

STATES OF JERSEY



GENEVA CONVENTIONS: ADDITIONAL PROTOCOL III – EXTENSION TO JERSEY

**Lodged au Greffe on 24th January 2011
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31(1)(b)(i) of the States of Jersey Law 2005, whether they agree that a request be made to Her Majesty in Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications and adaptations, Section 1 of, and the Schedule to, the Geneva Conventions and UN Personnel (Protocols) Act 2009, as summarised in the report of the Chief Minister dated 24th January 2011.

CHIEF MINISTER

REPORT

Executive Summary

The purpose of this Proposition is to request the States to consider whether they agree in principle to the Geneva Conventions Act (Jersey) Order 2011 (draft text attached at Appendix 1), which implements in Jersey the Additional Protocol III to the Geneva Conventions.

The Protocol introduces a new distinctive emblem, the red crystal, in addition to the existing red cross and red crescent, to be used in situations where the existing symbols might be wrongly perceived as having religious connotations. The Protocol puts the new emblem on the same legal footing as the existing emblems recognised by the Geneva Conventions.

Extension of the Protocol will enhance the international reputation of Jersey by sending a strong and positive message, demonstrating that Jersey stands alongside the rest of the international community in recognising the importance of the Protocol, as well as reaffirming its support for the institution of the International Committee of the Red Cross (ICRC).

Background

An International Diplomatic Conference adopted the (Third) Protocol Additional to the Geneva Conventions on 8th December 2005, and the UK signed the Protocol on the same day. The Protocol is the result of a long process of international negotiations initiated by the International Committee of the Red Cross (ICRC). One of its objectives is to enable national humanitarian societies of countries who did not want to choose between the existing emblems to join the International Red Cross and Red Crescent Movement.

The text of the Protocol can be found on the ICRC website (www.icrc.org/ihl.nsf/FULL/615?OpenDocument) and in the schedule appended to the Geneva Conventions and UN Personnel (Protocols) Act 2009 (www.opsi.gov.uk/acts/acts2009/ukpga_20090006_en_1)

Aim of the Protocol

The Protocol introduces a new distinctive emblem, the red crystal, in addition to the existing red cross and red crescent, to be used in situations where the existing emblems might be wrongly perceived as having religious connotations. The Protocol puts the new emblem on the same legal footing as the existing emblems recognised by the Geneva Conventions.

The Conventions provide for the emblems to be used to identify the personnel, material and buildings of armed forces medical services, protecting them and their patients against attack in situations of armed conflict. The Protocol allows armed forces medical services, without prejudice to their current emblems, to make temporary use of any recognised distinctive emblem where this may enhance protection. For instance, the UK will continue to use the red cross as its protective emblem for Defence Medical Services, but may decide to use the red crystal or the red crescent in situations where these are likely to afford a higher level of protection.

Steps required to meet the terms of the Protocol

Legislation necessary to give effect to the Protocol in UK law, the Geneva Conventions and United Nations (Protocols) Act 2009, received Royal Assent on 2nd July 2009. The Act amends the Geneva Conventions Act 1957 (already extended to Jersey by Order in Council), which makes it a criminal offence to misuse the distinctive emblems, by extending these provisions to the red crystal. The UK thus complied with Article 6 of the Protocol which requires states parties to take measures necessary for the prevention and repression of misuse of the new emblem.

Extension of the Protocol to Jersey requires measures for the prevention and repression of misuse of the emblem. This will be effected, if the States agree, by extending the relevant provisions of the Geneva Conventions and UN Personnel (Protocols) Act 2009, section 1 and the Schedule, to the Crown Dependencies by Order in Council, as provided by section 3(3) of the Act in conjunction with section 8(2) of the Geneva Conventions Act 1957, as amended in 1995.

Financial and manpower implications

There will be no additional manpower, revenue or capital requirements arising from this provision.

24th January 2011

STATUTORY INSTRUMENTS

2011 No.

GENEVA CONVENTIONS

The Geneva Conventions Act (Jersey) Order 2011

Made - - - - 2011

Coming into force - - 2011

At the Court at Buckingham Palace, the 13th day of October 2011

Present

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the power conferred by section 8(2) of the Geneva Conventions Act 1957⁽¹⁾, as applied by section 7(4) of the Geneva Conventions (Amendment) Act 1995⁽²⁾ and section 3(3) of the Geneva Conventions and United Nations Personnel (Protocols) Act 2009⁽³⁾, having noted that the States of Jersey have signified, pursuant to Article 31 of the States of Jersey Law 2005, that they agree that section 1 of, and the Schedule to, the said Act of 2009 should extend to Jersey so as to be law in Jersey, by and with the advice and consent of Her Privy Council, makes the following Order:

1. This Order may be cited as the Geneva Conventions Act (Jersey) Order 2011, and shall come into force on the seventh day after it is registered by the Royal Court of Jersey.

2. Section 1 of, and the Schedule to, the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 shall extend to Jersey subject to the exceptions and modifications specified in the Schedule to this Order.

Judith Simpson
Clerk of the Privy Council

(1) 1957 c.52.
(2) 1995 c.27.
(3) 2009 c.6.

SCHEDULE

Article 2

EXCEPTIONS AND MODIFICATIONS SUBJECT TO WHICH SECTION 1 OF, AND THE SCHEDULE TO, THE GENEVA CONVENTIONS AND UNITED NATIONS PERSONNEL (PROTOCOLS) ACT 2009 EXTEND TO JERSEY

1. References to –

- (a) the Geneva Conventions Act 1957,
- (b) the Geneva Conventions (Amendment) Act 1995,
- (c) the Geneva Conventions and United Nations Personnel (Protocols) Act 2009,

or to any provision of any of those Acts shall be construed as references to the Act or provision as it has effect in Jersey.

2. In section 1(5) for subsection (4D) (as inserted) substitute–

■(4D) For the purposes of subsection (4B) of this section references in subsection (4) of this section to the coming into operation of this Act in Jersey shall be construed as references to the coming into operation in Jersey of section 1 of the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 by virtue of the Geneva Conventions Act (Jersey) Order 2011.■

3. Omit section 1(6)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends section 1 of, and the Schedule to, the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 to Jersey subject to exceptions and modifications.

**Protocol additional
to the Geneva Conventions of 12 August 1949,
and relating to the Adoption
of an Additional Distinctive Emblem**

(Protocol III)

Geneva, 8 December 2005

**Protocol additional to the Geneva Conventions of 12 August 1949,
and relating to the Adoption of an Additional Distinctive Emblem**

(Protocol III)

Preamble

The High Contracting Parties,

(PP1) *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,

(PP2) *Desiring* to supplement the aforementioned provisions so as to enhance their protective value and universal character,

(PP3) *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,

(PP4) *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,

(PP5) *Stressing* that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

(PP6) *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,

(PP7) *Recalling* that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

(PP8) *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,

(PP9) *Recognizing* the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

(PP10) *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:

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.

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.
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".
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.

Article 3 - Indicative use of the third Protocol emblem

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.

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.
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.
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.

Article 4 - International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies

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.

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.

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.

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.

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.

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.

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.

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

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.

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.
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 their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

Article 13 - Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol.

Article 14 - Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation.
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.
3. The denunciation shall have effect only in respect of the denouncing Party.
4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict or occupation, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

Article 15 - Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol, of:

- a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 8, 9 and 10;
- b) the date of entry into force of this Protocol under Article 11 within ten days of said entry into force;
- c) communications received under Article 13;
- d) denunciations under Article 14.

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.

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.

ANNEX

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