



RESEARCH PAPER 09/28  
20 MARCH 2009

# ***Geneva Conventions and United Nations Personnel (Protocols) Bill [HL]***

**Bill 69 of 2008-09**

This short Bill is intended to amend two UK Acts to enable the Government to ratify two international agreements protecting military medical personnel and humanitarian workers: the Third Additional Protocol to the Geneva Conventions and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

In line with the protocols, the Bill would firstly sanction and protect the 'red crystal' as a new symbol to protect humanitarian personnel in armed conflict instead of (or in addition to) the existing red cross or red crescent; and secondly extend the definition of protected UN workers to include those delivering humanitarian, political or development assistance in peacebuilding operations and those delivering emergency humanitarian protection.

The Bill received cross-party support and minimal debate in the House of Lords. It is due to be debated on second reading in the House of Commons on 1 April 2009.

Arabella Thorp

INTERNATIONAL AFFAIRS AND DEFENCE SECTION

HOUSE OF COMMONS LIBRARY

## Recent Library Research Papers include:

List of 15 most recent RPs

<b>09/13</b>	Unemployment by Constituency, January 2009	11.02.09
<b>09/14</b>	Apprenticeships, Skills, Children and Learning Bill: apprenticeship & training provisions [Bill 55 of 2008-09]	18.02.09
<b>09/15</b>	Apprenticeships, Skills, Children and Learning Bill: provisions for children, education and learners [Bill 55 of 2008-09]	18.02.09
<b>09/16</b>	Saving Gateway Accounts Bill: Committee Stage Report	24.02.09
<b>09/17</b>	Autism Bill [Bill 10 of 2008-09]	25.02.09
<b>09/18</b>	Northern Ireland Bill [Bill 62 of 2008-09]	02.03.09
<b>09/19</b>	Small Business Rate Relief (Automatic Payment) Bill [Bill 13 of 2008-09]	03.03.09
<b>09/20</b>	Economic Indicators, March 2009	04.03.09
<b>09/21</b>	Statutory Redundancy Pay (Amendment) Bill [Bill 12 of 2008-09]	11.03.09
<b>09/22</b>	Industry and Exports (Financial Support) Bill [Bill 70 of 2008-09]	12.03.09
<b>09/23</b>	Welfare Reform Bill: Committee Stage Report	13.03.09
<b>09/24</b>	Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill [Bill 29 of 2008-09]	17.03.09
<b>09/25</b>	Fuel Poverty Bill [Bill 11 of 2008-09]	17.03.09
<b>09/26</b>	Unemployment by Constituency, February 2009	18.03.09
<b>09/27</b>	Coroners and Justice Bill: Committee Stage Report	19.03.09

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site, URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet, URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our papers; these should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to [PAPERS@parliament.uk](mailto:PAPERS@parliament.uk)

## Summary of main points

The *Geneva Conventions and United Nations Personnel (Protocols) Bill* [HL] is intended to amend two existing pieces of UK legislation in preparation for the Government's ratification of two international agreements: the Third Additional Protocol to the Geneva Conventions and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel. The protocols provide extra protection for military medical personnel and humanitarian workers, following warnings from both the UN and the International Committee of the Red Cross that humanitarian operations in many parts of the world face unacceptable security risks from the changed nature of armed conflict and especially from the proliferation of undisciplined armed groups. The Bill is short and uncontroversial. It received cross-party support in the House of Lords in the debate on second reading there on 27 January 2009, and as no amendments were tabled it received no further debate, simply being passed on third reading on 2 March 2009.

The 2005 Third Additional Protocol to the Geneva Conventions provides for a new distinctive emblem, known as the 'red crystal', in addition to the long-standing emblems of the red cross and the red crescent:



These distinctive emblems serve two main purposes. During time of armed conflict they are designed to offer protection to medical establishments or medical transports and to medical and religious personnel, and therefore must be known to all. They also indicate, whether in peacetime or during armed conflict, property or personnel belonging to a national Red Cross or Red Crescent Society or to the International Committee of the Red Cross (ICRC). The adoption of a new distinctive emblem in the Third Protocol aims to solve the problems caused by the previous recognition of only the red cross and the red crescent, both of which are sometimes thought to have religious, cultural or political significance. It was part of a package agreed by the Red Cross Movement which allowed the Israeli, Palestinian and Eritrean National Societies to join the Movement.

Clause 1 of the Bill would sanction the red crystal in UK law as a new symbol to protect humanitarian personnel in armed conflict instead of (or in addition to) the red cross or red crescent. It would extend the existing criminal offences in the *Geneva Conventions Act 1957* of misuse of the red cross and red crescent to cover the new red crystal emblem.

The 1994 UN Convention on the Safety of United Nations and Associated Personnel requires member states to prevent and punish, through domestic criminal law, attacks on UN personnel and others associated with UN operations or extradite people suspected of such attacks. However, its scope is relatively narrow, leaving many UN workers without this protection. This criticism led the UN in 2005 to adopt an Optional Protocol to the Convention which extends its scope to two new categories: operations for delivering humanitarian, political or development assistance in peacebuilding, and operations for delivering emergency humanitarian assistance.

Clause 2 would extend the *United Nations Personnel Act 1997* (which implemented the 1994 Convention in the UK) to protect UN workers in the two new categories. It would ensure that offences under the 1997 Act will apply to UN workers engaged in such operations.



# CONTENTS

<b>I</b>	<b>Introduction</b>	<b>7</b>
<b>II</b>	<b>The red crystal</b>	<b>9</b>
	<b>A. History of the red cross and red crescent emblems</b>	<b>9</b>
	<b>B. Use of the symbols</b>	<b>11</b>
	<b>C. Legal protection of the emblems</b>	<b>12</b>
	<b>D. Problems with the emblems</b>	<b>14</b>
	<b>1. Religious objections</b>	<b>14</b>
	<b>2. Proliferation of emblems</b>	<b>15</b>
	<b>3. Loss of protective value of the emblems</b>	<b>16</b>
	<b>E. Development of a new emblem</b>	<b>17</b>
	<b>F. Progress towards a Third Additional Protocol to the Geneva Conventions</b>	<b>17</b>
	<b>G. Adoption of the Third Additional Protocol</b>	<b>19</b>
	<b>H. The new red crystal symbol</b>	<b>20</b>
	<b>I. Clause 1 of the Bill and the Schedule</b>	<b>21</b>
<b>III</b>	<b>Protection of UN and associated personnel</b>	<b>22</b>
	<b>A. The 1994 UN Convention on the Safety of United Nations and Associated Personnel</b>	<b>22</b>
	<b>B. Problems with the scope of the Convention</b>	<b>22</b>
	<b>C. The Optional Protocol</b>	<b>24</b>
	<b>D. Clause 2 of the Bill</b>	<b>26</b>



# I Introduction

The *Geneva Conventions and United Nations Personnel (Protocols) Bill* passed through the House of Lords with cross-party support and minimal debate. It was introduced there as HL Bill 12 of 2008-09 on 17 December 2008. The second reading debate in the Lords on 27 January 2009<sup>1</sup> lasted under an hour and showed the uncontroversial nature of the Bill. The Conservative Spokesperson for Foreign and Commonwealth Affairs, Lord Howell of Guildford, offered his party's support:

That completes my questions on a Bill that all reasonable people will welcome. We remain supportive of this endeavour and of the people who have shaped it. It has been created and established after many delays and debates, and we hope that it will bring more humanity to a dark and violent world.<sup>2</sup>

Baroness Northover, speaking for the Liberal Democrats, said:

We on these Benches also support the Bill. As humanitarian action has become more organised and more international, so too must the protection of those involved.<sup>3</sup>

Because no amendments were subsequently tabled and no peers wished to speak, the Bill received no debate in Committee<sup>4</sup> or on third reading in the Lords.<sup>5</sup> It was thus passed to the Commons in its original state on 2 March 2009, and on the same day it was introduced in the House of Commons as Bill 69 of 2008-09.

It is a very short Bill, with only three clauses and one schedule. Its purpose is to extend existing UK laws to comply with the Third Additional Protocol to the Geneva Conventions and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, which the Government wishes to ratify. The protocols seek to provide extra protection for military medical personnel and humanitarian workers, the former by introducing a new emblem of a 'red crystal' alongside the existing humanitarian emblems of the red cross and red crescent,<sup>6</sup> and the latter by extending legal protection to UN and associated personnel engaged in a wider range of activities than hitherto.

---

<sup>1</sup> HL Deb 27 January 2009 cc188-198

<sup>2</sup> HL Deb 27 January 2009 c192

<sup>3</sup> HL Deb 27 January 2009 c192

<sup>4</sup> HL Deb 23 February 2009 c11

<sup>5</sup> HL Deb 2 March 2009 c508

<sup>6</sup> In this Research Paper, "red cross" is printed in lower case when it refers to the emblem and with upper case initial letters when it refers to the organisation, as recommended in Jean S. Pictet (ed) *The Geneva Conventions of 12 August 1949: Commentary*, Vol. I, 'Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva', ICRC, 1952, p297. The same rule has been applied to the terms "red crescent", "red lion and sun" and "red shield of David". Quotations have however been left intact.

The UK has been a strong supporter of both protocols,<sup>7</sup> and has signed and intends to ratify them, but in line with its general policy the Government is seeking to amend the UK's domestic law to comply with its obligations under the protocols before binding itself by ratification. The procedure and rationale by which international treaties, conventions and protocols are scrutinised by the UK Parliament are considered in a House of Commons Library Standard Note.<sup>8</sup>

The Bill extends to the whole of the UK, but as far as Scotland is concerned it covers only reserved matters and no Legislative Consent Motion will be required in the Scottish Parliament. There is a power to extend the provisions of the Bill to the Channel Islands, the Isle of Man and British Overseas Territories (clause 3(3) and (4)). The various territories will be consulted about whether they wish the two Protocols to be applicable to them, and whether consequently they wish the legislation to be extended.<sup>9</sup>

It would not come into force automatically but would instead require a commencement order from the Secretary of State (clause 3(1) and (2)). This is so that the Secretary of State can coordinate the entry into force of the legislation with the entry into force for the United Kingdom of each of the two Protocols.<sup>10</sup>

The Bill appeared in the government's May 2008 [Draft Legislative Programme](#) for 2008-09, but not in the [Queen's Speech](#) in December 2008. It is accompanied by the Government's brief [Explanatory Notes](#) and a more informative impact assessment.

---

<sup>7</sup> Foreign and Commonwealth Office, *Impact Assessment of Geneva Conventions and UN Personnel Bill*, 26 November 2008

<sup>8</sup> Standard Note SN/IA/4693, *Parliamentary Scrutiny of Treaties*, 10 April 2008. See also HC Information Office Factsheet P14, *Treaties*, November 2006.

<sup>9</sup> [Memorandum](#) by the Foreign and Commonwealth Office to the House of Lords Delegated Powers and Regulatory Reform Committee, December 2008, reproduced as Appendix 1 to the Committee's 2<sup>nd</sup> report of 2008-09

<sup>10</sup> *Ibid*

## II The red crystal

### A. History of the red cross and red crescent emblems

The International Red Cross and Red Crescent Movement began with the establishment in 1863 of the committee that became the International Committee of the Red Cross (ICRC). The ICRC directs and coordinates the Movement's work. Alongside the ICRC is the International Federation of Red Cross and Red Crescent Societies (IFRC) which currently comprises 186 National Societies. The Movement is guided by seven fundamental principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

The founders of the Movement recognised very early on that it needed an effective and simple emblem:

The adoption of a single distinctive sign that would confer legal protection on army medical services, volunteer aid workers and victims of armed conflict was one of the main objectives of the five-member committee that met on 17 February 1863 to study Dunant's proposals. This committee was later to become the International Committee of the Red Cross (ICRC). The sign – or emblem as it was eventually called – had to be simple, identifiable from a distance, known to everyone and identical for friend and foe alike.<sup>11</sup>

Until that point the symbols used to identify armed forces' medical services had varied according to their country of origin, were not generally well known, were rarely respected and were not entitled to any form of legal protection.

The original proposal was that voluntary nurses in all countries should wear a white armlet on the left arm, but the red cross was soon added to that and to the single flag for the protection of military medical services. This proposal was accepted and enshrined in Article 7 of the Geneva Convention of 22 August 1864:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag. An armlet may also be worn by personnel enjoying neutrality but its issue shall be left to the military authorities. Both flag and armlet shall bear a red cross on a white ground.



The reasons for the choice of the red cross were not recorded. Various suggestions have been made about why the emblem should have been chosen. François Bugnion, who has written an authoritative history of the subject on which this paper draws substantially, avers that there is no evidence that it was intended to have Christian connotations:

---

<sup>11</sup> IFRCRCS/ICRC, [Emblems of humanity](#), June 2007

Since the dawn of time, the white flag had been recognized as a sign of the wish to negotiate or of surrender; firing on anyone displaying it in good faith was forbidden. With the addition of a red cross, the flag's message was taken a stage further, demanding respect for the wounded and for anyone coming to their aid. Furthermore, the resulting sign had the advantage of being easy to make and recognizable at a distance because of its contrasting colours.

As the emblem was intended as the visible expression of the neutral status enjoyed by the army medical services and the protection thus conferred on them, the sign adopted was formed by reversing the Swiss federal colours. Switzerland's permanent neutral status had been firmly established in practice over several centuries and had been confirmed by the Treaties of Vienna and Paris of 1815 that put an end to the Napoleonic wars.

There is nothing in the preparatory documents to suggest that the October 1863 Conference had the slightest intention of conferring any religious significance whatsoever on the distinctive sign for volunteer nurses and military medical services, nor that it was at all aware that any religious significance could be attached to the emblem, since the aim of the founders of the Red Cross was precisely to set up an institution which would transcend national borders and religious differences.<sup>12</sup>

The same author points out that the symbol of the cross long predated Christianity:

The sign of the cross has been seen in different civilizations from time immemorial. It is generally considered to be a symbol of the human being and his place in the world, the horizontal bar symbolizing arms extended towards the cardinal points (relationship to the world) and the vertical axis symbolizing the relationship with the divinity. The early Christians adopted a symbol which long predated Christianity and identified it with the instrument of Christ's passion. However, the cross as an instrument of torture was usually in the shape of a T; extending the vertical axis above the horizontal axis played no part in the killing of the victim.<sup>13</sup>

The 1906 revision of the Geneva Conventions emphasised that the protective emblem had no religious significance:

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the Federal colours, is continued as the emblem and distinctive sign of the sanitary service of armies.<sup>14</sup>

However, the Christian connotations of the red cross had already caused the Ottoman Empire – a signatory to the 1864 Geneva Convention – to claim that the red cross emblem “gave offence to Muslim soldiers”.<sup>15</sup> It had declared unilaterally in 1876 that it would instead use the red crescent on a white background:



---

<sup>12</sup> François Bugnion, [Red Cross, Red Crescent, Red Crystal](#), ICRC, 15 January 2007, p8

<sup>13</sup> Bugnion *op. cit.* fn15

<sup>14</sup> Geneva Convention of 6 July 1906, Art. 18

<sup>15</sup> ICRC, [History of the emblems](#), 14 March 2006, p4

The red crescent was accepted temporarily for the duration of the Russo-Turkish War of 1876 to 1878 and then permanently (as a limited derogation from the universal red cross symbol) following the 1929 revision of the Geneva Conventions.

Persia had also gained recognition for its symbol, the red lion and sun. However, in 1980 Iran declared that it was waiving its right to use the red lion and sun and would use the red crescent as its distinctive symbol. It reserved the right to return to the red lion and sun should new emblems be recognised.<sup>16</sup>

In 1986 the Movement adopted new Statutes which were intended to strengthen its unity by placing the red cross and the red crescent on an equal footing (the red lion and sun was not mentioned as it was no longer in use).<sup>17</sup>

Today, 151 National Societies use the red cross and 33 the red crescent (which may face either right or left).

A more detailed history is given in François Bugnion, [Red Cross, Red Crescent, Red Crystal](#), ICRC, 15 January 2007.

## B. Use of the symbols

The emblems serve two purposes. They may be used as either protective devices or indicative devices, and their use depends on the purpose and whether it is in a time of armed conflict or of peace:

### PROTECTIVE DEVICES

In armed conflicts, they are the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on relief workers and on medical personnel, facilities and means of transport. In such cases, the emblems should be as large as possible and should be displayed with no other information.

### INDICATIVE DEVICES

They show the link that a person or an object has with the Movement. In such cases, the emblems should bear additional information (e.g. the name or the initials of the National Society). The emblems must be of small dimensions and may not be placed on armlets or on the roofs of buildings, in order to avoid any confusion with the emblems used as protective devices.

### PROTECTIVE USE

#### WHO CAN USE THE EMBLEMS ?

In times of armed conflict

- medical services and religious personnel of the armed forces
- medical personnel and medical units and transports of National Societies when placed at the disposal of the medical services of the armed forces and subject to military laws and regulations

---

<sup>16</sup> ICRC, [History of the emblems](#), 14 March 2006

<sup>17</sup> Bugnion *op. cit.* pp27-28

- with the express authorization of the government and under its control: civilian hospitals, all civilian medical units and other voluntary relief societies and medical facilities, their staff and civilian medical means of transport assigned to the treatment and transport of the wounded, sick and shipwrecked

In times of peace

- medical services and religious personnel of the armed forces
- National Society medical facilities and means of transport that are to function as such in the event of armed conflict, with the authorities' consent

The ICRC and the International Federation may use the emblems at all times (in peacetime as well as in times of armed conflict) and without restriction.

#### INDICATIVE USE

#### WHO CAN USE THE EMBLEMS ?

In times of armed conflict

- the National Societies
- the International Federation
- the ICRC

In times of peace

- the bodies, persons and objects connected with one of the components of the Movement : the National Societies, the ICRC, the International Federation
- ambulances and first-aid stations exclusively assigned to providing free treatment to the wounded and sick, as an exceptional measure, in conformity with national legislation and with the express authorization of the National Society

In compliance with domestic legislation, National Societies may use one of these emblems, both on national and foreign territory.<sup>18</sup>

The ICRC has published a series of documents describing in more detail the meaning of the emblems and the conditions for their use. In addition, the ICRC's Advisory Service on International Humanitarian Law has prepared a comprehensive model law concerning the use and protection of the emblems as a guide for States in drafting their own domestic legislation.<sup>19</sup>

### **C. Legal protection of the emblems**

There are two different legal regimes governing the protection of the emblems:

---

<sup>18</sup> IFRCRCS/ICRC, [Emblems of humanity](#), June 2007

<sup>19</sup> See ICRC website, [National implementation of international humanitarian law: protection of the emblem](#) [undated; viewed 13 March 2009]

- the provisions of the Geneva Conventions and the Additional Protocols relating to the emblem as a device protecting medical services and to the emblem and name of National Societies; and
- the provisions of the Statutes of the Movement and of the Constitution of the Federation relating to the emblem, name and recognition of National Societies.

The recognised distinctive emblems enjoy equal status under the 1949 Geneva Conventions, which are international treaties to protect the wounded and sick in armed forces in the field; wounded, sick and shipwrecked members of armed forces at sea; prisoners of war; and civilians who find themselves under the rule of a foreign power in the event of international conflict:<sup>20</sup>

In order to ensure universal respect for and protection of the emblems, each State party to the 1949 Geneva Conventions has the obligation to enact national legislation with the aim of regulating the use of the emblems and preventing and punishing their unauthorized use both in times of armed conflict and in peacetime. The prevention and repression of misuse of the emblems cannot be accomplished solely by the adoption of regulatory or penal measures. National authorities must also undertake to inform the public, businesses and the medical community of the proper use of the emblems.<sup>21</sup>

#### IMITATION

The use of a sign which, owing to its shape and/or colour, may be confused with one of the emblems.

#### IMPROPER USE

Any use of a distinctive emblem inconsistent with the relevant rules of international humanitarian law. The use of an emblem by unauthorized people or bodies (commercial enterprises, pharmacists, private doctors, NGOs, ordinary individuals, etc.) or for purposes that are inconsistent with the Movement's Fundamental Principles.

#### PERFIDY

The use of the distinctive emblem during an armed conflict in order to protect combatants and military equipment and with intent to mislead the adversary. Perfidious use of the emblem, when causing death or serious personal injury, is considered a war crime.<sup>22</sup>

The 1986 Statutes of the Movement provide for recognition of a society that uses "the name and emblem of the Red Cross or Red Crescent in conformity with the Geneva Conventions".<sup>23</sup> The Federation's new Constitution, adopted in October 1999, recognises only two emblems and two names for the purposes of the admission of National Societies: the red cross and the red crescent.

---

<sup>20</sup> Article 38 of the 1949 First Geneva Convention repeats almost word-for-word Article 19 of the 1929 Convention.

<sup>21</sup> IFRC/ICRC, [Emblems of humanity](#), June 2007

<sup>22</sup> IFRC/ICRC, [Emblems of humanity](#), June 2007

<sup>23</sup> Article 4

## D. Problems with the emblems

The IFRCRCS/ICRC notes the problems that emerged with the red cross and red crescent symbols:

The red cross and red crescent emblems are entitled to full respect under international law. However, they are sometimes perceived as having cultural, religious or political connotations, and this jeopardizes the protection they confer on victims of armed conflicts, medical services of the armed forces and humanitarian personnel.

Moreover, until recently, National Societies that did not wish to use either the red cross or the red crescent could not be recognized as full members of the Movement. This made it impossible for the Movement to achieve universality – one of its Fundamental Principles – and raised the prospect that different emblems would continue to proliferate.<sup>24</sup>

François Bugnion notes the almost continuous debate this prompted:

In successive conflicts and over the years, millions of victims of war or natural calamities – the wounded, the shipwrecked, prisoners, refugees and disaster-stricken populations – have seen the red cross and red crescent emblems as symbols of protection against the violence of warfare or the arbitrary behaviour of the enemy, the promise of a helping hand in the midst of general distress and hope for renewed solidarity.

Yet since their adoption these symbols, which serve both as protective emblems for military and civilian medical services in wartime and as distinctive signs for the National Red Cross and Red Crescent Societies, have been a source of recurrent difficulties and the subject of almost continual discussion. The latter has generally been guided by a true spirit of tolerance and by the determination to find solutions, but has also been fraught with legitimate frustrations and occasionally dominated by emotional reactions and incomprehension.<sup>25</sup>

### 1. Religious objections

The juxtaposition of two emblems – the red cross and the red crescent – endowed the original emblem with a religious connotation that it did not necessarily have at the outset. It also gave the impression of bias in favour of Christian and Muslim countries to the detriment of other faiths.<sup>26</sup>

This was a source of difficulty for countries where different religious communities were cohabiting, in which the National Society would inevitably be identified with the section of society associated with its emblem. It also undermined the universality of the Movement, as many countries felt unable to identify with either of the emblems and demanded that further emblems be recognised.<sup>27</sup>

---

<sup>24</sup> IFRCRCS/ICRC, [Emblems of humanity](#), June 2007

<sup>25</sup> Bugnion *op. cit.* pp1-2

<sup>26</sup> Bugnion *op. cit.* p27

<sup>27</sup> Bugnion *op. cit.* p28

One of the main objectors was Israel. Israel's emergency relief service and Red Cross equivalent, Magen David Adom (MDA, 'Red Shield of David'), was excluded from full membership of the International Federation of the Red Cross and Red Movement as it uses the red shield of David (a six-pointed star or hexagram made up of two superimposed triangles, one pointing up, the other down) as its symbol.

## 2. Proliferation of emblems

Religious objections led directly to the second problem: a proliferation of emblems. Although the red cross was intended to be universal, Turkey's early rejection of it in favour of the red crescent and Persia's use of the red lion and sun were soon accepted as *faits accomplis*. Siam had also asked for its red flame to be recognised but later withdrew its request.<sup>28</sup>

In 1929 the revised Geneva Convention retained the red cross but allowed a derogation for Turkey, Persia and Egypt, the three countries that had asked for recognition of the emblems actually in use by their armed forces medical services.<sup>29</sup> This amounted to formal recognition that the red cross was no longer a universal symbol.

It was not long before other countries sought recognition of their own symbols. In 1931 the ICRC was informed of the establishment in Palestine of a relief society that was using the red shield of David as its emblem, and in 1935 the Afghan government requested recognition of the Red Archway Society (Mehrab-e-Ahmar) with the symbol of a red mosque on a white background.<sup>30</sup> Israel asked for recognition of the red shield of David in 1949 and again in the 1970s, but the first time it was rejected after a vote and the second time Israel withdrew its request in the face of clear opposition. Having failed to win its case in 1949, the Israel signed the 1949 Geneva Conventions subject to the following reservation:

while respecting the inviolability of the distinctive signs and emblems of the Convention, Israel will use the Red Shield of David as the emblem and distinctive sign of the medical services of her armed forces.<sup>31</sup>

Other states and other National Societies have also asked for recognition of new symbols.<sup>32</sup> In 1977, the Indian Red Cross Society consulted the ICRC about using a red swastika (a symbol long familiar in India) on a white ground; and soon after independence the Zimbabwean government proposed that the Zimbabwe Red Cross Society be renamed the Zimbabwe Red Star Society and adopt a red star on a white field, though this proposal was later abandoned.<sup>33</sup>

There was also the question of whether both the red cross and the red crescent could be used together. On the basis of the Geneva Conventions and the wording of the

---

<sup>28</sup> Bugnion *op. cit.*, p10

<sup>29</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 27 July 1929, Article 19

<sup>30</sup> Bugnion *op. cit.* p13

<sup>31</sup> *Final Record of the Diplomatic Conference of Geneva of 1949*, Federal Political Department, Bern, 1949, Vol. I, p. 348

<sup>32</sup> See ICRC, *The Emblem of the Red Cross: A Brief History*, 1977, pp61-70

<sup>33</sup> Bugnion *op. cit.* p31

conditions for the recognition of new National Societies, the ICRC considered that the Conventions authorised the use of the red crescent in place of the red cross, but did not authorize the use of the double emblem of the red cross and red crescent on a white ground. The double emblem was nevertheless used by the Alliance of Red Cross and Red Crescent Societies of the USSR and then for a few years by the Kazakh Red Crescent and Red Cross Society, but neither was recognised by the ICRC. The Red Cross Society of Eritrea wishes to use both symbols but Eritrea has no reservation to that effect. Bugnion points out some of the problems with the double emblem:

It should nevertheless be borne in mind that use of the double emblem creates as many problems for a National Society as it resolves. The juxtaposition of the two emblems may be perceived as evidence of the religious connotations of both, especially by populations which are neither Christian nor Muslim. The risk of a split in the National Society, with Red Cross branches in certain regions and Red Crescent branches in others, cannot be overlooked. In the event of civil war, a split in the Society along religious fault lines would be even more likely. Finally, this solution is of no use for countries where populations which are neither Christian nor Muslim live side by side.<sup>34</sup>

In 1983 the International Federation of Red Cross and Red Crescent Societies adopted the double emblem, which has since then been borne by the Federation's staff, vehicles and premises.<sup>35</sup>

### **3. Loss of protective value of the emblems**

The religious objections and proliferation of emblems undermined their protective value. Instead of appearing as a symbol of neutrality, the distinctive sign could become identified with one or other of the parties to the conflict.<sup>36</sup>

Over the last dozen years there have been many attacks on Red Cross and Red Crescent personnel, including:

- 1996: three ICRC relief workers in Burundi killed while travelling in vehicle clearly marked with red cross emblems<sup>37</sup>
- 1999: four ICRC staff killed by SPLA in South Sudan; they had been abducted in February and were executed in April<sup>38</sup>
- 2001: six ICRC workers killed in Ituri province, Democratic Republic of Congo, while travelling in two vehicles marked with red cross emblems<sup>39</sup>
- 2001: Red Cross plane shot in Sudan, killing the co-pilot<sup>40</sup>
- 2003: five ICRC staff killed in Afghanistan and Iraq<sup>41</sup> (the ICRC's headquarters in Baghdad had been bombed in a suicide attack);<sup>42</sup>

---

<sup>34</sup> Bugnion *op. cit.* pp20-21

<sup>35</sup> Bugnion *op. cit.* pp18-19

<sup>36</sup> Bugnion *op. cit.* pp28

<sup>37</sup> [Senate Congressional Record, 5 June 1996, S5852](#)

<sup>38</sup> ['Attacks on humanitarian workers'](#), *Wikipedia* [viewed 6 February 2009]

<sup>39</sup> ['Six ICRC staff killed in Democratic Republic of Congo'](#) *ICRC Press Release*, 27 April 2001

<sup>40</sup> ['Red Cross Plane Attacked in Sudan; Co-Pilot Killed'](#), *Los Angeles Times* 10 May 2001

<sup>41</sup> ['Annual Report 2003: Independent and neutral humanitarian action still vital for victims of armed conflict'](#), ICRC News release 04/44, 28 June 2004

<sup>42</sup> ['Red Cross to cut Iraq staff'](#), *BBC news online*, 29 October 2003

- 2007: Red Crescent driver seriously injured in attack on Somali Red Crescent pickup truck clearly marked with the red crescent emblem<sup>43</sup>

## E. Development of a new emblem

At the Diplomatic Conference convened in 1949 to revise the Geneva Conventions various proposals were made to deal with the emblem problem. The ICRC wanted to revert to the red cross only, the Netherlands suggested a new single universal symbol to replace all the existing ones, and Burma proposed that each State and each National Society be free to adopt the emblem of its choice. These were all rejected by the Conference.<sup>44</sup>

By the 1990s the ICRC had recognised that a return to the red cross alone was impossible. In 1992 Cornelio Sommaruga, then president of the ICRC, called publicly for the creation of an additional emblem devoid of any national, political or religious connotation.<sup>45</sup> Various working groups then set out proposals on the emblems. All agreed that the only way of finding a widely-accepted solution was to adopt a neutral emblem in addition to the existing ones, given that a majority of States and National Societies were deeply attached to the red cross and red crescent emblems. The design of the new emblem should enable it to be used alone or to incorporate within it one of the signs already in use – the red cross, the red crescent, the red shield of David, or the double emblem of the red cross and red crescent. This would prevent any future proliferation, but at the same time would clear the way for recognition of Israel's Magen David Adom and Eritrea's National Society. It would also offer an alternative solution to any National Society that might have difficulty in using one of the existing emblems in the future.<sup>46</sup>

## F. Progress towards a Third Additional Protocol to the Geneva Conventions<sup>47</sup>

In April 2000, a Joint Working Group met in Geneva to consider how the proposals for an additional emblem could be taken forward. The Working Group, which was composed of various representatives from the Red Cross and Red Crescent Movement, Member States and National Societies, decided that if a new emblem was to be adopted it would require legal status through a third protocol additional to the Geneva Conventions of 1949. The Working Group also determined that this would require extensive consultation if it were to be agreed by the international community. A series of meetings and consultations took place in the summer and autumn of 2000, which sought to produce a draft Third Protocol which could be submitted to all the States party to the Geneva Conventions for their agreement in November 2000.

---

<sup>43</sup> [‘Somalia: ICRC deeply concerned by attack on Red Crescent’](#), *International News Safety Institute* 20 September 2007

<sup>44</sup> Bugnion *op. cit.* p14

<sup>45</sup> Cornelio Sommaruga, “Unity and plurality of the emblems”, *IRRC No. 289*, July-August 1992, pp. 337

<sup>46</sup> Bugnion *op. cit.* p38

<sup>47</sup> For much of this section and the one following, I am indebted to Ian Cruse, House of Lords Library

However, in September 2000 fresh hostilities broke out in the Middle East. A view was taken to postpone consideration of the new emblem for fear that the conflict would reduce the likelihood of reaching a consensus on its adoption. In addition, the Member States of the League of Arab States and the Organisation of the Islamic Conference subsequently requested a suspension of negotiations on adopting a Third Protocol for as long as there were clashes in the Middle East. Failure to make progress resulted in the US Red Cross threatening to withdraw from, and withhold funds from, the International Federation of the Red Cross and Red Crescent Movement.<sup>48</sup>

The diplomatic process towards international agreement on the adoption of the Third Protocol in effect stalled for four years. However, consultations did continue between the ICRC, the IFRC and various Member States. The draft Third Protocol was also discussed at the November 2001 and November 2003 Council of Delegates Sessions and at the 28th International Conference of the Red Cross and Red Crescent (December 2003).<sup>49</sup> The 2001 Council of Delegates adopted by consensus a resolution which confirmed the objective of finding a solution to the question of the emblem and agreed that the draft Third Protocol was an acceptable basis for negotiations when the international conditions were conducive to agreement between states.

Bugnion argues that by late 2003, bombings in Bali, Riyadh, Casablanca and Istanbul and the war in Afghanistan and Iraq made for “a menace-charged atmosphere”.<sup>50</sup> Despite this, the 2003 Council and Conference made progress. The Council thus requested that continuing efforts be made regarding the draft Third Additional Protocol.

In addition, the ICRC and IFRC had also been working on a number of fronts to further the likelihood of adoption of the Third Additional Protocol. The ICRC had carried out visibility tests with the help of the Swiss Army regarding the new emblem, while the ICRC and IFRC conducted research to find the most appropriate name for it, which suggested ‘red crystal’. At the international level, both the ICRC and IFRC had been working closely with the National Societies awaiting recognition (the Palestine Red Crescent Society, Israel's Magen David Adom and the Red Cross Society of Eritrea) to pave the way for their incorporation into the Movement. Importantly, the ICRC and IFRC had also encouraged bilateral cooperation between non-recognised and other National Societies. This led to the Palestine Red Crescent Society and the Magen David Adom (Israel) maintaining channels of communication during periods of conflict.<sup>51</sup>

Finally, the Standing Commission elected by the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent formed a new Working Group composed of representatives belonging to the National Societies of Egypt, Kenya, Lesotho, the United States, Syria, Iran, Indonesia, the United Kingdom, Germany, the ICRC and the IFRC. It was chaired by Ambassador Philippe Cuvillier, a member of the Standing Commission and the Commission's special representative on the emblem. He carried out several missions, in particular to Middle Eastern countries, to test the possibility of restarting the diplomatic process regarding the adoption of the draft Third Additional Protocol.

---

<sup>48</sup> ‘U.S. Red Cross May Quit Geneva Federations’, *New York Times* 2 May 2000.

<sup>49</sup> The International Conference brings together the States party to the Geneva Conventions and the various components of the International Red Cross and Red Crescent Movement.

<sup>50</sup> Bugnion *op. cit.* p45

<sup>51</sup> Bugnion *op. cit.* p48

Bugnion suggests that by January 2005 the situation in the Middle East had stabilised and this led the various bodies of the Red Cross and Red Crescent Movement to request that Switzerland resume the diplomatic process for the adoption of the Third Additional Protocol. On 12 and 13 September 2005, Switzerland opened informal consultations with all States party to the Geneva Conventions. However, the Member States of the League of Arab States and the Organisation of the Islamic Conference maintained that the time was still not right for a Conference to consider the Protocol. A number of initiatives were launched which sought to address the impasse. The Swiss Foreign Minister, Micheline Calmy-Rey, held consultations at the UN General Assembly and visited various countries in the Middle East. In addition, Ambassador Philippe Cuvillier, with the backing of the ICRC and IFRC, negotiated a cooperation agreement between the Palestine Red Crescent Society and the Magen David Adom, which was agreed at the meeting of the Council of Delegates in Seoul in November 2005. This was seen as addressing a key concern of Arab states.<sup>52</sup> Despite reservations from four National Societies, the Council agreed a resolution which called for a Diplomatic Conference to give effect to the Protocol. When the cooperation agreement was signed in Geneva on 28 November 2005, the two heads of the relief societies stated that it was their belief that both societies would become full members of the Red Cross and Red Crescent Movement.<sup>53</sup>

## G. Adoption of the Third Additional Protocol

The Diplomatic Conference was convened by Switzerland in Geneva on 5-8 December 2005 to consider the Third Additional Protocol. There were still reservations among Arab states, with some reported as seeing the fundamental concept of a third emblem as an unnecessary accommodation of Israel, while Syria argued that as the Golan Heights was a disputed territory, the Syrian Red Crescent should be allowed there.<sup>54</sup> There were protracted negotiations which attempted to achieve agreement by consensus. However, this was not possible and the Conference proceeded to adopt the [Third Additional Protocol](#) by 98 votes to 27, with 10 abstentions.<sup>55</sup>

As of 12 March 2009, 50 states had signed the Third Additional Protocol and 38 had ratified (or acceded to) it.<sup>56</sup>

The Third Additional Protocol also had to be adopted by the National Societies which constitute the International Conference of the Red Cross and Red Crescent, so as to change the statutes of the International Red Cross and Red Crescent Movement. The 29<sup>th</sup> International Conference of the Red Cross and Red Crescent took place in Geneva on 20 and 21 June 2006. Bugnion notes that intensive diplomatic preparations took place before the Conference to lay the groundwork for a successful outcome, including efforts to ensure that both the Palestine Red Crescent's and Magen David Adom's own statutes met the necessary requirements to join the Red Cross and Red Crescent

---

<sup>52</sup> 'Pact helps Israel join Red Cross', *BBC News Online*, 28 November 2005.

<sup>53</sup> Bugnion *op. cit.* 15 January 2007, pp48-51

<sup>54</sup> 'Red Cross to adopt red crystal in deal to let Israel join up', *The Independent* 6 December 2005

<sup>55</sup> Bugnion *op. cit.* pp51-55

<sup>56</sup> [ICRC treaty database](#) [viewed 12 March 2009]

Movement.<sup>57</sup> A press release issued by the ICRC before the Conference noted that the change to the statutes would also be considered along with the admittance of the Palestine Red Crescent Society to the Movement, while the acceptance of the third emblem would in effect allow the admittance of Israel's Magen David Adom.<sup>58</sup> The Conference voted to accept the Third Additional Protocol by 237 votes to 54, with 18 abstentions.<sup>59</sup> At the conclusion of the International Conference, the Palestine Red Crescent and Magen David Adom were admitted by the International Federation of the Red Cross and Red Crescent.<sup>60</sup>

## H. The new red crystal symbol

The Third Additional Protocol creates an additional emblem alongside the red cross and red crescent, known as the red crystal:



The red crystal is said to be free from any religious, cultural or political connotations. It enjoys the same legal status as the red cross and red crescent and may be used in the same way or under the same conditions.

It does not replace the red cross or red crescent, or restrict their use in any way. National Societies that choose to adopt the red crystal as their sign of identification (i.e. for indicative purposes) may incorporate within it any one of the recognised emblems or a combination of them. They may also incorporate within it any other sign which has been in effective use and was communicated to the other States party to the Geneva Conventions and the ICRC before the adoption of the Third Additional Protocol.<sup>61</sup> A National Society choosing to do so may use and display the combined emblem only within its national territory. The ICRC, the International Federation and their personnel will retain their current names and emblems. However, in exceptional circumstances and to facilitate their work, they may use the red crystal.<sup>62</sup>

The use of the humanitarian emblems for protective purposes by armed forces, medical and religious personnel is restricted to the three distinctive emblems and no other emblem may be incorporated.<sup>63</sup> The Third Additional Protocol also states that the medical services and religious personnel of a State's armed forces may, regardless of their current emblems, make temporary use of any recognised emblem for enhanced

---

<sup>57</sup> Bugnion *op. cit.* pp57-58

<sup>58</sup> 'The 29th International Conference of the Red Cross and Red Crescent opens', *ICRC Press Release* 15 June 2006

<sup>59</sup> Bugnion *op. cit.* p63

<sup>60</sup> A detailed commentary on the provisions of the Third Additional Protocol can be found in Jean-Francois Queguiner, '[Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem \(Protocol III\)](#)', *International Review of the Red Cross*, vol. 89, no. 865, March 2007

<sup>61</sup> IFRCRCS/ICRC, [Emblems of humanity](#), June 2007

<sup>62</sup> IFRCRCS/ICRC, [Emblems of humanity](#), June 2007

<sup>63</sup> Rt Hon Lord Malloch-Brown, Minister of State, Foreign Office, letter to Lord Howell of Guildford, 30 January 2009, Dep 2009-0342

protection. This could provide extra protection in conflict situations where the red cross and red crescent might be perceived as having particular religious or other connotations.

The Protocol entered into force on 14 January 2007, six months after the second ratification.

## I. Clause 1 of the Bill and the Schedule

Clause 1 and the Schedule amend the UK's *Geneva Conventions Act 1957* to give effect to the Third Additional Protocol.

The 1957 Act (as amended) makes it a criminal offence to use the red cross, red crescent or certain other emblems without the authorisation of a Secretary of State. In practice the British Red Cross advises and warns those who appear to have misused them.<sup>64</sup> Clause 1 of the current Bill and its Schedule would add the red crystal to the list of emblems protected by the 1957 Act. A grave breach of the Protocol (perfidious use of the emblem for the purpose of killing, injuring or capturing an adversary during an international armed conflict) would be punishable by up to 30 years' imprisonment (or, if the offence involved murder, life imprisonment). Unauthorised use of the emblem would be punishable by a fine up to level 5 on the standard scale (currently £5,000),<sup>65</sup> and the court may order the forfeiture of any goods or articles upon or in connection with which the emblems or designs were used.

Clause 1(6) would enable the Secretary of State to make regulations in relation to the use of the new emblems, in particular to authorise its use by certain prescribed categories of person for particular purposes. This power already exists in relation to the existing protected emblems under section 6A of the 1957 Act but has not been used, since in practice more informal means have been used to authorise the use of protected emblems by bodies such as the British Red Cross.<sup>66</sup>

The red crystal emblem has been registered with the Patent Office by the ICRC as a trade mark, for use only by ICRC organisations. Businesses, voluntary sector organisations and others wishing to use the symbol for their own purposes will now no longer be able to do so. There were no registered trademarks for goods or services which were the same as or confusingly similar to the red crystal emblem.<sup>67</sup>

---

<sup>64</sup> Professor Peter Rowe, '[Geneva Conventions and United Nations Personnel Bill](#)', *Parliamentary Brief*, 3 December 2008

<sup>65</sup> *Criminal Justice Act 1991* s17(2)

<sup>66</sup> [Memorandum](#) by the Foreign and Commonwealth Office to the House of Lords Delegated Powers and Regulatory Reform Committee, December 2008, reproduced as Appendix 1 to the Committee's 2<sup>nd</sup> report of 2008-09

<sup>67</sup> Foreign and Commonwealth Office, *Impact Assessment of Geneva Conventions and UN Personnel Bill*, 26 November 2008 p4

### **III Protection of UN and associated personnel**

#### **A. The 1994 UN Convention on the Safety of United Nations and Associated Personnel<sup>68</sup>**

In the 1990s the increasing deployment of UN personnel to complex and dangerous situations such as those in Somalia, Rwanda and Bosnia and Herzegovina led to growing concerns about their safety. For example, between 1992 and 1993, 33 UN civilian personnel were killed, and 202 UN military personnel were killed in 1993.<sup>69</sup>

In December 1993, the UN General Assembly therefore established an ad hoc committee to produce an international convention on the safety and security of UN and associated personnel. The drafting of the Convention on the Safety of United Nations and Associated Personnel was completed in six weeks and was accepted by the UN General Assembly in 1994.<sup>70</sup>

The Convention seeks to offer general rights and duties to member states and UN personnel but also to establish a mechanism to identify and address the individual responsibility of alleged perpetrators of attacks against such personnel. It provides that attacks on UN or associated personnel or property should be made a crime under international law by each member state and that jurisdiction should be established with regard to such offences when the crime is committed in the territory of that state, or on board a ship or aircraft registered in that state, or when the alleged offender is a national of that state. In addition, the state in whose territory the alleged offender is present should either prosecute or extradite him or her.<sup>71</sup>

The Convention protects only personnel involved in operations for maintaining or restoring international peace and security. It may also apply in other cases where the Security Council or the General Assembly has declared that there exists an exceptional risk to the safety of the personnel participating in the operation, but no such declarations have been made. It does not apply to UN operations authorised by the Security Council as enforcement action under Chapter VII of the UN Charter if any of the personnel are fighting organised armed forces and the law of international armed conflict applies.

The Convention entered into force on 15 January 1999.

#### **B. Problems with the scope of the Convention**

By the later 1990s the then Secretary General of the UN, Kofi Annan, among others, had begun to express concerns that the Convention did not offer enough protection to UN

---

<sup>68</sup> For much of this section and the two following, I am indebted to Ian Cruse, House of Lords Library

<sup>69</sup> M. Christiane Bourloyannis-Vrailas, 'The Convention on the Safety of United Nations and Associated Personnel', *International and Comparative Law Quarterly*, vol. 44, no. 3, July 1995, p560

<sup>70</sup> UN General Assembly Resolution 49/59, *Convention on the Safety of United Nations and Associated Personnel*

<sup>71</sup> Malcolm Shaw QC, *International Law*, 5<sup>th</sup> edition 2003, pp600-601. For a commentary on the Convention, see Evan T Bloom, 'Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel', *American Journal of International Law*, vol. 89 no. 3, July 1995, pp621-631

and associated personnel. It was thought that the Convention was too narrowly drawn and did not cover operations delivering humanitarian, political or development assistance in peace building, or delivery of emergency humanitarian assistance.

In 1998 a high-level meeting of UN and ICRC officials warned of an unacceptably high level of risk to their humanitarian staff, particularly from undisciplined armed groups in areas where law and order had broken down:

Top officials from UNHCR and the ICRC have warned that humanitarian operations in many parts of the world were facing "unacceptable security risks". The comments were made in a press communiqué issued on Monday after the two agencies had assembled many of their top officials in Geneva to discuss how to provide a more secure environment for humanitarian operations.

The communiqué said the risks to the work of UNHCR and ICRC came from the changed nature of armed conflict today, and especially from the proliferation of undisciplined armed groups. Many humanitarian operations are taking place in areas where law and order has broken down completely and organised crime and banditry threaten relief efforts.

The result is a threat both to the integrity of humanitarian operations and to the aid workers themselves. "Unfortunately, the people who brave danger and hardship trying to help others, more and more frequently become victims of violence themselves. There must be a limit to how much we can take," said Sadako Ogata, the UN High Commissioner for Refugees.

ICRC President Cornelio Sommaruga insisted on the urgent need to strengthen respect for international humanitarian law. "Particularly, the civilian population is now often the target of military operations," he said. "This is unacceptable."

Over the past six years, 139 UN civilian workers have been killed in the course of duty and 141 taken hostage. Over the past five years alone, 30 ICRC staff were killed.<sup>72</sup>

In a report submitted to the General Assembly on 21 November 2000, the UN Secretary General sought to emphasise the limitations of the Convention with regard to the scope of the operations included and the personnel covered. He drew attention to problems that had occurred in UN operations in Afghanistan, Burundi and East and West Timor. He stated his belief that a Protocol to the Convention would be required and urged that it should extend the protection of the Convention to all UN operations.<sup>73</sup>

Huw Llewellyn, writing in *International and Comparative Law Quarterly*, argued that a key problem with the Convention lay with its reliance on the notion of 'exceptional risk':

No UN operations falling outside the international peace and security category are within the automatic scope of application of the Convention. They fall within the scope only if a declaration of exceptional risk is made by the Security Council or

---

<sup>72</sup> United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network for Central and Eastern Africa, '[Humanitarian activities: Officials warn of increasing security risks](#)', IRIN Update No. 444 for Central and Eastern Africa, 24 June 1998

<sup>73</sup> UN General Secretary *Report to the General Assembly (A/55/637)*, 21 November 2000

by the General Assembly. There are many types of, and countless numbers of, such other operations.

[...] To date, none of these other operations is within the scope of the Convention because none has been the subject of a declaration of exceptional risk, either by the Security Council or by the General Assembly.<sup>74</sup>

### C. The Optional Protocol

On 12 December 2001, the UN General Assembly authorised the establishment of an Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel.<sup>75</sup> Subsequently, a Working Group was also established on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel.

The move to introduce a Protocol gained added momentum in August 2003, when Iraqi insurgents detonated a car bomb at the UN Headquarters in Baghdad which killed 20 UN employees including the UN Special Envoy to Iraq, Sergio Vieira de Mello, and injured 160 others.<sup>76</sup>

In November 2005, the Chairman of the Ad Hoc Committee and Working Group, Christian Wenaweser, introduced before the UN Legal Committee a draft Optional Protocol to the Convention. He noted that, while there had been consensus in many areas, a concern amongst some states was the difficulty involved in defining what was meant by “peace building”.<sup>77</sup> Huw Llewellyn contends that this issue was not addressed and was carried forward into the adopted Protocol, as the phrase which is used in the document, “delivering humanitarian, political or development assistance in peace building”, is not defined in the text. He suggests that this might be met in part through the work and practice of the [UN Peacebuilding Commission](#), which was established by the UN in December 2005, whose mandate focuses on strategies for post-conflict peace building and recovery.

On 8 December 2005, the UN General Assembly considered the Optional Protocol. Kofi Annan, then UN Secretary General, pointed out to the General Assembly what he saw as the flaw in the 1995 Convention on the Safety of United Nations and Associated Personnel:

[...] humanitarian, development, and other non-peacekeeping operations were covered only through a declaration of exceptional risk. But this requirement was impractical. There are no generally agreed criteria for determining whether such a

---

<sup>74</sup> Huw Llewellyn, ‘The Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel’, *International and Comparative Law Quarterly*, vol. 55 no. 3, July 2006, p721

<sup>75</sup> The Ad Hoc Committee’s Reports, relevant UN General Assembly Resolutions and Reports by the UN Secretary General are at <http://www.un.org/law/UNsafetyconvention/index.html>

<sup>76</sup> ‘Protection of UN and Humanitarian Personnel in Conflict Zones’, *American Journal of International Law* vol. 98 no. 1, January 2004, pp172-173

<sup>77</sup> ‘Legal Committee, Recommending New Protocol, seeks Broader Protection for United Nations, Associated Personnel Serving on Peace Missions’, *UN Press Release GA/L/3291* 16 December 2005. See also UN *Report of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel*, Annex II, paragraphs 5–8

risk exists. Making such a declaration could be time-consuming. And political considerations could influence what is meant to be a technical assessment. The new Protocol corrects this flaw. It expands the legal protection to all other United Nations operations, from emergency humanitarian assistance to peace building and the delivery of humanitarian, political and development assistance.<sup>78</sup>

The Optional Protocol was accepted by the UN General Assembly<sup>79</sup> and the text can be found on the UN's Treaty Database.<sup>80</sup> As of 12 March 2009, it had 34 signatories and 16 states parties, compared with the 43 signatories and 87 states parties to the 1994 Convention.<sup>81</sup> Five countries with UN peacekeeping or major humanitarian missions have so far signed the Protocol – the Central African Republic, Cyprus, Lebanon, Liberia and Sierra Leone – but none of these has yet ratified it.

Huw Llewellyn, writing shortly after the Optional Protocol had been adopted, considered what had been achieved by its adoption. He noted that it offered important improvements:

There is no doubt that the expansion of the scope of automatic application of the Convention to include peacebuilding operations and emergency humanitarian assistance operations is a very significant improvement. These activities are at the forefront of UN field operations and, along with peace and security operations, frequently represent areas of particular danger for the personnel. The removal of any need for a declaration of exceptional risk in relation to these operations is a major step forward.<sup>82</sup>

However, he had a number of issues with the Optional Protocol. He thought that its drafting might leave some UN bodies outside its scope:

Emergency humanitarian assistance operations established by autonomous organizations within the UN system and by the Specialised Agencies do not fall within Article II(1)(b). They are not established by UN Charter bodies. So, for example, operations established by the Food and Agriculture Organization (FAO), or by the World Health Organization (WHO) would not be within the scope of the Protocol.<sup>83</sup>

He was also concerned about whether the relevant states would sign up to its provisions:

The Convention, more than 10 years after its adoption, has only 79 States parties out of a UN membership of 191. That is far from universal adherence. Many of the States parties are developed countries, which are less likely to host a UN operation. Of the 16 current UN peacekeeping operations, for example, only four are hosted in States parties. And because no UN operations have been the

---

<sup>78</sup> United Nations Information Service, *Optional Protocol Corrects Flaw in Convention on Safety of United Nations, Associated Personnel, Secretary-General Tells General Assembly Meeting*, 8 December 2005.

<sup>79</sup> UN General Assembly Resolution 60/42, 6 January 2006

<sup>80</sup> [Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel](#), 8 December 2005.

<sup>81</sup> [UN Treaty database](#), Ch. XVIII, 'Penal Matters' [viewed 12 March 2009]

<sup>82</sup> Huw Llewellyn, 'The Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel', *International and Comparative Law Quarterly*, vol. 55 no. 3, July 2006, pp725 and pp727–728

<sup>83</sup> *Ibid*

subject of declarations of exceptional risk, this means that these are the only four UN operations that have the protection of the Convention. Of the 10 current political and peacebuilding missions that would fall within the scope of the Protocol's Article II(1)(a), only one is hosted in a State party to the Convention.<sup>84</sup>

Notwithstanding these concerns, he did see cause for optimism:

In the 2005 World Summit, the largest ever gathering of world leaders condemned attacks on the personnel of UN operations and stressed the need to conclude negotiations on the Protocol during the 60th session of the General Assembly. The fact that the negotiations were then concluded within 2 months, and indeed that the negotiations overall took less than three years (which in UN terms is rapid) suggests that there is political will to expand the protections for UN personnel in the field. There were certainly sufficient contentious issues in the negotiation for it to be delayed or blocked if the political will had not really been there to make progress. It might be that a significant factor underlying the Convention's lack of States parties was precisely the fact that it was seen as largely redundant. If that is the case, we could now see a sharp increase in acceptance of the Convention and Protocol.<sup>85</sup>

Meanwhile, attacks on UN personnel continue. In a speech to the UN Security Council on 8 January 2009, Antonio Guterres, the UN High Commissioner for Refugees, expressed his concern that "the deliberate targeting of humanitarian workers has increased, establishing a tension between the imperatives of staff safety and effective humanitarian action".<sup>86</sup> Less than a month later, on 2 February 2009, a senior UN official, John Solecki, was kidnapped in Quetta, the provincial capital of Balochistan province in Pakistan. He was the head of the Balochistan chapter of the United Nations High Commission for Refugees (UNHCR), and was travelling in a vehicle which reportedly bore UNHCR insignia.<sup>87</sup>

## D. Clause 2 of the Bill

The 1994 Convention on the Safety of United Nations and Associated Personnel was implemented in the UK by the *United Nations Personnel Act 1997*. The main purpose of the Act was to establish extra-territorial jurisdiction for trying in the UK a person alleged to have attacked (including for example taken hostage) a UN worker or to have damaged or destroyed his premises or vehicle anywhere in the world.

Clause 2 of the Bill would, on the basis of the Optional Protocol, amend the definition of a UN operation in the 1997 Act to extend it to cover UN workers delivering humanitarian, political or development assistance in peace-building or during an emergency. The 1994 Convention (and the 1997 Act) restricted protection for this type of work to situations where the UN declared there to be an exceptional risk to the safety of UN personnel. Offences against the new categories of UN workers would be criminal offences under

---

<sup>84</sup> *Ibid*

<sup>85</sup> *Ibid*

<sup>86</sup> '[High Commissioner Guterres briefs Security Council on global protection challenges](#)', UNHCR Press Release, 8 January 2009

<sup>87</sup> 'Senior UN official kidnapped in Balochistan', *Jane's Country Risk Daily Report: Afghanistan/Pakistan*, 4 February 2009

domestic law, incurring a range of penalties depending on the severity of the offence, in accordance with the 1997 Act.

The Government recognises that ratification of the Convention and Protocol will not alone be enough to protect UN personnel from all threats of violence. Lord Malloch-Brown told the House of Lords that:

One of the darkest clouds of my latter years at the UN was the severity and growing frequency of attacks on UN humanitarian workers. Let me be clear that this protocol alone will not solve that problem. It is an important step and a demonstration by the UK that we take this very seriously. However, as it is not on UK territories that threats to UN humanitarian workers are likely to occur, we are in a sense trying to lead by example in doing this, encouraging others to adopt the protocol. More critically, we are encouraging them to recognise in their own justice systems and the priorities that they set for themselves that attacks on humanitarian workers—particularly UN workers, the category covered by this protocol—is a heinous offence that they must address.<sup>88</sup>

He added in a letter to Lord Wallace of Saltaire:

I would like to take this opportunity to respond more comprehensively to your question on law enforcement by international courts in states with no recognised authority or institutions.

On the question of these so-called 'failed states', who are unable or unwilling to protect United Nations personnel from the threat of violence, it remains the case that the obligation of all parties involved in an armed conflict is to comply fully with the rules of international law applicable during armed conflict. In addition, the international community should do what it can to protect these valuable workers.

Attacks against United Nations personnel are attacks committed against representatives of the international community - attacks indirectly committed against the international community itself. UN personnel continue to be involved in situations in which the infrastructure of law enforcement and justice systems may not be capable of conducting effective investigations or prosecutions. We must accept that ratification of the Convention and Protocol alone will not deliver the desired effect. We would therefore urge the UN and its related bodies to take all possible steps to protect those acting on behalf of the international community, as well as providing support to host nations to develop domestic criminal justice systems.<sup>89</sup>

Attacks intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations are listed as a war crime in the 1998 [Rome Statute of the International Criminal Court](#).

There is a voluntary trust fund for the security of UN personnel, established in the summer of 1998, but contributions to the fund have been disappointing.<sup>90</sup>

---

<sup>88</sup> HL Deb 27 January 2009 c197

<sup>89</sup> Rt Hon Lord Malloch-Brown, Minister of State, Home Office, letter to Lord Wallace of Saltaire, 6 February 2009, Dep 2009-0451

<sup>90</sup> ['Security council condemns violence against UN, humanitarian personnel, in Presidential statement, following day-long debate'](#), Press Release SC/6803, 9 February 2000

Nothing in the 1994 Convention, the Optional Protocol or the Bill protects humanitarian workers who are working for NGOs such as Save the Children, Oxfam or Médecins sans Frontières. Lord Malloch-Brown has signalled the need to press for a fuller set of protections that would cover such people,<sup>91</sup> a need that has very recently been illustrated by the news that three international staff members with Médecins sans Frontières are missing in Darfur after being kidnapped at gunpoint on 11 March 2009.<sup>92</sup>

---

<sup>91</sup> HL Deb 27 January 2009 c198

<sup>92</sup> 'Charity pulls out of Darfur after rebels seize Western aid workers', *Times*, 13 March 2009