

CURRENT DEVELOPMENTS

PUBLIC INTERNATIONAL LAW

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I. THE GENEVA CONVENTIONS AND UNITED NATIONS PERSONNEL (PROTOCOLS) ACT 2009: A MOVE AWAY FROM THE MINIMALIST APPROACH

The Geneva Conventions and United Nations Personnel (Protocols) Act 2009 makes the necessary changes in domestic law to enable the United Kingdom to ratify two treaties. The first treaty, the 2005 Third Additional Protocol to the 1949 Geneva Conventions, establishes an additional distinctive (protective) emblem, the red crystal. The second, the 2005 Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel, extends the legal protection given to personnel involved in two types of UN operations: operations for the purpose of delivering humanitarian, political or development assistance in peace-building, and operations for the purpose of delivering emergency humanitarian assistance. As the Foreign Office Minister of State explained, '[b]oth agreements aim to enhance the protection of personnel operating with a humanitarian purpose.'¹

The Bill gave rise to protracted debate at Second Reading in the House of Commons, in particular, on the first clause concerning the red crystal emblem. This is deceptive since the leadership of the three main political parties—Labour, Conservative and Liberal Democrat—were generally united in their support for the Bill. The debate was stimulated for essentially extraneous reasons connected with an unrelated matter of Parliamentary procedure.² The fact that it had little to do with the substance of the Bill was seen by the fact that the Bill itself passed without a vote and even on the procedural motion, the Conservative Front Bench voted with the Government.³

¹ *Hansard* HL col 189 (27 Jan 2009). An additional common feature is that, by chance, both treaties were signed on 8 December 2005.

² There was a feeling of anger among some Conservative back-bench MPs that they had been treated unfairly by the Government Whips, who had kept them up late a few nights earlier in a debate on another Bill. They decided to filibuster.

³ *Hansard* col 982 (1 Apr 2009).

A. Third Additional Protocol to the 1949 Geneva Conventions, relating to the Adoption of an Additional Distinctive Emblem

1. Historical background

The need for an additional distinctive (protective) emblem has its roots in the history of modern international humanitarian law (also called the law of war or the laws of armed conflict). Modern international humanitarian law began with the original Geneva Convention of 1864.⁴ This decided that a red cross on a white ground should be the distinctive and uniform sign for army medical personnel and for military ambulances and hospitals. This prescription can be found in all subsequent treaties that amplify and up-date the 1864 Convention. Previously, it was common practice to mark hospitals and ambulances on the battlefield but there was no uniformity in what the mark should be.⁵ There is no definitive explanation as to why the red cross was chosen although later Conventions state: 'As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.'⁶

At the same time as the adoption of the original Geneva Convention, what is now the International Red Cross and Red Crescent Movement came into being. The initial resolutions of the Movement, passed in 1863 and thus pre-dating the 1864 Convention, provided that voluntary medical personnel placed under military command 'shall wear in all countries, as a uniform distinctive sign, a white armband with a red cross.'⁷ Since that time, whilst the emblem remains primarily for the use of military (and now, in time of war, duly authorised civilian) medical personnel and those voluntary medical personnel who work alongside them, the Movement has had a close connection with the emblem by virtue of its historic and continuing association with the Geneva Conventions.⁸

2. The red crescent emblem

Soon after the adoption of the red cross emblem, soldiers of the Ottoman Empire took offence because the use of the cross reminded them of the badge of the Crusaders.⁹ Thus, as early as 1876, the Turkish government announced that its military medical

⁴ *Handbook of the International Red Cross and Red Crescent Movement* (14th edn, International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, Geneva, 2008), inset between 19–31.

⁵ JS Pictet (ed), *Commentary to Geneva Convention I of 12 August 1949* (International Committee of the Red Cross, Geneva, 1952) 297.

⁶ Art 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (Geneva Convention I). The text can be found in Adam Roberts and Richard Guelff (eds), *Documents on the Laws of War* (3rd edn, Oxford University Press, Oxford, 2000) 197, 211–212.

⁷ Art 8 of the Resolutions of the Geneva International Conference of 1863, *Handbook of the International Red Cross and Red Crescent Movement* (n 4) 516.

⁸ For a fuller explanation, see Michael Meyer, 'The proposed new neutral protective emblem: a long-term solution to a long-standing problem' in Richard Burchill, Nigel D White and Justin Morris (eds), *International Conflict and Security Law* (Cambridge University Press, Cambridge, 2005) 88–89, 93–94.

⁹ Details of the points made in this section can be found in François Bugnion, *Towards a Comprehensive Solution to the Question of the Emblem* (International Committee of the Red

services would use a red crescent on a white background. Although the International Committee of the Red Cross (ICRC) indicated its preference for a single emblem, the red cross, it acquiesced in the Turkish practice. Later Egypt joined Turkey in the use of the red crescent, and Persia adopted the red lion and sun emblem. This latter emblem is no longer in use though modern-day Iran has reserved the right to use it in future.

In 1929, in an attempt to avoid a multiplicity of emblems, the States Parties to the Geneva Wounded and Sick Convention of that year recognised the red crescent and red lion and sun emblems. In 1949, States were again faced with attempts to introduce further emblems. In particular, Israel wished to have recognition of the red shield of David emblem used by their military medical services. However, the three existing emblems were confirmed in the 1949 Geneva Conventions without any further additions. Officially, only those countries that used these emblems prior to 1949 were permitted to continue the usage but, in practice, there have been no objections when additional countries have decided to use the red crescent. Israel, however, chose to continue use of the red shield of David emblem although this was formally unrecognized.

Distinctive emblems, such as the red cross and the red crescent, serve an important purpose as signs of neutrality and of protection. They are to be used only by officially authorized medical and religious personnel; they signify that these personnel, and transports, establishments and objects marked with the same emblems, must not be attacked, and, as far as possible, these personnel must be assisted in performing their purely humanitarian functions. In simple terms, the red cross and red crescent emblems are intended to provide protection on the battlefield.

3. Background to the red crystal emblem

In recent decades, two particular problems have arisen in respect of the existing emblems. The first is the rise in religious/ethnic conflicts in which there has been a decreased respect for the red cross and red crescent emblems. In at least some cases, they have been identified with religious/ethnic groupings and thus lost their neutral and impartial character.¹⁰ This loss has affected not only the parties to the conflict but also peacekeeping and other forces that might be in the region.

A second concern was that some National Societies also had a difficulty using one or the other emblem—a requirement for membership in the International Red Cross and Red Crescent Movement.¹¹ To give two examples, the government of Eritrea, because of the ethnic make-up of the country, wished its National Society to use an emblem comprising both the red cross and the red crescent together (the so-called double emblem), while Israel wished to retain the red shield of David.

Cross, Geneva, 2000). Also see Dr Bugnion's earlier work *The Emblem of the Red Cross: A brief history* (International Committee of the Red Cross, Geneva, 1977).

¹⁰ Conflicts where the red cross and red crescent emblems have not been as well respected include Somalia, Chechnya, Afghanistan and Iraq. In at least some cases, this was felt to be due to the religious or national/ethnic significance attached to these emblems. They might be perceived as being identified with an enemy.

¹¹ Statutes of the International Red Cross and Red Crescent Movement 1986, art 4(5), prior to amendment in 2006. This is found in the *Handbook of the International Red Cross and Red Crescent Movement* (13th edn, International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, Geneva, 1994) 415, 421.

Consultations began in 1995 to try to find a satisfactory solution to these problems. Two points quickly became clear. The red cross and the red crescent were universally known and it would not be possible to abandon these in favour of a new emblem. However, if there was to be a new *additional* emblem, it must be entirely free from any religious, national, cultural, ethnic or political symbolism.

The 27th International Conference of the Red Cross and Red Crescent, a body consisting, *inter alia*, of all National Societies that are members of the Movement and all States that are parties to the 1949 Geneva Conventions, set up a Joint Working Group to examine this issue in 1999. The United Kingdom was a leading member of this Group and in 2000, a draft Additional Protocol was sent to all States. This Protocol put forward a new additional emblem, the red crystal. Unfortunately, the Diplomatic Conference that was to convene to adopt the Protocol had to be postponed due to renewed conflict in the Middle East. It was not possible to hold the conference until December 2005 when the Additional Protocol including the red crystal emblem was duly adopted.¹² The Protocol entered into force on 14 January 2007 and, as at 14th November 2009, there are 51 States Parties.

4. *Status and benefits of the Third Additional Protocol*

The Additional Protocol places the red crystal emblem alongside the red cross and red crescent emblems as special symbols of neutrality and protection. All three have exactly the same status under international law¹³ and the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 will have the effect of ensuring that the same is applicable under national law. In addition, the Act will give the same protection to the red crystal emblem against misuse as applies to the other emblems. Use will only be permitted with the authority of the Secretary of State. This is discussed later.

The red crystal emblem will provide two main benefits:

- Improved protection: in cases where protection may be enhanced, the medical and religious personnel of the British armed forces will be able to use the red crystal emblem on a temporary basis (or indeed the red crescent) in preference to the red cross.¹⁴ This will be the same, *mutatis mutandis*, for any country that has become a party to Additional Protocol III. Members of the International Red Cross and Red Crescent Movement may also make temporary use of the red crystal emblem in exceptional circumstances and to facilitate their work.¹⁵
- Greater universality: in so far as the Movement is concerned, it will enable National Societies of States such as Eritrea and Israel to become full members of the Movement, thus contributing to the universality of the Movement. Magen David Adom in Israel has already joined the Movement. The National Society of Eritrea is not yet a full member.

¹² The full text of Additional Protocol III is printed in the *Handbook of the International Red Cross and Red Crescent Movement* (n 4) 323.

¹³ Art 2(1) of the Third Additional Protocol.

¹⁴ Art 2(4) of the Third Additional Protocol.

¹⁵ Art 3(3) for National Societies, and art 4 for the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. For National Societies there is an additional condition: such temporary use of the red crystal emblem must also be in accordance with national legislation.

The Third Additional Protocol to the 1949 Geneva Conventions is designed to increase the protection given to the sick and wounded on the battlefield and those who minister to them by providing an additional emblem which may be used in situations where the existing emblems may be thought to carry political or other controversial connotations. This will apply to British armed forces when operating in such circumstances.

5. *The legislative provisions*

The Act is short, with a majority of the provisions giving effect to the Third Additional Protocol, by amending the Geneva Conventions Act 1957.¹⁶ The relevant provision of the Third Additional Protocol is article 6, entitled 'Prevention and repression of misuse'. Article 6(1) requires the States parties to give the third Protocol emblem (also called the 'red crystal'¹⁷) and designation the same legal protection against misuse as already exists for the red cross and red crescent emblems and their designations. Article 6(2) provides for prior users of the third Protocol emblem (the red crystal). It follows the more flexible regime established for the red crescent emblem.¹⁸ Under article 6(2), States Parties may permit prior users to use the third Protocol emblem or an imitation thereof, 'provided that such 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.' Article 6(2) does however prohibit use by persons who claim the right to use the third Protocol emblem or an imitation after the Protocol was adopted.

Section 1 of the Geneva Conventions and United Nations Personnel (Protocols) Act amends the relevant sections of the Geneva Conventions Act 1957 accordingly. Among other matters, this has the following consequences: use of the red crystal emblem and of designs closely resembling the red crystal emblem is made subject to prior official authorisation¹⁹; unauthorised use is a criminal offence²⁰; the Secretary of State has the power to make regulations conferring general authority for use of the red

¹⁶ Geneva Conventions Act 1957, c. 52. There have been Geneva Convention(s) Acts since 1911, to enable ratification to take place of successive Geneva Conventions. The previous major revision was the Geneva Conventions (Amendment) Act 1995, which was the ratification legislation for the two 1977 Additional Protocols to the 1949 Geneva Conventions (see Peter Rowe and Michael A Meyer, 'The Geneva Conventions (Amendment) Act 1995: A generally minimalist approach' (1996) 45 ICLQ 476).

¹⁷ The Third Additional Protocol refers only to the 'third Protocol' emblem, not the red crystal. At the time of its negotiation, this seemed the best way to attract consensus on the text. However, almost immediately, the third Protocol emblem was referred to as the 'red crystal' and following adoption of the Protocol in December 2005, this name was endorsed by the 29th International Conference of the Red Cross and Red Crescent in June 2006. In Resolution 1, the International Conference '*decide[d]* that the Third Protocol emblem will henceforth be designated as the "red crystal"' (operative paragraph 2). The International Conference of the Red Cross and Red Crescent is composed of delegations of all the States Parties to the 1949 Geneva Conventions, as well as delegations from the recognised National Red Cross and National Red Crescent Societies, the ICRC and the International Federation of Red Cross and Red Crescent Societies.

¹⁸ Art 53 of 1949 Geneva Convention I sets out different rules for prior users of the red cross emblem and of the red crescent and red lion and sun emblems. The regime for the red cross emblem is more restrictive.

¹⁹ S 6(1) and 6(2)(b) of the Geneva Conventions Act 1957 (as amended), respectively.

²⁰ This is punishable by a fine up to level 5 on the national scale and/or by forfeiture: section 6(3).

crystal emblem or regulating the use of the red crystal emblem²¹. The following points deserve special mention.

(a) Perfidious use of the red crystal emblem

The grave breach provision in the Geneva Conventions Act 1957 is extended to include the perfidious use of the red crystal emblem.²² Under section 1(3) of the 2009 Act, a grave breach of the Third Additional Protocol is defined as ‘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.’ Section 6(1)(f) specifies:

(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’ or ‘third Protocol emblem’.

It is worth noting that the effect of the above is to make it a grave breach to use perfidiously either the red crystal emblem on its own or the red crystal emblem in combination with other emblems (as permitted by article 3 of the Protocol for use as an indicative sign). This may be said to go further than might have been envisaged by the drafters of the Third Protocol but as explained below, this possible expansive interpretation is no bad thing.

Perfidy is prohibited under article 37(1) of 1977 Additional Protocol I and under article 85(3)(f), perfidious use, in violation of article 37, of the red cross or red crescent emblem is a grave breach of the Protocol. The term ‘perfidious’ is not defined, although the term ‘perfidy’ is. There does not appear to be any other definition or judicial interpretation of the term ‘perfidious’ and so one is entitled to have regard to the definition in article 37(1) in deciding its meaning. On that basis, the key question is whether the use of the emblem would involve ‘inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.’

In general one assumes that in most cases the perfidious use of the emblem will involve the use of the red crystal—or the red cross or the red crescent—as such and without adornment. However, one can imagine scenarios where using the red crystal emblem in an indicative manner could constitute a perfidious use of the emblem. Perhaps a better view would be that, in those cases where the red crystal is used perfidiously, it would not matter whether the perfidious use was in circumstances where it was being used in an indicative manner or not. It is a protective sign and the sign would be being used in a manner that would fall within article 37(1) of Additional Protocol I, namely purporting to accord protection. Put differently the red crystal emblem will still be a protective sign within the meaning of article 85(3)(f) of Additional Protocol I, regardless of how it is being used at the time.

This potential difficulty has not arisen before because, unlike the red crystal, neither the red cross nor the red crescent can incorporate another emblem or combination of emblems. They are protected emblems in their own right under both international and

²¹ S 6A(1).

²² S 1(2) and 1(3) of the Geneva Conventions and United Nations Personnel (Protocols) Act 2009.

national law. However, with the red crystal, under Additional Protocol III, it can also involve ‘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’ (article 3(1)(b), Additional Protocol III). This refers to the red shield (star) of David, which is not generally recognised as a protective emblem under international and national laws.

An alternative approach would have been to have had two different descriptions of the red crystal emblem in the legislation: one for the purposes of the grave breach provision (section 1 of the Geneva Conventions Act 1957 (as amended)), referring to the red crystal simpliciter, and one for the purposes of general emblem misuse (section 6 of the said 1957 Act), referring to the red crystal on its own or in combination with other emblems. However, this would have been more complicated.

In our view, the text as enacted is acceptable. It catches a perfidious use of the red crystal emblem where it is being used in conjunction with another emblem or emblems. Even if it may be said to create a slight illogicality in reference to the grave breach provision, it ensures that the UK is adequately covered in relation to ordinary misuse cases. It would be better to have a possibly over-extensive interpretation of the grave breach provision than risk arguments on the general misuse provision, which is where the real risk is likely to arise. The former may be dealt with if necessary by prosecutorial discretion.

(b) Protection of the designation ‘Red Crystal’

As noted previously, the additional distinctive emblem has two designations (names): ‘Red Crystal’ and ‘third Protocol emblem’. The former was agreed at the 29th International Conference of the Red Cross and Red Crescent in 2006 (see footnote 17), while the latter is the designation which appears in the text of the Third Additional Protocol. It is very positive that both designations are protected in the 2009 Act. This protection applies both with respect to general cases of misuse²³ and to prior users.²⁴ Article 6(2) of the Third Additional Protocol does not refer to prior users of the designation. However, as noted in the Commentary to the Protocol, ‘there is no logical reason justifying the establishment of different legal regimes for the prior use of the emblem and that of its designation, which is equally protected.’²⁵

B. Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel

1. Historical background

The 1994 United Nations Convention on the Safety of United Nations and Associated Personnel²⁶ was negotiated against the backdrop of a large expansion in the number

²³ S 1(4) of the 2009 Act.

²⁴ S1(5).

²⁵ J-F Quéguiner, ‘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)’ (2007) 89 *International Review of the Red Cross* 198.

²⁶ The full text of the Convention is printed in A Roberts and R Guelff (eds) (n 6) 627.

and scope of peace operations carried out by the United Nations at the end of the Cold War. The traditional peacekeeping role was replaced by interventions between warring parties. The result was a commensurate increase in casualties as the local forces sought to impede the role being played by United Nations forces. This culminated in 202 United Nations military personnel being killed in 1993 alone.

The Convention itself was agreed in six weeks and was designed to give a degree of legal protection to United Nations personnel, their premises and vehicles. In particular, attacks on them and threats of attack were made international criminal offences.²⁷ The United Kingdom ratified the Convention on 6 May 1998, following the enactment of the United Nations Personnel Act 1997.²⁸

However, the Convention was limited in a number of ways, in particular in relation to the type of operations to which it applied. Article 1(c) of the Convention read as follows:

- (c) 'United Nations operation' means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:
 - (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
 - (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation.

It follows that there are two distinct types of operation, those where the Convention applies automatically ('[w]here the operation is for the purpose of maintaining or restoring international peace and security') and those where it requires action by the Security Council or General Assembly before it applies (where 'there exists an exceptional risk to the safety of the personnel participating in the operation'). There has never been a declaration by either body in relation to any operation and as a result there has been growing criticism that the scope of the Convention is too limited. The United Nations Secretary-General himself joined in the criticism, referring in particular to the United Nations Special Mission to Afghanistan (UNAMA) as a mission where there was clearly an exceptional risk.²⁹ The Secretary-General recommended that the Convention should apply to all United Nations operations and that the element of risk should not be a condition for the applicability of the Convention. In 2001, initial steps were taken by the General Assembly to re-examine the scope of the Convention. An Ad Hoc Committee was established, followed by a Working Group but momentum was increased in August 2003 following the bombing of the United Nations Headquarters in Baghdad which killed 20 United Nations employees including the Special Envoy to Iraq. A further 160 people were injured. A draft Protocol was submitted in November 2005 as a new Optional Protocol to the Convention. This was adopted by consensus on 8 December 2005 as the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel. However, the Protocol did not go as far as the

²⁷ For an account of the Convention, see M Christine Bourloyannis-Vrailas, 'The Convention on the Safety of United Nations and Associated Personnel' (1995) 44 ICLQ 560.

²⁸ United Nations Personnel Act 1997, c. 13.

²⁹ See Report of the Secretary-General on the Scope of Legal Protection Under the Convention on the Safety of United Nations and Associated Personnel, UN Doc A/55/637, dated October 2000.

Secretary-General had recommended. It added two new categories of operations where the Convention would automatically apply. Article II(1) of the Protocol states that the parties shall:

in addition to those operations as defined in article I(c) of the Convention, apply the Convention in respect of all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purposes of:

- (a) delivering humanitarian, political or development assistance in peacebuilding, or
- (b) delivering emergency humanitarian assistance.

This would exclude emergency humanitarian assistance operations established by autonomous organizations within the United Nations system or by the Specialized Agencies. Furthermore, during the negotiations, a number of States sought to distinguish between humanitarian operations in response to natural disasters and other relief and peacebuilding operations. As a result, an 'opt-out' was included in article II(3) of the Protocol which provides as follows:

A host State may make a declaration to the Secretary-General of the United Nations that it shall not apply the provisions of this Protocol with respect to an operation under Article II(1)(b) [delivering emergency humanitarian assistance] which is conducted for the sole purpose of responding to a natural disaster. Such a declaration shall be made prior to the deployment of the operation.

The Protocol will come into force thirty days after twenty-two States have become Parties. As at 14 November 2009, the number was 19 and so the Protocol is likely to come into force in the near future.³⁰

2. *The legislative provisions*

The Geneva Conventions and United Nations (Protocols) Act 2009 which received the Royal Assent on 2 July is designed to provide the necessary domestic legislative framework to enable the United Kingdom to ratify the 2005 Protocol. It does this by means of amendment to section 4 of the United Nations Personnel Act 1997.³¹ Section 4(2) currently defines a 'UN operation' in terms that reflect the 1994 Convention. It is expanded now so that the operations to which the Convention is automatically applicable include those outlined in article II(1) of the Protocol, namely delivering humanitarian, political or development assistance in peacebuilding, and delivering emergency humanitarian assistance.³² The 2009 Act retains the 'exceptional risk' option that is to be found in article 1(c)(ii) of the 1994 Convention as the Protocol 'supplements' the Convention and does not seek to replace its provisions. Indeed, article I of the Protocol specifically states that 'the Convention and the Protocol shall be read and interpreted together as a single instrument.' However, in the light of the extension in the type of operations to which the Convention is automatically applicable, it is hard to envisage a case where article 1(c)(ii) is likely any longer to be relevant. The 'opt-out' provision contained in article II(3) is also reflected in the 2009 Act in that where a declaration has been made by a host State in accordance with article II(3), that operation is excluded from the definition of 'UN operation' within the Act.³³

³⁰ For an appraisal of the Protocol, see H Llewellyn, 'The Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel' (2006) 55 ICLQ 718.

³¹ S 2(1) of the 2009 Act.

³² S 2(2) and 2(3).

³³ S 2(4).

c. Commencement and territorial extent

The Act will come into force on such day as the Secretary of State may by order appoint.³⁴ An Order was made on 14 October 2009, stating that section 1 of the Act 'shall come into force on 5 April 2010.'³⁵ The Third Additional Protocol will come into force for the United Kingdom on 23 April 2010, being six months after deposit of the instrument of ratification.³⁶ This slight discrepancy in dates is normal UK practice: by bringing the relevant domestic law into effect before the treaty is in force internationally, the UK is assured of meeting its international obligations. No order has yet been made to bring into force section 2 of the Act which amends the United Nations Personnel Act 1997.

Like the texts of the 1949 Geneva Conventions and their 1977 Additional Protocols, the text of Additional Protocol III is inserted as a Schedule to the Geneva Conventions Act 1957.³⁷ Also like earlier Geneva Conventions Acts, the provisions of section 1 on the emblem and the Schedule of the 2009 Act may be extended to the Channel Islands, Isle of Man and British Overseas Territories.³⁸ The provisions of the Act extend to the whole of the UK. As far as Scotland is concerned, the Act relates only to reserved matters.³⁹

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II. CLEARING THE FOG OF WAR? THE ICRC'S INTERPRETIVE GUIDANCE ON DIRECT PARTICIPATION IN HOSTILITIES

I. INTRODUCTION

In the summer of 2009, the International Committee of the Red Cross (ICRC) published a document setting out its 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law.'¹ The purpose of the document is to help clarify and to assist in the interpretation of a principle that is undoubtedly accepted in international humanitarian law (IHL) but which is subject to much ambiguity. This is the principle that civilians are to be immune from direct attacks by the parties to an armed conflict, unless the civilian takes a direct part in hostilities. The principle is applicable in both international and non-international

³⁴ S 3(1) of the Geneva Conventions and United Nations Personnel (Protocols) Act 2009.

³⁵ The Geneva Conventions and United Nations Personnel (Protocols) Act 2009 (Commencement No. 1) Order 2009 (SI 2892/2009).

³⁶ Art 11(2) of the Third Additional Protocol.

³⁷ S 1(8).

³⁸ S 3(3). A similar provision in s 3(4) also provides for the extension of s 2.

³⁹ Geneva Conventions and United Nations Personnel (Protocols) Bill [HL], Explanatory Notes, 17th December 2008, 1.

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¹ ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva 2009) ('*Interpretive Guidance*'), available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0990?opendocument>.