II. THE GENEVA CONVENTIONS (AMENDMENT) ACT 1995: A GENERALLY MINIMALIST APPROACH

THE government's decision, announced on 22 October 1993, to ratify the 1977 Additional Protocols to the Geneva Conventions of 1949 as soon as amendments to the Geneva Conventions Act 1957 could be made led to a race to pass the bill through all its stages in both Houses before 4 December 1995.[1] This was the date of the International Conference of the Red Cross and Red Crescent held in Geneva and it was argued in the House of Lords that the British Red Cross should be able to attend the conference and to say that the necessary domestic legislation had been passed to enable ratification to take place. The bill had started its life in the House of Lords and had received its second reading only on 25 May 1995. It was, in fact, given the royal assent on 19 July 1995.

A similar situation had attended the passage of the Geneva Conventions Act 1957. Professor Colonel Gerald Draper explained that the 1957 Act was the direct result of an International Red Cross Conference in Delhi in that year. He went on to say:[2]

> The British Red Cross, all credit be to them, came with horror to see me ... and said: "This is shaming. How can we stand in front of the other Red Cross and Red Crescent societies of the world, at such a conference, where not only other Red Cross and Red Crescent societies are represented, but also the governments who are parties to any of the Geneva Conventions back from the 19th century, and say we have not ratified it?"

The 1957 Act was passed in four days through both Houses.[3] The 1995 Act took longer since it was a private member's bill, sponsored by Lord Archer of Weston-Super-Mare, with the assistance of the British Red Cross Society.[4] Lord McIntosh enquired why it was not a government bill and was told by the Minister of State, Baroness Blatch, that "the determination to ratify the protocol is actively being considered by the Government and it is therefore a matter of timing".[5] Lord Archer's bill had ensured that the December 1995 deadline would be met. The process in 1957 had been slightly different. Then the government had been forced to produce a bill by "a subtle form of blackmail"[6] in "getting distinguished peers to write letters to The Times" and then by raising the matter "in the House of Lords by the parliamentary procedure of questions".[7]

1. The bill was proposed by Lord Archer of Weston-Super-Mare, who concluded his speech by saying that when "the Minister walks out of this Chamber and sees her civil servants, I hope she will say to them, 'I am damn well going to have this through by 4th December 1995' ": *HL Hansard*, Vol.564, col.1086 (25 May 1995).

2. Bothe, Macalister-Smith and Kurzidem (Eds), *National Implementation of International Humanitarian Law* (1990), pp.16–17.

3. *Idem*, p.18.

4. This was not the first time that legislation of this nature, enacted to enable the UK to ratify a treaty (in this case, two), went through Parliament as a private member's bill (the Antarctic Acts of 1967 and 1994 are earlier examples). All-party support was essential in order to have the Act passed so rapidly, and Labour MP Barbara Roche sponsored the bill in the Commons. This general backing was in line with the universal character and object of international humanitarian law, of which the 1977 Protocols are an integral part, and with the neutrality of the British Red Cross, and of the Red Cross Movement generally.

5. *HL Hansard*, Vol.564, col.1084.

6. Bothe *et al.*, *op. cit. supra* n.2, at p.17.

7. *Ibid.*

https://doi.org/10.1017/S002058930005911X Published online by Cambridge University Press

There had been Geneva Convention Acts in 1911 (to enable ratification to take place of the 1906 Geneva Convention) and in 1937 (to apply a similar process to the 1929 Geneva Wounded and Sick Convention). Both these Acts were restricted to protecting the red cross emblem and similar signs by creating specific offences in English law. The 1957 and the 1995 Acts also provided protection for such signs but, in addition, they created new criminal offences in English law, the grave breach provisions of the 1949 Conventions and the First Additional Protocol of 1977. Moreover, the 1957 Act led to a considerable amount of detailed implementation of the 1949 Geneva Convention III in the Prisoner of War (Discipline) Regulations 1958 and the Prisoner of War (Determination of Status) Regulations[8] of the same year.

On behalf of the government, Baroness Blatch stated that the bill "requires substantial amendment" since it went "somewhat further than is strictly required in a number of areas and in so doing raises some sensitive issues".[9] Baroness Blatch had thereby indicated the government's position on the extent to which legislation was required to implement the Additional Protocols. In its view, the bill should in principle contain only those provisions required to bring into UK law the additional grave breaches in the First Protocol and any additional matters on the protection of emblems contained in the Protocols.[10] What therefore is the status, in *UK law*,[11] of the other provisions of both Protocols which are not styled as grave breaches but yet may be considered to limit the methods and means of warfare?

A. The Status of Unincorporated Articles

The 1957 Act had referred to very few articles in the Act itself and had then included all four Conventions as schedules. This was a pattern followed by many Commonwealth countries. The effect of this procedure was not thereby to make all 429 articles of the four Conventions a part of UK law. What judicial authority there is supports the view that the whole of the 1949 Conventions are not part of English law. In 1968 Ungoed-Thomas J stressed that:[12]

> The title and preamble relied on [by the appellant, who had argued that his tax assessments were invalid since part of the tax would have been used by the government for constructing nuclear weapons] do not make the Geneva Conventions statute; and therefore except to the extent of the specific amendments to the law made by the Act of 1957 itself ... the Act of 1957 does not provide material which can be relied on as being in conflict with the Finance Act 1964.

8. Both are set out in the *Manual of Military Law*, Part III (1958), HMSO.
9. *HL Hansard*, Vol.564, col.1084.
10. In fact the bill as passed goes beyond this, generally strengthening the protection given to the red cross and other protective emblems, designations, signs and signals, and making minor amendments and repeals to bring the 1957 Act up to date. Like the earlier Geneva Conventions Acts, the provisions of the 1995 Act may be extended to the Channel Islands, Isle of Man and colonies by Order in Council.
11. Reference will subsequently be made to English law but the Act applies to Scotland and Northern Ireland; not, it is anticipated, that the legal effects will be different in the other jurisdictions.
12. *Cheney* v. *Conn (Inspector of Taxes)* [1968] 1 All E.R. 779, 782. See also *R.* v. *Starkey* 14 Dec. 1987 (unrep. Lexis). Cf. Hampson, "The Geneva Conventions and the Detention of Civilians and Prisoners of War" [1991] Pub.L. 507, 517–519.

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It is, therefore, inaccurate to conclude, as does Lord McNair, that a treaty relating to the conduct of war automatically becomes part of English law in the absence of an enabling Act.[13] In any event, the creation of new criminal offences requires domestic legislation. This is what the draftsman did in 1957 by including the grave breach provisions in the Act itself. The 1995 Act follows the same pattern.

B. Grave and Non-Grave Breaches

Although a number of articles in the First Protocol may fairly be said to reflect customary international law,[14] it is difficult to accept that their status in English law is sufficient to create additional criminal offences within that law. The conclusion must therefore be drawn that only those prohibitions on individual action contained in the First Protocol which are styled as grave breaches can give rise to liability under English criminal law. To deal with this limitation on the trial under English law of those who might breach some of the other articles in the Protocol, clause 2 was inserted in the bill presented to the House of Lords on 25 May 1995 for second reading. It provided that a breach of Article 37(1), 40 or 42(1) or (2) of the First Additional Protocol would be *treated* as though it were a grave breach of the Protocol. This went beyond the mere implementation of the grave breach provisions. Faced with the need to obtain government support for the bill in order to meet the 4 December deadline, Lord Archer withdrew clause 2 at committee stage,[15] on the ground that "the sort of misconduct which would constitute a breach of the First Protocol is in many cases already covered by the existing criminal law and by the Armed Forces disciplinary codes". However, this is not necessarily the case.

Article 37(1) of the First Protocol deals with the prohibition of perfidy, Article 40 with the denial of quarter and Article 42(1) and (2) prohibit attacks on persons parachuting from an aircraft in distress or where such a person has not been given the opportunity to surrender. The inter-governmental conference did not include these acts as grave breaches of the Protocol, perhaps largely because these articles aim at protecting *combatants* rather than civilians or others protected by the 1949 Conventions.

The international obligation to enact legislation to provide effective penal sanctions certainly applies only to grave breaches,[16] whereas for other breaches, the duty is to take measures necessary for their suppression.[17] The reason for including the original clause 2 to the bill so as to treat these acts as grave breaches (even

13. McNair, *The Law of Treaties* (1960), p.89. His view is supported by Brownlie, *Principles of Public International Law* (1991), p.48 and Shaw, *International Law* (1991), p.115. Cf. Higgins in Jacobs and Roberts (Eds), *The Effect of Treaties in Domestic Law* (1987), p.126, n.6. See, however, the Prisoner of War (Discipline) Regulations 1958, which implement large sections of the Third Geneva Convention 1949. No specific power is granted in the 1957 Geneva Conventions Act to make regulations for this purpose.

14. See Greenwood in Rowe (Ed.), *The Gulf War 1990–91 in International and English Law* (1993), chap.4.

15. *HL Hansard*, col.1863 (14 June 1995).

16. See Arts.49, 50, 129 and 146 in each of the four 1949 Conventions. Art.85(1) of the First Additional Protocol refers back to the structure of the 1949 Conventions with respect to breaches and grave breaches of the Protocol.

17. *Idem*, para.3 to each of the four Articles of the 1949 Conventions. See also Arts.1(1) and 80(1) and Art.86(1) of Protocol I.

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though they were not so defined in the Protocol) was because it was considered that the existing criminal law and the armed forces disciplinary codes did not necessarily cover such acts. A British soldier who killed an enemy by way of perfidy, or by denial of quarter, or who killed an enemy pilot ejecting from his stricken aircraft, would have committed a breach of the Protocol, for which he could be tried by an international tribunal. A prosecutor before a British court-martial would have some difficulty in framing a suitable charge. Are the soldier's acts properly described as murder, given that he commits no *actus reus* of homicide in killing an enemy combatant?[18] No question of lack of jurisdiction occurs since a British soldier is liable to the criminal law of England and Wales wherever he commits acts that infringe that law.[19] It could be argued, however, that this immunity from murder applies only if the killing occurs within the constraints of the laws of war binding on the United Kingdom, either by treaty or under customary international law.[20] Thus, if he kills in one of the ways prohibited by Article 37(1), 40 or 42(1) or (2) his immunity would no longer apply and he would be guilty of murder. Apart from the unrealism of charging a British soldier with murder in killing an enemy combatant during an international armed conflict involving British forces, there is also the issue of the status of unincorporated treaty provisions in English law. Even if it is accepted that these articles reflect customary international law (and thus automatically form a part of English law) it may be difficult to persuade a British court-martial that they reduce the immunity from what would otherwise be the offence of murder and thereby *increase* the criminal liability of a British citizen.[21]

Apart from his liability under the criminal law, a British soldier is also liable to military law under the Army Act 1955 for a wide range of military offences. Some may be committed against persons who are not themselves subject to British military law. These include stealing from anyone killed, wounded or captured in the course of warlike operations,[22] disobeying any lawful command,[23] committing an offence against the person or property of any member of the civilian population,[24] or conduct prejudicial to good order and military discipline under section 69 of the Army Act 1955. In the absence of an order not to take part in combat in one of the

18. See Hale, *Pleas of the Crown*, Vol.1, p.433; *R.* v. *Page* [1953] 2 All E.R. 1355; *R.* v. *Howe* [1987] A.C. 417, 429 (Lord Hailsham LC). See also Professor Sir John Smith QC, *Justification and Excuse in the Criminal Law* (1989), pp.30–31.

19. S.70 of the Army Act 1955. Similar provisions apply in the other service discipline Acts: the Naval Discipline Act 1957 and the Air Force Act 1955. These Acts give jurisdiction to a court-martial to try offenders outside as well as within (subject to certain limitations) the UK. A soldier may be tried by a criminal court in the UK for acts committed abroad in the same circumstances as his civilian counterpart.

20. See Rowe, "Murder and the Law of War" (1991) 42 N.I.L.Q. 216.

21. See generally, Rowe and Meyer, "Ratification by the United Kingdom of the 1977 Protocols Additional to the Geneva Conventions of 1949: Selected Problems of Implementation" (1994) 45 N.I.L.Q. 343. The sentence to be imposed for murder and wilful killing constituting a grave breach is the same. A charge brought in respect of the latter offence may be considered more acceptable than one in respect of the former.

22. S.30, Army Act 1955.

23. *Idem*, s.34. See also s.36, which deals with disobedience to standing orders.

24. *Idem*, s.63. It is difficult to imagine an offence that might be charged under this section that would not also be an offence under English law and thus chargeable under *idem*, s.70.

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ways prohibited by these articles, a British soldier might be charged with an offence under section 69 of the 1955 Act. The maximum punishment provided by this section is imprisonment for two years. This, it may be argued, is hardly adequate to reflect the seriousness of a deliberate breach of these articles. Had any of these acts been committed by an enemy combatant against British forces, it is likely that a charge under international law would be sought against the perpetrator.[25]

One further advantage in treating a breach of Article 37(1), 40 or 42(1) or (2) as a grave breach is that a prisoner of war who had committed such an act against British forces prior to capture could be tried by a British prisoner of war court-martial, the jurisdiction of which is limited to the trial of grave breaches (and acts that might be treated as such). There is no prohibition contained in the Conventions or in the First Protocol against the trial of *any breach* of these instruments and it would therefore be compatible with them for such a prosecution to take place under English law.[26]

C. Reprisals

At the second reading stage of the bill in the House of Lords, clause 1B provided that:

> In proceedings for an offence under this section in respect of a grave breach of the scheduled conventions or the Protocol ... it shall not be a defence that the person charged with the offence acted in reprisal for any act done or alleged to have been done by the other party.

This clause was deleted at committee stage by Lord Archer, who commented:[27]

> the United Kingdom wishes to retain the right to take reprisals in certain closely defined circumstances. The Government intends to enter a reservation to this effect on ratification of the protocols. The proposed new Section 1(1B) would have been incompatible with this and has not therefore been retained in the amended Clause 1.

The *Manual of Military Law* explains that reprisal action by one State is a form of "retaliation for illegitimate acts of warfare ... Reprisals are by custom admissible as a means of securing legitimate warfare."[28] Were this principle to be given full reign it could lead to harmful action against persons protected by the 1949 Conventions and the First Protocol. The structure of the Conventions is that certain groups of individuals are styled as "protected persons" and reprisals are pro-

25. Such a charge could not be brought under the Prisoner of War (Discipline) Regulations 1958 since the only offence that will give rise to a prisoner of war court-martial for acts committed prior to capture under the Regulations is a grave breach of the Conventions (or when amended, the First Protocol): reg.7. There is a certain logic in limiting the liability of a prisoner of war to a grave breach charge for acts committed prior to capture since this is the only offence transformed into English criminal law by the Geneva Conventions Act 1957. An international tribunal established to try war crimes at the conclusion of the conflict would not, of course, be bound by the 1958 Regulations.

26. Art.88 of the First Protocol refers to mutual assistance in respect of grave breaches only but it is likely that if an enemy soldier breached the Arts. under discussion the evidence against him would be provided by British soldiers and Art.88 would not come into play.

27. *HL Hansard*, col.1862 (14 June 1995).

28. Part III (1958), p.184.

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hibited against them. In the First Protocol this concept is extended, primarily, to all civilians and specified civilian objects.[29]

The object of placing subsection (1B) in the bill was to draw the restrictions on the taking of reprisals contained in the 1949 Conventions and in the First Protocol into English law. In the absence of any reservations, a claim before an international tribunal that the defendant had acted by way of reprisal could not succeed if the reprisal action were prohibited by the Conventions or the Protocol.[30] What, however, of the position in English law? A prisoner of war who had, prior to capture, committed a grave breach could be tried by a British prisoner of war court-martial under the Prisoner of War (Discipline) Regulations 1958. If the grave breach involved conduct specifically excluded from reprisals by the Conventions or the First Protocol, a defendant could not rely on the defence of reprisal (even if he had complied with all other requirements of international law for the reprisal to be lawful). The provisions prohibiting reprisals have not been transformed into English law, while grave breaches are specific offences in domestic law. An attempt to rely on a right of reprisal under customary international law would in some cases fail, at least to the extent that the prohibitions against reprisals could be said themselves to be part of customary international law.

The position is more complex if a State enters a reservation to one of the articles restricting reprisal action. As stated above, the British government does intend to enter a reservation when ratifying the First Protocol to permit it to take reprisal action in closely defined circumstances. If a State, which were subsequently to become involved in an armed conflict with the United Kingdom, had entered a similar reservation, its soldiers would be bound by the First Protocol as accepted by their State. If one of its soldiers were charged before a British prisoner of war court-martial with a grave breach of the Protocol, he might seek to rely on the defence of reprisal. Assuming all the other requirements of lawful reprisal were met, should the defence succeed? Equally, once the United Kingdom's reservation becomes effective, a British soldier might seek to be relieved of liability if brought before a British court.[31] Clause 1(1B) would have had the effect of preventing either soldier from relying on reprisal action by way of a defence and it was dropped from the bill. However, the question remains whether the reprisal-prohibiting provisions of the First Protocol *or* reservations to them have domestic effect in the absence of their specific incorporation into English law. Section 4(7) of the Act gives the Crown the power to certify by Order in Council that a reservation has been made to the Protocols and says that it shall be taken into account in construing the Act. The reservation, though, would be to the reprisal-prohibiting provisions, which are not made part of English law and would not, therefore, be before a court. It might be that soldiers on either side would be vulnerable if

29. A civilian is defined in Art.50 of the First Protocol; civilian objects are defined in Art.52(1).

30. For reprisal action in general see Greenwood, in Meyer (Ed.), *Armed Conflict and the New Law* (1989), chap.9 and Kalshoven, *Belligerent Reprisals* (1971).

31. If reprisal action were taken by the UK government, it is unlikely that a serviceman who carried out the order would be charged before a British court-martial with committing a grave breach of the Protocol. However, if he *refused* to carry out the order, he could be charged under s.34, Army Act 1955 (disobedience of a lawful command).

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proceedings were taken against them in a national tribunal, even though their actions could be justified in international law.

D. Reservations and Declarations

At the present time it is not clear to what extent any reservations and declarations to be made by the United Kingdom will depart from the understandings made upon signature of the Protocols.[32] A disadvantage of the UK method of ratification of treaties, which require some form of domestic legislation and where the treaty is added as a schedule to the Act, is that the schedule may not reflect accurately the extent of treaty obligations accepted on ratification. Section 4(7) of the 1995 Act warns of this possibility and provides that if either of the Protocols is subject to a reservation or accompanied by a declaration, "the protocol shall for the purposes of the Act be construed subject to and in accordance with any reservation or declaration so certified".[33] It also draws attention to the possibility of subsequent alterations to reservations or declarations. Such a section was not included in the Geneva Conventions Act 1957, nor is it to be found in the comparable legislation in Australia, Canada or New Zealand. This subsection does not, of course, give the government authority to make (or withdraw) reservations and declarations. It is designed principally to enable a court to have placed before it (should this be necessary) an Order in Council certifying that such a reservation or declaration has been made (or withdrawn). Unless the reservation or declaration refers to a part of the Protocol implemented directly into English law, it, like the scheduled Protocol, has no further status in English law, although it has, of course, under international law.

E. Emblems, Signs and Signals

Sections 2 and 3 of the 1995 Act make the necessary changes to protect the integrity of the emblems, signs and signals covered by both Additional Protocols. Section 2 generally strengthens the existing law preventing misuse, and section 3 enables regulations to be made to control use of the protected emblems.

Section 2 amends section 6 of the 1957 Act concerning prevention of abuse of the red cross and other emblems. The international distinctive sign of civil defence and the distinctive signals of identification for medical units and transports introduced by the First Protocol are given the same protection as the red cross, red

32. One important such departure would be a declaration recognising the competence of the International Fact-Finding Commission established under Art.90 of the First Protocol.

33. The UK entered a reservation to Art.68(2) of the Fourth Geneva Convention of 1949 but withdrew it on 15 Dec. 1971. It made declarations in respect of Art.85 of the Third Convention: see Roberts and Guelff, *Documents on the Laws of War* (2nd edn), p.336. Withdrawal of a reservation or declaration is dealt with by s.4(7) of the 1995 Act and any revision under Art.98 of the First Protocol, covering the technical Annex I containing regulations concerning identification, by s.4(7). Such a revision was made and entered into force on 1 Mar. 1994. It is included in the scheduled First Protocol. On the lawfulness and desirability of reservations to reprisal-prohibiting provisions, see Hampson, "Belligerent Reprisals and the 1977 Protocols to the Geneva Conventions of 1949" (1988) 37 I.C.L.Q. 818, 832–835, 838–842.

https://doi.org/10.1017/S002058930005911X Published online by Cambridge University Press

crescent and red lion and sun emblems and designations. For example, use of the civil defence sign and of the distinctive signals is made subject to prior official authorisation, and unauthorised use is made a criminal offence.

This provision in the Act helps to increase protection of these emblems, the sign and signals in several respects. First, the amount of fine for which one is liable on summary conviction for unauthorised use has been increased from level 3 (currently £1,000) to level 5 (£5,000) on the standard scale. Second, the wording covering the penalty of forfeiture has been widened, so that it no longer applies solely to "goods" but includes "or other article". This will enable objects not previously caught by the term "goods", such as vehicles using, without authorisation, a flashing blue light (which is one of the distinctive signals for medical transports), to be subject to forfeiture.

Further, the function of controlling use of the red cross and other emblems, etc., and their imitations, has been given to the "Secretary of State". At present, the Defence Council is responsible for controlling use of the protected emblems and designations, and the Board of Trade acts as protecting authority for use of designs and wording resembling the protected emblems and designations, as well as for use of the heraldic emblem of the Swiss Confederation and similar designs.[34] The reference only to the "Secretary of State" does not necessarily eliminate the current division of responsibilities, since the relevant function can be conferred administratively on any named minister or on the Defence Council. However, the change does permit the transfer of responsibility for the emblems and designations from the existing authorities to another minister or department. Centralising control for the protected emblems, etc., in one department could assist in strengthening their protection by helping to ensure greater consistency of interpretation and enhancing efficiency for monitoring purposes. Administrative arrangements resulting from the legislation will clarify where responsibility for the various emblems, the civil defence sign and the distinctive signals will lie.

Unfortunately, section 2 could also come to weaken the protection of the emblems, etc. This is because, under section 6(2)(b) of the 1957 Act, the test for determining whether or not a design closely resembles a protected emblem can be—and has been—interpreted as being twofold, namely, capable of being mistaken for, or understood as referring to, the said emblem. The wording in section 2 governing designs resembling the civil defence sign, and signals resembling the distinctive signals, limits the text to "capable of being mistaken for" and in proceedings for an offence under section 6(2)(b), these new provisions could be used in argument to support a more narrow approach.

Section 3 inserts a new section 6A into the 1957 Act, granting the Secretary of State the power to make regulations conferring general authority for use of the protected emblems, etc., or regulating the use of any such signs, etc. Although it is also provided that nothing in the regulation-making power affects the power of the Secretary of State to grant authority under section 6 of the Act in any other way,

34. The Swiss heraldic emblem and its imitation require regulation because of the confusion which may arise between the red cross emblem (being a red cross on a white ground) and the arms of Switzerland (being a white cross on a red ground). The instrumental role of Switzerland in establishing and promoting the original Geneva Convention of 1864 and its successors is well known.

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regulations made for such purposes would give them a greater status and, as a consequence, they may help to increase respect for, and public knowledge of, proper use of the red cross emblem and related matters.[35]

F. The Status of the Second Protocol

No grave breach provisions are contained in the Second Protocol. Section 1 of the 1995 Act, which amends the grave breach section in the 1957 Act, does not therefore refer to this Protocol. As noted above, reference is made to the Second Protocol in section 3 of the 1995 Act providing for regulations to control use of any emblem, etc., for the purpose of that Protocol. The Second Protocol is also referred to by way of definition in section 4(6), and in section 4(7) which deals with reservations and declarations. This Protocol, by itself, has no force in English law, despite its inclusion as a schedule to the 1995 Act. Article 12 does prohibit the improper use of the distinctive emblem of the red cross, but section 6 of the 1957 Act is sufficiently widely drawn to catch any such improper use within the United Kingdom. The Second Protocol is thus somewhat of a legal oddity. To avoid a breach of it, the obligations it imposes can be enforced only through existing law within the United Kingdom. In so far as it is inadequate to the task, the United Kingdom would be in breach of the Protocol should the obligations contained within it be broken. In the absence of any grave breach provisions, it is by no means clear whether an individual may be charged with a war crime under international law in respect of his acts in failing to comply with the Protocol.[36] Despite the 1995 Act he could not be tried on such a charge (however styled) under English law. The main effect of the Second Protocol in English law may be to act as a limitation on any emergency legislation which might be considered if a situation of civil disturbance reached a stage sufficient to cause the Protocol to apply.[37]

The fact that the Second Protocol is attached to the Act as a schedule could help to disseminate knowledge of its text, thereby implementing one of the obligations of the Protocol[38] and assisting in ensuring respect for its provisions.

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35. Regulation-making powers in relation to use of such emblems, etc., are given in the equivalent legislation in some other countries. See e.g. the New Zealand Geneva Conventions Act 1958, as amended in 1987, s.9.

36. Although see the decision of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, *Prosecutor* v. *Dusko Tadic a/k/a/ "Dule"*, 2 Oct. 1995.

37. See, in particular, Arts.6(2)(d), (f) and 10(1); and it would be relevant to establishing the UK's "other obligations under international law" for the purposes of an emergency derogation under Art.15(1) of the European Convention on Human Rights.

38. Art.19.

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