

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

Background

- 2.1 The *Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel* (the Optional Protocol) is a supplementary treaty of the *Convention on the Safety of United Nations and Associated Personnel* (the Convention).¹
- 2.2 The Convention requires States Parties to criminalise attacks on United Nations (UN) and associated personnel engaged in peacekeeping operations or operations specifically declared to be of 'exceptional risk' by the UN Security Council or General Assembly.² States that are party to the Convention are required either to prosecute or extradite persons suspected of committing such acts within the jurisdiction of that State.³
- 2.3 The Convention came into force in Australia on 3 January 2001.⁴ In order to comply with the Convention, the Commonwealth Government amended the *Criminal Code Act 1995* to include Division 71, which prohibits the commission of, or the intention to commit, certain acts against UN personnel involved in peace keeping operations or operations specifically declared to be of 'exceptional
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1 National Interest Analysis (NIA), Para 3.

2 NIA, Para 4.

3 NIA, Para 4.

4 NIA, Para 3.

- risk'. The acts criminalised include murder, manslaughter, assault, rape, theft and destruction of property.⁵
- 2.4 The Optional Protocol expands the protection of the Convention to personnel involved in additional types of UN operations, including personnel involved in delivering humanitarian, political or development assistance in peace building and delivering emergency humanitarian assistance.⁶ This includes for example personnel employed by the UN Development Programme; UN Children's Fund; the World Food Programme; and the UN High Commissioner for Refugees.⁷
- 2.5 Australia signed the Optional Protocol on 19 September 2006, and will lodge the instrument of ratification as soon as practicable after the completion of the treaty making process.⁸ The Optional Protocol will enter into force after 22 instruments of ratification have been lodged with the Secretary-General of the UN. The Optional Protocol is not yet in force.⁹
- 2.6 Article I of the Optional Protocol provides that the Convention and the Optional Protocol shall be interpreted as a single instrument.¹⁰

The Optional Protocol

- 2.7 UN personnel involved in delivering humanitarian, political or development assistance, or delivering emergency humanitarian aid are often exposed to a security environment of exceptional risk. For example, the Department of Foreign Affairs and Trade (DFAT) advised that, in the 2007-08 year, 25 civilian UN personnel lost their lives as a result of malicious acts while engaged in humanitarian work.¹¹
- 2.8 Despite UN personnel involved in humanitarian work being continually exposed to security environments of risk, a declaration of 'exceptional risk', which would extend the protections of the

5 *Criminal Code Act 1995*, Division 71.

6 NIA, Para 5.

7 NIA, Para 10.

8 NIA, Para 1.

9 NIA, Para 2.

10 NIA, Para 3.

11 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 1.

Convention to those UN personnel involved in humanitarian work, has never been made.¹²

- 2.9 It is not entirely clear why a declaration of ‘exceptional risk’ has never been made. DFAT speculate that this could be because either a State in which the UN was operating may feel that such a declaration reflects badly on its ability to protect UN personnel, or the process of obtaining such a declaration from the UN Security Council or General Assembly is too difficult.¹³
- 2.10 The Optional Protocol removes the requirement for a declaration of ‘exceptional risk’ before the Convention can apply to UN operations other than a UN peacekeeping operation.¹⁴

Obligations

- 2.11 The Optional Protocol obliges ratifying states to amend their laws to criminalise attacks on UN and associated personnel engaged in delivering humanitarian, political and development assistance, or delivering emergency humanitarian assistance. To meet the Optional Protocol’s obligations, the Commonwealth Government will amend Division 71 of the *Criminal Code Act 1995* to extend its coverage to UN and associated personnel involved in delivering humanitarian, political or development assistance in peace building and delivering emergency humanitarian assistance within Australia’s jurisdiction.¹⁵

Reasons for entering into the Optional Protocol

- 2.12 In the unlikely event that UN or associated personnel were involved in delivering humanitarian assistance within Australia’s jurisdiction, any offences committed against them that would fall within the scope of Division 71 of the *Criminal Code Act 1995* would already be prohibited under applicable State or Territory law. In other words, Division 71 of the *Criminal Code Act 1995* does not prohibit anything that was not already prohibited in Australia.¹⁶

12 NIA, Para 4.

13 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 3.

14 NIA, Para 5.

15 NIA, Para 12.

16 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 6.

- 2.13 Nevertheless, there are good reasons for Australia to ratify the Optional Protocol. A large number of Australians are involved in working for the UN in humanitarian, political and development assistance, or delivering emergency humanitarian assistance, and it is in their interests for Australia to ratify the Optional Protocol.¹⁷
- 2.14 As indicated above, the Optional Protocol is not yet in force. This means that Australians involved in humanitarian work for the UN are not subject to the protections of the Convention. In order to come into force, 22 instruments of ratification need to be lodged with the Secretary-General of the UN. Eighteen instruments have so far been lodged.¹⁸ Ratification by Australia will bring the Optional Protocol closer to being in force; it will also encourage other nations to undertake the ratification process.¹⁹
- 2.15 In addition, while prohibiting attacks on UN and associated personnel involved in humanitarian work will not necessarily prevent such attacks from happening, doing so will strengthen the rule of law and create an additional sense of obligation on nations where humanitarian assistance is delivered.²⁰

Conclusions and recommendation

- 2.16 The Committee concludes that ratification of this treaty will send a message to the international community about Australia's commitment to the safety of UN and associated personnel involved in humanitarian, political and development assistance, or delivering emergency humanitarian assistance.
- 2.17 While the Committee believes that Division 71 of the *Criminal Code Act 1995* may never be used, if Australia's ratification of this treaty results in another country using similar provisions to prosecute someone who has attacked an Australian working for the UN, it will have been well worth the effort.

17 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 2.

18 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 3.

19 NIA, Para 6.

20 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 17 August 2009, p. 3.

Recommendation 1

The Committee supports *the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel* and recommends that binding treaty action be taken.

