

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

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Foreign and Commonwealth Office, are published separately as Bill 69 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary David Miliband has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Geneva Conventions and United Nations Personnel (Protocols) Bill [HL] are compatible with the Convention rights.

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

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1957

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B I L L

TO

Amend the Geneva Conventions Act 1957 so as to give effect to the Protocol additional to the Geneva Conventions of 12 August 1949 done on 8 December 2005; and to amend the United Nations Personnel Act 1997 so as to give effect to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly of the United Nations on 8 December 2005.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Amendments of the Geneva Conventions Act 1957

- (1) The Geneva Conventions Act 1957 (c. 52) is amended as follows.
- (2) In section 1 (grave breaches of Conventions and protocols), in subsection (1), for “or the first protocol” substitute “, the first protocol or the third protocol”.
- (3) In subsection (1A) of that section, after paragraph (b) insert “; and 5
 - (c) a grave breach of the third protocol is anything which for the purposes of Article 6 of the protocol constitutes the perfidious use of the emblem specified in section 6(1)(f) of this Act”.
- (4) In section 6 (use of the Red Cross and other emblems), in subsection (1), after paragraph (e) insert “; 10
 - (f) the emblem of a red frame in the shape of a square on edge on a white ground, conforming to the illustration in Article 1 of the Annex to the third protocol (and whether or not incorporating another emblem, or a combination of emblems, in accordance with Article 3 of the protocol), or the designation “Red Crystal” 15 or “third Protocol emblem””.
- (5) After subsection (4A) of that section, insert—
 - “(4B) Subsection (4) of this section shall apply in relation to a design or wording reproducing or resembling the emblem or a designation specified in paragraph (f) of subsection (1) of this section as it applies to 20

designs or wording reproducing or resembling an emblem or designation specified in paragraph (b) or (c) of that subsection.

- (4C) But subsection (4) of this section shall not apply by virtue of subsection (4B) of this section where the use of the design or wording concerned is such as would appear, in time of armed conflict, to confer the protection of the scheduled conventions and, where applicable, the first protocol and the second protocol. 5
- (4D) For the purposes of subsection (4B) of this section references in subsection (4) of this section to the passing of this Act shall be construed as references to the passing of the Geneva Conventions and United Nations Personnel (Protocols) Act 2009.” 10
- (6) In section 6A (regulations), in subsection (1)(b), for “or the second protocol” substitute “, the second protocol or the third protocol”.
- (7) In section 7 (interpretation), at the end of subsection (1) add “; “the third protocol” means the Protocol, additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem (Protocol III) done on 8 December 2005, the text of which is set out in Schedule 7”. 15
- (8) After Schedule 6 (which sets out the text of the second protocol), insert the Schedule 7 contained in the Schedule to this Act (which sets out the text of the third protocol). 20

2 Amendments of the United Nations Personnel Act 1997

- (1) Section 4 of the United Nations Personnel Act 1997 (c. 13) (meaning of “UN worker”) is amended as follows.
- (2) In subsection (2) – 25
- (a) for “subsection (3)” substitute “subsections (3) and (3A)”, and
- (b) in paragraph (c)(i), for “the maintenance or restoration of international peace and security” substitute “a purpose mentioned in subsection (2A)”.
- (3) After subsection (2) insert – 30
- “(2A) The purposes referred to in subsection (2)(c)(i) are –
- (a) maintaining or restoring international peace and security;
- (b) delivering humanitarian, political or development assistance in peacebuilding;
- (c) delivering emergency humanitarian assistance.” 35
- (4) After subsection (3) insert –
- “(3A) In this section “UN operation” also does not include any operation in respect of which a declaration is made in accordance with Article II(3) of the Optional Protocol (opt-out for operation to deliver emergency humanitarian assistance in response to natural disaster).” 40
- (5) In subsection (4), after the definition of “the Convention” insert –
- ““the Optional Protocol” means the Optional Protocol to the Convention adopted by the General Assembly of the United Nations on 8 December 2005;”

3 Commencement, extent and short title

- (1) Sections 1 and 2 come into force on such day as the Secretary of State may by order appoint.
- (2) An order under subsection (1) –
 - (a) must be made by statutory instrument, and 5
 - (b) may make different provision for different purposes.
- (3) Section 8(2) of the Geneva Conventions Act 1957 (c. 52) (power to extend provisions to the Channel Islands, the Isle of Man and British overseas territories) applies in relation to the provisions of section 1 and the Schedule as if they were contained in that Act. 10
- (4) Section 9(2) of the United Nations Personnel Act 1997 (c. 13) (power to extend provisions to the Channel Islands, the Isle of Man and British overseas territories) applies in relation to the provisions of section 2 as if they were contained in that Act.
- (5) This Act may be cited as the Geneva Conventions and United Nations Personnel (Protocols) Act 2009. 15

SCHEDULE

Section 1(8)

SCHEDULE 7 TO BE INSERTED INTO THE GENEVA CONVENTIONS ACT 1957

“SCHEDULE 7

Section 7(1)

PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949,
 AND RELATING TO THE ADOPTION OF AN ADDITIONAL DISTINCTIVE EMBLEM
 (PROTOCOL III), 8 DECEMBER 2005 5

Preamble

The High Contracting Parties,

Reaffirming the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems, 10

Desiring to supplement the aforementioned provisions so as to enhance their protective value and universal character, 15

Noting that this Protocol is without prejudice to the recognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols additional thereto, 20

Recalling that the obligation to respect persons and objects protected by the Geneva Conventions and the Protocols additional thereto derives from their protected status under international law and is not dependent on use of the distinctive emblems, signs or signals, 25

Stressing that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

Emphasizing the importance of ensuring full respect for the obligations relating to the distinctive emblems recognized in the Geneva Conventions, and, where applicable, the Protocols additional thereto, 30

Recalling that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems, 35

Recalling further that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used

in the country where the activity takes place and in the country or countries of transit,

Recognizing the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

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Noting the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems,

Have agreed on the following:

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Article 1 – Respect for and scope of application of this Protocol

1 The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2 This Protocol reaffirms and supplements the provisions of the four Geneva Conventions of 12 August 1949 (“the Geneva Conventions”) and, where applicable, of their two Additional Protocols of 8 June 1977 (“the 1977 Additional Protocols”) relating to the distinctive emblems, namely the red cross, the red crescent and the red lion and sun, and shall apply in the same situations as those referred to in these provisions.

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Article 2 – Distinctive emblems

1 This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.

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2 This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the “third Protocol emblem”.

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3 The conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols.

4 The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection.

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Article 3 – Indicative use of the third Protocol emblem

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1 National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:

-
- (a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or
- (b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol. 5
- Incorporation shall conform to the illustration in the Annex to this Protocol.
- 2 A National Society which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legislation, use the designation of that emblem and display it within its national territory. 10
- 3 National Societies may, in accordance with national legislation and in exceptional circumstances and to facilitate their work, make temporary use of the distinctive emblem referred to in Article 2 of this Protocol. 15
- 4 This Article does not affect the legal status of the distinctive emblems recognized in the Geneva Conventions and in this Protocol, nor does it affect the legal status of any particular emblem when incorporated for indicative purposes in accordance with paragraph 1 of this Article. 20
- Article 4 – International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies* 25
- The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may use, in exceptional circumstances and to facilitate their work, the distinctive emblem referred to in Article 2 of this Protocol. 30
- Article 5 – Missions under United Nations auspices*
- The medical services and religious personnel participating in operations under the auspices of the United Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2. 35
- Article 6 – Prevention and repression of misuse*
- 1 The provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems shall apply equally to the third Protocol emblem. In particular, the High Contracting Parties shall take measures necessary for the prevention and repression, at all times, of any misuse of the distinctive emblems mentioned in Articles 1 and 2 and their designations, including the perfidious use and the use of any sign or designation constituting an imitation thereof. 40
- 45

- 2 Notwithstanding paragraph 1 above, High Contracting Parties may permit prior users of the third Protocol emblem, or of any sign constituting an imitation thereof, to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, and provided that the rights to such use were acquired before the adoption of this Protocol. 5

Article 7 – Dissemination

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that this instrument may become known to the armed forces and to the civilian population. 10
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Article 8 – Signature

This Protocol shall be open for signature by the Parties to the Geneva Conventions on the day of its adoption and will remain open for a period of twelve months. 20

Article 9 – Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Geneva Conventions and the 1977 Additional Protocols. 25

Article 10 – Accession

This Protocol shall be open for accession by any Party to the Geneva Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 11 – Entry into force 30

- 1 This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.
- 2 For each Party to the Geneva Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession. 35

Article 12 – Treaty relations upon entry into force of this Protocol

- 1 When the Parties to the Geneva Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol. 40
- 2 When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in

Article 16 – Registration

- 1 After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.
- 2 The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

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Article 17 – Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Geneva Conventions.

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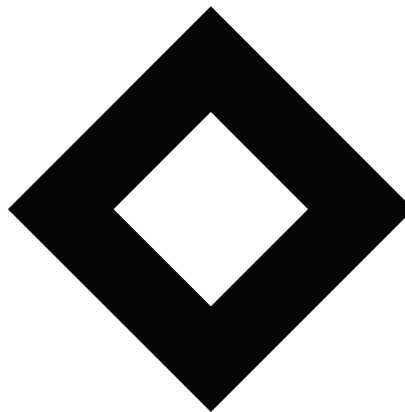
ANNEX

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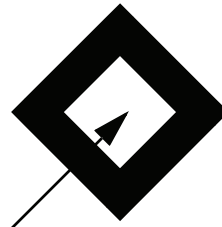
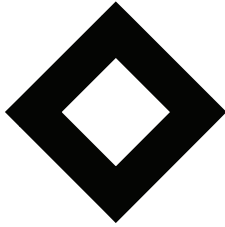
THIRD PROTOCOL EMBLEM

(Article 2, paragraph 2 and Article 3, paragraph 1 of the Protocol)

Article 1 – Distinctive emblem



Article 2 – Indicative use of the third Protocol emblem



Incorporation in
accordance with Art. 3

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