



HOUSE OF LORDS

# Library Note

## **Geneva Conventions and United Nations Personnel (Protocols) Bill [HL]** (HL Bill 12 of 2008–09)

The Geneva Conventions and United Nations Personnel (Protocols) Bill was introduced in the House of Lords on 17 December 2008, and is due for a second reading debate on 27 January 2009.

The Bill gives effect to two international agreements. The first relates to the Third Additional Protocol to the Geneva Conventions of 12 August 1949 which was adopted on 8 December 2005. The main purpose of this Protocol was to allow the adoption of a third emblem, the 'Red Crystal', by the Red Cross and Red Crescent Movement. The second concerns 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. The Optional Protocol seeks to expand the legal protection given to United Nations operations, including emergency humanitarian assistance, and the delivery of humanitarian, political and development assistance in peace building.

This Library Note considers the background to these agreements.

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## 1. Introduction

This Library Note will firstly offer a brief outline of the Bill. Subsequent sections provide background to the two issues that lie behind its provisions: the adoption of a new emblem for the International Red Cross and Red Crescent Movement, the 'Red Crystal'; and the extension of protection to United Nations personnel.

## 2. The Bill

The Geneva Conventions and United Nations Personnel (Protocols) Bill (HL Bill 12 of 2008–09) was introduced in the House of Lords on 17 December 2008.<sup>1</sup> The Bill consists of three clauses and one schedule and seeks to give effect to two protocols to two international conventions. 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>2</sup>

Clause 1 of the Bill gives effect to the Third Additional Protocol to the Geneva Conventions, which was adopted on 8 December 2005. It amends the Geneva Conventions Act 1957 to give effect to the Protocol, which introduced a new humanitarian emblem, the 'Red Crystal', alongside the existing emblems, the Red Cross and the Red Crescent, illustrated below.



The new emblem will have the same status as the existing Red Cross and Red Crescent. The Bill provides protection under the criminal law against misuse of the new emblem. As a result of the amendment to section 1A of the 1957 Act, a grave breach of the Protocol will be punishable by up to 30 years' imprisonment; and as a result of the amendment to section 6 of the 1957 Act, unauthorised use of the emblem will be punishable by a fine up to level 5 on the standard scale.

Clause 2 of the Bill amends the United Nations Personnel Act 1997 to give effect to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, also adopted on 8 December 2005. This Optional Protocol extends the scope of legal protection to United Nations and associated personnel engaged in United Nations operations for delivering humanitarian, political or development assistance in peace building, or for delivering emergency humanitarian assistance. The amendments made by the clause will ensure that the offences under the 1997 Act (for example, an offence under section 1 relating to attacks on United Nations workers) will apply to United Nations workers engaged in such operations.

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<sup>1</sup> Copies of the [Bill](#) and its [Explanatory Notes](#) can be accessed online. The Foreign and Commonwealth Office has published a Regulatory Impact Assessment, available in the Library.

<sup>2</sup> HC Library Standard Note SN/IA/4693, [Parliamentary Scrutiny of Treaties](#), (10 April 2008); see also HC Information Office, [Treaties](#), Factsheet P14, (November 2006).

Clause 3 of the Bill includes provisions regarding its territorial application. The Bill will extend to the whole of the United Kingdom. For Scotland, the Bill relates only to reserved matters. There is a power to extend the provisions to the Channel Islands, the Isle of Man and British overseas territories.

### 3. The Origins of the Red Cross and the Red Crescent Emblems

The Red Cross and Red Crescent Movement emerged from the first meeting of the International Committee for Aid to Wounded Soldiers on 17 February 1863 and the adoption of the original Geneva Convention on 22 August 1864. It was at a subsequent meeting of the International Committee for Aid to Wounded Soldiers in October 1863 that the notion of a single distinctive emblem was considered. François Bugnion, in a paper considering the origin of the Movement's emblems, notes that "from the very start the protective function of the emblem was closely linked to its universality".<sup>3</sup> He notes that it was at this Conference that the Red Cross added to a white armlet was adopted, though the minutes of the Conference do not reveal the rationale behind the choice of symbol. However, he suggests that the choice may have been linked to the use of a white background as a sign of surrender or negotiation and the Red Cross as a sign for the wounded, with the contrasting colours allowing identification from a distance. He also conjectures that the emblem might be related to the national colours of Switzerland and that country's neutrality over many centuries, which was confirmed by the Treaties of Vienna and Paris in 1815.

Whatever the reasons for the adoption of the Red Cross emblem, during the Russo-Turkish War (1876–1878), the Ottoman Empire, although it had acceded to the Geneva Convention, unilaterally declared in a note dated 16 November 1876 that it would use the Red Crescent on a white background. The note stated that this was because the Red Cross emblem "gave offence to Muslim soldiers".<sup>4</sup> The Red Crescent was accepted temporarily during the course of the Russo-Turkish War. During the 1899 and 1907 Hague Peace Conferences and the 1906 Geneva Conference, delegations from the Ottoman Empire, Persia and Siam requested recognition of their own distinctive signs for their ambulances and hospital ships: the Red Crescent (Ottoman Empire), the Red Lion and Sun (Persia) and the Red Flame (Siam). The 1906 Geneva Conference sought to emphasise that the Red Cross emblem had no religious connotations by adopting new wording that stated that it had been devised by reversing the Swiss federal colours. However, all three of the above-mentioned conferences allowed states to file reservations on the articles pertaining to the protective emblem, a *de facto* acceptance of possible alternatives to the Red Cross. The Geneva Convention was revised in 1929 and the Turkish, Persian and Egyptian delegations presented proposals for the adoption of the Red Crescent, the Red Lion and the Red Flame. The Conference granted their requests, but limited the derogation to the three countries and stated that no similar requests would be accepted in the future. The latter point meant that attempts in the 1930s by a relief agency in Palestine to have a Red Shield of David (Magen David Adom) accepted and the Afghan government's request to have a symbol accepted for the Red Archway Society (*Mehrab-e-Ahmar*) were rejected.<sup>5</sup>

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<sup>3</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), pp 3–9. For a more concise history of the Red Cross and Red Crescent Movement's emblems see: <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/emblem-history>.

<sup>4</sup> Quoted in *ibid.* p 9.

<sup>5</sup> *ibid.* pp 9–13.

#### 4. Proposals for Additional Emblems

Some of these matters were revisited at the 1949 Diplomatic Conference to revise the Geneva Conventions following the Second World War. It considered proposals to adopt a single new sign (Netherlands), to revert to the unity of the Red Cross sign, and the recognition of the Red Shield of David (Israel). All three proposals were rejected. The Israeli proposal was defeated in a Committee of the Conference (21 votes to 10, with 8 abstentions) and on the floor of the Conference (22 votes to 21, with 7 abstentions). Though there were a number of heated debates concerning Israel's proposals at the Conference, the number of states who voted against exceeded those who were in conflict with Israel. Bugnion suggests that there was also a prevailing fear that adoption of the Israeli emblem would have led to additional similar proposals that would have diluted the unity of the existing emblems.<sup>6</sup> Israel, therefore, in ratifying the 1949 Convention stated that it would respect the signs and emblems of the Convention, but with a reservation that it would use the Star of David for the medical services of its armed forces. One outcome of the 1949 Conference was the adoption of text almost identical to that agreed in 1929, which allowed, in addition to the Red Cross, and, where already in use, acceptance of the Red Crescent and Red Lion and Sun emblems.

However, this, Bugnion argues, left a number of problems. Firstly, despite the fact that some argued that the two emblems were non-religious in nature, the situation appeared to others to give a bias to Christian and Muslim countries compared to other faiths, such as Judaism and Buddhism. The coexistence of two emblems also seemed, even when placed on a formal equal footing in 1986, to question the notion of the International Red Cross and Red Crescent Movement's unity because there was no single identifiable emblem. Such coexistence could cause particular problems for states where different religious communities were cohabiting. More importantly, according to Bugnion, it was felt that the existence of multiple emblems could lead to combatants adopting separate emblems which might diminish their role as a sign of neutrality.<sup>7</sup>

Further attempts were made by Israel during the Diplomatic Conference on the Reaffirmation and Development of International Law (Geneva, 1974–1977) to gain international recognition for the Red Shield of David. However, it refrained from seeking a vote fearing that a negative result might have led to an outright rejection of its emblem and continued to base its approach on its reservations under the 1949 Convention. Proposals for additional emblems were also made by other countries. In 1977, the Indian Red Cross Society sought to use an emblem based on a well-known symbol in India and Sri Lanka, a red swastika on a white background, while Zimbabwe in the 1980s requested the use of a red star on a white field. Both requests were withdrawn.<sup>8</sup>

Conversely, in 1981 a note from the Islamic Republic of Iran declared that it would waive its right to use the Red Lion and Sun and would therefore use the Red Crescent. By 1986, the Statutes of the Geneva Convention stopped making reference to the Red Lion and Sun, leaving the Red Crescent and the Red Cross as the two accepted emblems.

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<sup>6</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), pp 13–15.

<sup>7</sup> *ibid.* pp 27–29.

<sup>8</sup> *ibid.* pp 30–32.

## **5. Initiatives of the Red Cross and Red Crescent Movement**

With a number of requests for additional emblems being made, in 1992 the President of the International Committee of the Red Cross (ICRC), Cornelio Sommaruga, advocated the adoption of an additional emblem available to those states and National Societies who felt unable to accept the existing emblems. A representative Working Group was set up by the Standing Commission of the Red Cross and Red Crescent, to examine this issue.<sup>9</sup> The Working Group submitted proposals to the meeting of the Red Cross and Red Crescent Movement's Council of Delegates in Seville in November 1997.<sup>10</sup> The group suggested that the new emblem should increase protection through its adoption, should be based on the continuing use of the two existing emblems, should not increase obstacles or division within the Red Cross and Red Crescent Movement and should be aimed at addressing those states and National Societies that had difficulties with the existing emblems. The proposals were adopted. Subsequently a recommendation by Mrs Christina Magnuson, the President of the Swedish Red Cross and Chair of the Working Group, was adopted, specifying that any future emblem should be devoid of any national, political or religious connotations. In addition, the ICRC endorsed the notion that National Societies of states that adopted the new emblem would be able to adopt within it as an indicative device one of the signs already in use – i.e. the Red Cross, the Red Crescent, the Red Shield of David or the double emblem of the Red Cross and Red Crescent. This latter point would allow the recognition of the Israeli National Society Magen David Adom and offer an alternative to any other National Societies such as the Palestine Red Crescent Society and the National Societies of Eritrea and Kazakhstan who also had difficulties using existing emblems, which were hindering their incorporation to the Red Cross and Red Crescent Movement.<sup>11</sup>

## **6. Progress towards a Third Protocol Additional to the 1949 Geneva Conventions**

In April 2000, a Joint Working Group met in Geneva to consider how these proposals 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. At this stage, though no formal decision had been taken regarding the new emblem's name, it appeared that the term 'red crystal' had gained support.

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<sup>9</sup> The Standing Commission is the trustee of the International Conference of the Red Cross and Red Crescent. Between Conferences, the Standing Commission provides strategic guidance in the interest of all components of the Movement.

<sup>10</sup> The Council of Delegates constitutes the assembly of the representatives of the ICRC, the International Federation and the National Societies of the Red Cross and Red Crescent. It meets every two years and is often asked to give an opinion on policy and subjects of common interest to all components of the International Movement of the Red Cross and Red Crescent.

<sup>11</sup> Both Eritrea and Kazakhstan used the double emblem of the Red Cross and Red Crescent.

Bugnion suggests that the symbol presented “undeniable advantages”:

it is identical in all three of the Movement’s working languages and in many other languages; it has no negative connotations in any of the numerous languages tested; in French and in English the initials are the same as for the red cross and red crescent; and lastly, crystals are a symbol of purity and transparency, and they bring to mind water, the source of life.<sup>12</sup>

Bugnion also argues that it appeared to present a “comprehensive solution” to the question of a new emblem. 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 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>13</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 International Federation of the Red Cross and Red Crescent Societies 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>14</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 the time of the 2003 Council of Delegates Sessions and the 28th International Conference of the Red Cross and Red Crescent, bombings in Bali, Riyadh, Casablanca and Istanbul and the war in Afghanistan and Iraq made for “a menace-charged atmosphere”.<sup>15</sup> Despite this, the 2003 Council and the 28th Conference of the Red Cross and Red Crescent made progress. The Council thus requested that continuing efforts be made regarding the draft Third Additional Protocol.

In addition, the ICRC and the International Federation of the Red Cross and Red Crescent 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 the Federation conducted research to find the most appropriate name for it, which suggested ‘Red Crystal’. At the international level, both the ICRC and the Federation had been working closely with the National Societies awaiting recognition (the Palestine Red Crescent Society, the Magen David Adom (Israel) and the Red Cross Society of Eritrea) to pave the way for their incorporation into the Movement. Importantly, the ICRC and the Federation had also encouraged bilateral cooperation between non-recognised and

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<sup>12</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), pp 42–43.

<sup>13</sup> *New York Times*, ‘[U.S. Red Cross May Quit Geneva Federations](#)’, (2 May 2000).

<sup>14</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>15</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), p 45.

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>16</sup>

Finally, the Standing Commission elected by the 28th 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 Federation. 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.

## **7. The Adoption of the Third Protocol Additional to the 1949 Geneva Conventions**

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 the International Federation of the Red Cross and Red Crescent, 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>17</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 by the Palestine Red Crescent Society and the Magen David Adom 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>18</sup>

The Diplomatic Conference was convened by Switzerland in Geneva between 5 and 8 December 2005 to consider the Third Protocol.<sup>19</sup> 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>20</sup> There were protracted negotiations which attempted to achieve agreement by consensus. However,

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<sup>16</sup> *ibid.* p 48.

<sup>17</sup> BBC News Online, [Pact helps Israel join Red Cross](#), (28 November 2005).

<sup>18</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), pp 48–51.

<sup>19</sup> [Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem.](#)

<sup>20</sup> *The Independent*, [Red Cross to adopt red crystal in deal to let Israel join up](#), (6 December 2005).

this was not possible and the Conference proceeded to adopt the Third Additional Protocol by 98 votes to 27, with 10 abstentions.<sup>21</sup>

The Third 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 29th 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 Movement.<sup>22</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>23</sup> The Conference voted to accept the Third Protocol by 237 votes to 54, with 18 abstentions.<sup>24</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.

A copy of the Third Additional Protocol can be found on the ICRC website, along with details of those states that have signed and ratified it.<sup>25</sup> In addition, in September 2006, the UK Government published the text of the Protocol in the form of a Command Paper ([Cm 6917](#)). A detailed commentary on the provisions of the Third 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).

## **8. Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel**

In December 1993, the UN General Assembly established an ad hoc committee to produce an international convention on the safety and security of UN and associated personnel. This was mainly in response to the increasing deployment of UN personnel in complex and dangerous situations such as Somalia, Rwanda and Bosnia and Herzegovina. Between 1992 and 1993, 33 UN civilian personnel were killed, while 202 UN military personnel were killed in 1993.<sup>26</sup> The drafting of the Convention on the Safety of United Nations and Associated Personnel was completed in six weeks and was

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<sup>21</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), pp 51–55.

<sup>22</sup> *ibid.* p 57–58.

<sup>23</sup> ICRC Press Release, [The 29th International Conference of the Red Cross and Red Crescent opens](#), 15 June 2006

<sup>24</sup> François Bugnion, [Red Cross, Red Crescent and Red Crystal](#), International Committee of the Red Cross, (May 2007), p 63.

<sup>25</sup> The text of the Protocol is at: <http://www.icrc.org/ihl.nsf/FULL/615?OpenDocument>. The list of State signatories is at: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=615&ps=S>.

<sup>26</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), p 560.

accepted by the UN General Assembly with the adoption of Resolution 49/59.<sup>27</sup> The Convention sought to offer general rights and duties to State parties and UN personnel but also to establish a mechanism to identify and address the individual responsibility of alleged perpetrators of attacks against such personnel.<sup>28</sup>

However, 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 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 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 indicative problems that had occurred in UN operations in Afghanistan, Burundi and East and West Timor and 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>29</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 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>30</sup>

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>31</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, and injured 160 others.<sup>32</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

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<sup>27</sup> UN General Assembly Resolution 49/59, [Convention on the Safety of United Nations and Associated Personnel](#).

<sup>28</sup> For a commentary on the Convention, see: Evan T Bloom, 'Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel', *The American Journal of International Law*, vol. 89, no. 3 (Jul., 1995), pp 621–631.

<sup>29</sup> UN General Secretary Report to the General Assembly (A/55/637), can be found at: (21 November 2000).

<sup>30</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), p 721.

<sup>31</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>32</sup> *The American Journal of International Law*, 'Protection of UN and Humanitarian Personnel in Conflict Zones', vol. 98, no. 1 (January 2004), pp 172–173.

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>33</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.<sup>34</sup>

On 8 December 2005, the UN General Assembly considered the Optional Protocol. Kofi Annan, UN Secretary General, in speaking to the General Assembly, again pointed to 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 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>35</sup>

The Optional Protocol was accepted by the UN General Assembly and the text can be found on the UN's Treaty Database page.<sup>36</sup>

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.

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

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<sup>33</sup> UN Press Release GA/L/3291, [Legal Committee, Recommending New Protocol, seeks Broader Protection for United Nations, Associated Personnel Serving on Peace Missions](#), (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.

<sup>34</sup> The UN Peacebuilding Commission website is at: <http://www.un.org/peace/peacebuilding/>.

<sup>35</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>36</sup> UN General Assembly Resolution 60/42. [Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel](#), (6 January 2006).

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.

He was also concerned about the number of states signing 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 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.

Notwithstanding this concern, 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>37</sup>

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<sup>37</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), p 725 and pp 727–728.

