



**Dr Ben Saul** BA (Hons) LLB (Hons) (Syd) DPhil (Oxon)  
*Director, Sydney Centre for International and Global Law*

Law Building F10  
Sydney University NSW 2006  
Australia

Tel: +61 2 9351 0354  
Facsimile: + 61 2 9351 0200  
Email: bsaul@usyd.edu.au

The Secretary  
Joint Standing Committee on Treaties  
House of Representatives  
Parliament House, Canberra ACT 2600  
*By email: jsct@aph.gov.au*

18 July 2009

Dear Secretary

Please accept this submission to your **Inquiry into ratification of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel**. The Sydney Centre for International Law is a leading centre of research and policy in international law in Australia and the Asia-Pacific region. At Sydney Law School I research and teach international humanitarian law, and I am a member of the International Law Association's International Committee on the Compensation of Victims of Armed Conflict.

This submission strongly supports Australia's ratification of the Optional Protocol for these reasons:

1. The parent Convention is limited in scope, as it only applies to peacekeeping operations or other UN operations which are declared to entail 'exceptional risk' by the UN Security Council or General Assembly. Despite the fact that 976 personnel have been killed in UN peacekeeping operations since the Convention came into force, a situation of 'exceptional risk' has never been declared.<sup>1</sup> This is concerning, as there are currently 113 Australians involved in UN Peacekeeping and other UN peace operations.<sup>2</sup> The Optional Protocol addresses this limitation by expanding the protection of the Convention to additional categories of UN operations and removing the 'exceptional risk' threshold.

2. The implementation of the Optional Protocol will be particularly important for the protection of 'Associated Personnel' who are defined in Article 1(b)(iii) of the Convention to include "*Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfilment of the mandate of a United Nations operation.*"

Associated Personnel are vulnerable to attack. For example, in the reporting period 1 July 2003 to 1 June 2004, the United Nations received reports of 428 violent assaults directed towards non-United Nations entities including the International Committee of the Red Cross.<sup>3</sup> Such incidents often fall outside of the scope of the Convention, as they do not occur during peacekeeping operations. By extending the scope of the Convention to cover emergency humanitarian assistance and peace-building operations, the Optional Protocol will strengthen protection of Associated Personnel. This is particularly important given Australia's increasing role in civil and military peace-building and humanitarian missions in the Asia-Pacific and in other regions.

## Implementation Issues

3. In giving domestic legislative or other operational effect to the Convention, two matters require further consideration. The term ‘peacebuilding’ is not defined in the Convention or the Optional Protocol. During the negotiation of the Optional Protocol, there was some disagreement as to the intended meaning of the term.<sup>4</sup> Some delegations thought that peacebuilding should encompass operations undertaken in pre-conflict, in-conflict and post-conflict situations.<sup>5</sup> Others preferred a restrictive definition of peacebuilding which applied only to post-conflict situations.<sup>6</sup>

*In our view, Australia should adopt a broad definition of ‘peacebuilding’ which includes pre and post-conflict operations.* This would give effect to the humanitarian object and purpose of the Protocol, which was to broaden the scope of the Convention and enhance its protective value. Further, this would be appropriate considering Australia’s involvement pre-conflict peacebuilding in activities aimed at stabilising countries in the Asia-Pacific region, such as police training and capacity building.<sup>7</sup>

4. Article 2(3) of the Optional Protocol allows State Parties to ‘opt out’ of applying the Convention to emergency humanitarian operations conducted in response to natural disasters. Declarations to this effect may be made to the Secretary-General prior to the deployment of disaster relief operations. The ‘opt out’ provision was included to reflect the view that natural disaster response operations do not entail a substantial risk to personnel.<sup>8</sup>

Australia plays an active role in disaster relief in the Asia-Pacific region. This involvement may include long term initiatives such as assisting refugees displaced by natural disasters or helping to control looting and unrest during but also well after the initial emergency phase of operations. The risks involved in such operations are difficult to predict at the outset. Australia should show leadership internationally by seeking to ensure the operation of the Convention in situations of natural disaster. This may encourage host States to act in good faith by not opting out of the Convention when receiving Australian personnel in disaster-relief situations.

Please be in touch if you require any further information.

Yours sincerely

**Dr Ben Saul**  
*Centre Director*

**Ms Sophie Williams**  
*Centre Researcher*

## Notes

---

<sup>1</sup> United Nations Department of Peacekeeping Operations, Table of Fatalities by Year, current to 30 April 2009. Available at <http://www.un.org/Depts/dpko/fatalities/StatsByYear%201.pdf>. Date accessed 19 May 2009.

<sup>2</sup> Department of Foreign Affairs and Trade, *Peacekeeping and Related Peace Operations*, <http://www.dfat.gov.au/facts/peacekeeping.html>. Date accessed 19 May 2009.

<sup>3</sup> Report of the Secretary-General, *Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel*, 4 September 2004, UN Doc A/59/332/

<sup>4</sup> *Report of the Ad Hoc Committee on the Scope of Legal protection under the Convention on the Safety of United Nations and Associated Personnel*, 11-15 April 2005, UN Doc A/60/52, pp2-5.

<sup>5</sup> *Ibid*, p4.

<sup>6</sup> *Ibid*.

<sup>7</sup> Department of Foreign Affairs and Trade, *Peacekeeping and Related Peace Operations*, above n2.

<sup>8</sup> *Report of the Ad Hoc Committee on the Scope of Legal protection under the Convention on the Safety of United Nations and Associated Personnel*, above n4, p7.