United Nations may independently perform its functions all over the world without hindrance, in times of war and peace.

The Charter itself enshrines the privileges and immunities of the Organization. Pursuant to Article 105, paragraph 1, of the Charter, the United Nations “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. To implement these privileges and immunities, the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946 (known as “the General Convention”).

Article II, Section 3 of the General Convention provides that the “premises of the United Nations shall be inviolable”; also, that the “property and assets of the





United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action”. This provision is reproduced or incorporated in all of the Organization’s negotiated status-of-forces and status-of-mission agreements and it is generally included in host country agreements with Member States.

The question has arisen as to the precise scope of inviolability of United Nations premises in times of armed conflict. According to some, international humanitarian law may, at times, prevail over the inviolability of our premises. Is this true as a matter of law? Are there any limitations or qualifications to the inviolability of United Nations premises in situations where, under international humanitarian law, the premises would lose their status as civilian objects? Or in situations where, under international humanitarian law, collateral damage to them would be lawful? In sum, does international humanitarian law ever displace inviolability?

I would like to seize this opportunity to provide you with some answers to these questions. Or at least, I can offer you some further questions that may better illuminate the basic principles. But let me start with a spoiler alert – as we shall both start and end with one basic principle: inviolability of UN premises applies both in war and in peace.

Inviolability has generally been interpreted as meaning that State agents may not enter or otherwise physically penetrate or physically interfere with the premises concerned without the prior consent of the United Nations. It also entails a duty on the part of the host State to take all appropriate measures to prevent non State actors from entering the premises or otherwise physically penetrating them,





damage them, or interfere with them. Acts of sovereign authority may not be performed at or on them. Thus, United Nations premises cannot, without prior authorization, be lawfully entered by domestic law enforcement officials.

Crucially for our purposes, inviolability also means that the premises must not be targeted, hit or damaged by any State authorities, including a State's armed forces.

There are no stated qualifications to, or limitations on, the inviolability of premises in the Convention on the Privileges and Immunities of the United Nations. There is no reference there to situations of armed conflict, civil unrest or other emergency situations as constituting possible limitations on such inviolability.

The inviolability of United Nations premises is similar in nature to the inviolability of the diplomatic premises of States, despite the different purposes of the two relevant rules. However, the inviolability of United Nations premises differs from that accorded to diplomatic premises of States, in the sense that it is not subject to reciprocity.

Because of this similarity, it is helpful to consider State practice in relation to diplomatic premises.

Pursuant to Article 22 of the Vienna Convention on Diplomatic Relations (1961), the premises of a diplomatic mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission. In addition, the premises of diplomatic missions, including their furnishings and other property you may find there, shall be immune from search, requisition, attachment or execution.

Article 45 of the Vienna Convention on Diplomatic Relations explicitly refers to situations of armed conflict. It states that diplomatic premises must still be





respected and protected, even in case of armed conflict, whenever diplomatic relations are severed, or when the diplomatic mission is otherwise temporarily or permanently withdrawn.

The clear implication is that the Vienna Convention on Diplomatic Relations is applicable even in situations of armed conflict between a sending State and a receiving State.

State practice clearly shows that the inviolability of diplomatic premises is an absolute rule that equally applies in times of peace and in times of armed conflict, whether non-international or international. Furthermore, the Security Council as well as individual States in the Security Council have on multiple occasions reiterated that rule.

From that practice, it appears that the principle of the inviolability of premises continues to apply during times of armed conflict, including in all the following configurations:

- In a non-international armed conflict in the receiving State to which the sending State is not a party.
- In a non-international armed conflict in the receiving State to which the sending State is a party.
- In an international armed conflict to which the receiving State is party, but the sending State is not.
- And in an international armed conflict to which both the receiving and the sending State are parties on opposing sides.

But let me move on to the situation of United Nations premises.





Over the years, the Office of Legal Affairs has consistently maintained that the inviolability of United Nations premises applies in times of armed conflict, and that such inviolability is absolute and mandatory. There are no exceptions, qualifications, or limitations as to the inviolability of premises and no demands of military expediency or security may justify their breach. No elements of practice or *opinio juris* support the idea that the inviolability of the United Nations ceases in times of armed conflict.

A review of the practice of the General Assembly and the Security Council also seems to indicate that they also share the view that inviolability applies also when international humanitarian law applies, that is, in times of armed conflict.

For example, in its annual resolution on the Safety and security of humanitarian personnel and protection of United Nations personnel, the General Assembly strongly urges all States to respect and ensure respect for the inviolability of United Nations premises, which are seen as essential to the continuation and successful implementation of United Nations operations, and calls upon States to comply fully with their obligations under international humanitarian law.

The importance of inviolability of United Nations premises in situations in which force is being used against United Nations and associated personnel has also been affirmed by the Security Council. In a Presidential Statement dated 12 March 1997, the Security Council expressed its grave concern at attacks on and violations of United Nations premises, and it reiterated its condemnation of such acts. The Council reaffirmed the importance of ensuring the safety and security of United Nations and associated personnel as well as the inviolability of United Nations premises which are essential to the continuation and successful implementation of United Nations operations.





I should also add that, more generally, the question of the continued applicability of United Nations privileges and immunities in times of armed conflict appears settled by general principles on the effects of armed conflicts on treaties. In its 2011 Draft Articles on the Effect of Armed Conflicts on Treaties, the International Law Commission took the view that, just like treaties relating to diplomatic and consular relations, those which are constituent instruments of international organizations are among the treaties, and I quote, “the subject-matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict” unquote. This would further confirm that our privileges and immunities enshrined in Article 105 of the Charter operate also in times of armed conflict, as do the provisions of the General Convention that give effect to Article 105.

Allow me to now use examples from some tragic events that have significantly impacted the premises and personnel of the United Nations in recent armed conflicts.

During the conflict in Gaza between 27 December 2008 and 19 January 2009, a number of United Nations premises and assets were affected. This prompted the Secretary-General to establish a United Nations Headquarters Board of Inquiry to review and investigate nine specific incidents. The summary of the report was transmitted to the Security Council on 4 May 2009, and it is a public document. It expressly stated, in relation to seven of the nine incidents, that a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization had occurred, highlighting that, and I quote, “such inviolability and immunity cannot be overridden by demands of military expediency” unquote.





Second, following the conflict in Gaza between 8 July 2014 and 26 August 2014, in which a number of premises of UNRWA were again damaged or destroyed, a United Nations Headquarters Board of Inquiry was established once more. The findings and conclusions of the Board did not characterize any of the incidents as a breach of the inviolability of the United Nations premises but the Secretary-General, in his letter transmitting the summary of the report to the President of the Security Council, stated that, allow me to quote again, “United Nations premises are inviolable and should be places of safety, in particular in a situation of armed conflict” unquote.

The position that has consistently been adopted by the United Nations Secretariat, including my office, was buttressed by the General Assembly, which, in relation to both the 2008-2009 and the 2014 hostilities in Gaza, deplored the breaches of the inviolability of United Nations premises and called upon Israel to abide by the relevant provisions of the Charter and of the General Convention. In 2009, the Assembly further urged Israel to speedily compensate UNRWA for damage and destruction to its property and facilities. In 2014, it called for a full and transparent investigation into all of the incidents affecting UNRWA’s facilities, with a view to ensuring accountability for all violations of international law.

More recently, in a resolution dated 11 December 2023 regarding the operations of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the General Assembly reiterated its call to respect and ensure respect for the inviolability of United Nations premises and explicitly stressed the need to maintain the neutrality and safeguard the inviolability of United Nations premises, installations, and equipment at all times.





On this occasion, the General Assembly also deplored the breaches of the inviolability of United Nations premises, the failure to accord the property and assets of the Organization immunity from any form of interference, incursions or misuse, the failure to protect United Nations personnel, premises and property and any disruption caused to Agency operations by such violations.

But what is the position from the point of view of international humanitarian law? United Nations premises are typically civilian objects and, as such, enjoy protected status in times of armed conflict. This protected status as civilian objects may, however, be lost under certain circumstances. However, even when losing protection within the framework of international humanitarian law, United Nations premises would still remain protected under the relevant provisions on inviolability enshrined in the Charter and in the Convention on Privileges and Immunities. We could only reach a different conclusion if it were established that the latter provisions, in so far as they provide for the inviolability of the Organization's premises, are displaced or suspended by the mere fact that an armed conflict has triggered the application of international humanitarian law. However, no practice supporting, or even suggesting, any such displacement or suspension has been identified.

Some pronouncements by the International Court of Justice are also relevant here. In 1996, the ICJ considered, in its advisory opinion on the Legality of the Threat or Use of nuclear weapons, whether certain obligations arising from human rights treaties and environmental treaties would apply in times of armed conflict. In relation to international human rights law, the Court noted that the protection of the International Covenant on Civil and Political Rights did not cease in times of war, except by operation of Article 4 of the Covenant that explicitly says that certain





provisions of the Covenant may be derogated from in a time of national emergency; also, international humanitarian law, as the applicable *lex specialis*, would govern certain aspects of the application of international human rights law – for example, the determination of what is an arbitrary deprivation of life.

There are no provisions in the Charter or the Convention on Privileges and Immunities that are similar to Article 4 of the International Covenant on Civil and Political Rights or that otherwise suggest that the privileges and immunities of the United Nations, including inviolability of its premises, can be derogated from in times of armed conflict. In fact, as I said earlier, the International Law Commission took the view that constituent instruments of international organizations, just like treaties relating to diplomatic and consular relations, in principle continue to apply during an armed conflict.

While international humanitarian law generally operates as *lex specialis* in relation to the conduct of hostilities, the Charter and the Convention on the Privileges and Immunities of the United Nations regulate one special category of civilian objects, United Nations premises, in a different manner than all other civilian objects. In this sense, the *lex specialis* applicable in these circumstances is in fact the very specific framework of privileges and immunities of the United Nations, which could be seen as separating United Nations premises from the more general rules that would otherwise apply in armed conflict.

This interpretation is supported by the fact that, pursuant to Article 103 of the Charter, and I quote “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail” unquote. Article 105 on the privileges and immunities of the United





Nations is clearly among the obligations of the Charter referred to in Article 103, and so are the details of the application thereof enshrined in the General Convention.

An attack hitting and damaging United Nations premises would thus be a breach of the Charter and the General Convention even if it complied with applicable rules of international humanitarian law, unless there are any circumstances that would otherwise preclude the wrongfulness of such an act under the law of international responsibility.

So, as promised, I have ended where I started: inviolability of United Nations premises applies both at war and at peace. There is no exception to this absolute rule. Clearly, the rule applies as part of a system of international law obligations. There may be some especially difficult issues that arise when we apply this rule in practice. For example, we can ask ourselves whether there are any circumstances under which United Nations premises would no longer be legally considered as such or what happens when United Nations premises are no longer used as such for a very long period of time. Might they eventually lose their protection under the Charter and the General Convention? There is very scant and contradictory State practice in regard to similar situations concerning diplomatic premises, and we simply cannot reach any definite conclusion. However, it is clear that premises of the United Nations that are only temporarily vacated for reasons of security continue to enjoy inviolability even while not in use, so long as there is an intention to return.

Even more difficult cases may be conceived, but, and I should perhaps say: fortunately, there is no time to address them today.





My aim today was to give you a glimpse of some of the complex interplay between international humanitarian law and other areas of the law that specifically affect the United Nations. Hopefully, this will have inspired you to consider these issues even further, especially as they are, unfortunately, more relevant by the day.

Allow me to conclude by wishing you all some intense and fruitful debates over the next two days.

Thank you.

