

The Adoption of an Additional Distinctive Emblem (Protocol III)

Introduction

- 5.1 On the 8 March 2006 Australia signed the *Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem for the Red Cross/Red Crescent Movement* (Protocol III).¹
- 5.2 Protocol III entered into force generally on 14 January 2007 in accordance with Article 11(1). As at March 2007, seventy-five states had signed Protocol III, with nine states having ratified or acceded.²

Background

- 5.3 The International Red Cross and Red Crescent Movement (the Movement) is an international humanitarian movement with the stated mission to protect human life and health, and to prevent and alleviate human suffering, without any discrimination based on nationality, race, religious beliefs, class or political opinions.³

1 National Interest Analysis (NIA), para. 2.

2 NIA, para. 2.

3 See the International Red Cross and Red Crescent Movement website: <www.redcross.int>

- 5.4 The Movement consists of several distinct organizations that are legally independent from each other, but are united through common basic principles, objectives, symbols, statutes, and governing organs. The Movement comprises:
- The International Committee of the Red Cross (ICRC) is a private humanitarian institution founded in 1863 in Geneva, Switzerland. Its 25-member committee has a unique authority under international humanitarian law to protect the life and dignity of the victims of international and internal armed conflicts.⁴
 - The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 and today coordinates activities between the 185 National Red Cross and Red Crescent Societies within the Movement. On an international level, the Federation leads and organises, in close cooperation with the National Societies, relief assistance missions responding to large-scale emergencies. The International Federation Secretariat is based in Geneva, Switzerland.⁵
 - National Red Cross and Red Crescent Societies exist in nearly every country in the world. Currently 185 National Societies are recognized by the ICRC and admitted as full members of the Federation. Each National Society works in its home country according to the principles of international humanitarian law and the statutes of the international Movement.⁶
- 5.5 Since its inception, the Movement has utilized the Red Cross and Red Crescent emblems as devices to protect its medical services. The use of these emblems is explicitly mandated by the Geneva Conventions.⁷

4 See the International Committee of the Red Cross website: <www.icrc.org>

5 See the International Committee of the Red Cross website: <www.ifrc.org>

6 A listing of Red Cross and Red Crescent Society websites can be found at <www.ifrc.org/address/rclinks.asp>

7 The Red Cross on white background was the original protection symbol declared at the 1864 Geneva Convention. It is, in terms of its color, a reversal of the Swiss national flag, a design adopted to honor the Swiss founder of the Red Cross, Henry Dunant, and his home country.

During the Russo-Turkish War of 1876-1878, the Ottoman Empire used a Red Crescent instead of the Red Cross because its government believed that the cross would alienate its Muslim soldiers. When asked by the ICRC in 1877, Russia and the Ottoman Empires committed to fully respect the sanctity of all persons and facilities bearing the Red Cross and Red Crescent symbols. After this de facto assessment of equal validity to both symbols, the ICRC declared in 1878 that it should be possible in principle to adopt an additional official protection symbol for non-Christian countries. The Red Crescent was

- 5.6 The symbols employed by the Movement have two distinctively different purposes. On one hand, the symbols serve as protection markings in armed conflicts, a denotation which is derived from and defined in the Geneva Conventions. As a protection symbol, they are used in armed conflicts to mark persons and objects (buildings, vehicles, etc.) which are working in compliance with the rules of the Geneva Conventions. In this function, they can also be used by organisations and objects which are not part of the International Red Cross and Red Crescent Movement, for example the medical services of the armed forces, civilian hospitals, and civil defense units. As protection symbols, these emblems are to be used without any additional specification (textual or otherwise) and in a prominent manner that makes them as visible and observable as possible, for example by using large white flags bearing the symbol.⁸
- 5.7 When used as an organisational logo, the Red Cross and Red Crescent symbols only indicate that persons, vehicles, buildings, etc. which bear the symbols belong to a specific organisation which is part of the International Red Cross and Red Crescent Movement (like the ICRC, the International Federation or the national Red Cross and Red Crescent societies). In this case, they are to be used with an additional specification (for example "Australian Red Cross") and not be displayed as prominently as when used as protection symbols.⁹
- 5.8 Today, the symbols of the Red Cross and the Red Crescent are used by more than 190 countries worldwide for the protection of medical personnel, buildings and equipment in times of armed conflict, and to identify national Red Cross and Red Crescent societies, the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies.¹⁰

formally recognized in 1929 when the Geneva Conventions were amended.

From 1924 to 1980, Iran used a "Red Lion with Sun" symbol for its national society, based on the flag and emblem of the Qajar Dynasty. The Red Lion with Sun was formally recognized as a protection symbol in 1929, together with the Red Crescent. Despite the country's shift to the Red Crescent in 1980, Iran explicitly maintains the right to use the symbol. See <http://en.wikipedia.org/wiki/Emblems_of_the_Red_Cross>

8 See Commentary on Article 39 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570048?OpenDocument>

9 See Commentary on Article 44, paragraph 2 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570053?OpenDocument>

10 Submission by Australian Red Cross, *Submission 3*, p. 1.

- 5.9 The emblems are recognised by the Geneva Conventions and the Additional Protocols of 1977 and 2005. These protocols constitute part of the fundamental law protecting human life and dignity in time of armed conflict.¹¹

The purpose of the protocol

- 5.10 Under international law, those displaying the symbols of the Red Cross and Red Crescent must be granted free access to people who are victims of armed conflicts or natural disasters.¹² Commentary on Article 38 of the First Geneva Convention of 1949 clearly states that these emblems are intended “to signify one thing only – something which is, however, of immense importance: respect for the individual who suffers and is defenceless, who must be aided, whether friend or enemy, without distinction of nationality, race, religion, class or opinion.”¹³ Despite this assertion, however, the emblems have not always been granted the recognition and respect to which they are entitled as “signs of the strict neutrality of humanitarian work.”¹⁴
- 5.11 The Department of Foreign Affairs and Trade (DFAT) when asked why a symbol devoid of political, religious or ethnic connotations such as the Red Crystal had not been adopted sooner, stated:

In 1949 when the Geneva Conventions were adopted, it was thought that the Red Cross and the Red Crescent would provide sufficient coverage, if you like, or were sufficiently broad to be adopted by all national societies. In the almost 60 years since, in the Middle East, in the Horn of Africa and in Ethiopia and Eritrea the use of the emblems was also an issue because of the connotations of some sort of religious affiliation. That is incorrect. Nevertheless, if that perception is there, it is a problem in ensuring protection for the humanitarian workers we are seeking to protect.¹⁵

11 Submission by Australian Red Cross, *Submission 3*, p. 1.

12 ICRC, “The emblems of the International Red Cross and Red Crescent Movement,” <www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem?OpenDocument>

13 See Commentary on Article 38 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570047?OpenDocument>

14 ICRC, “The emblems of the International Red Cross and Red Crescent Movement,” <www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem?OpenDocument>.

15 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, pp. 22-23.

- 5.12 The Australian Red Cross also stated in their evidence that:
- Despite the Red Cross and Red Crescent emblems being exclusively universal and humanitarian symbols, they have been wrongly perceived as having religious, cultural and political considerations. This has affected respect for the emblems and has diminished the protection they offer both to victims and to the humanitarian aid providers operating in areas of conflict.¹⁶
- 5.13 Some countries have found it difficult to identify with one or the other symbol and have not wished to make use of either of these emblems, arguing that they have religious connotations. Israel's national society, Magen David Adom, (MDA) is one such society which up until now has been precluded from becoming a member of the Movement, by virtue of the fact that it has used the Red Shield of David as its emblem.¹⁷
- 5.14 Because of the controversy over MDA and a number of other disputes, the introduction of an additional neutral protection symbol had been under discussion for a number of years, with the "Red Crystal" being the most popular proposal. This is a red diamond shape on white foreground (attached at the end of the chapter).
- 5.15 Amending the Geneva Conventions to add a new protection symbol required a diplomatic conference of all 192 signatory states to the Conventions. The Swiss government organised such a conference to take place on 5-6 December 2005, to adopt a third additional protocol to the Geneva Conventions to establish the Red Crystal as an additional symbol with equal status to the Red Cross or Red Crescent. The Australian Government participated in the conference and the DFAT told the Committee that there was "very little discussion about discarding the existing emblems".¹⁸ The Department went on to comment that "trying to come up with something that was not in wide use already but was sufficiently neutral in meaning was a bit of a challenge and ... the Red Crystal was what everyone was able to settle on."¹⁹
- 5.16 Additional Protocol III to the Geneva Conventions was adopted by the conference after a vote successfully achieved the required two-

16 Mr Dale Cleaver, *Transcript of Evidence*, 22 June 2007, p 23.

17 The MDA's national symbol is known as the Red Star (or Shield) of David. NIA, para. 3.

18 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 25.

19 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 26.

thirds majority. From the countries which attended the conference, 98 voted in favour and 27 against the protocol, while 10 countries abstained from voting.²⁰ The chairman of the conference, Mohammed Al Hadid, declared that: "This is an historical moment for the International Red Cross and Red Crescent Movement. We urge all governments to respect the red crystal, in addition to the red cross and the red crescent."²¹

5.17 The new symbol is referred to as "the third Protocol emblem in Additional Protocol III". The rules for the use of this symbol are the following:

- *Within its own national territory*, a national society can use either of the recognised symbols alone, or incorporate any of these symbols or a combination of them with the Red Crystal. Furthermore, a national society can choose to display a previously and effectively used symbol, after officially communicating this symbol to the state parties of the Geneva Conventions through Switzerland as the depositary state.
- *For indicative use on foreign territory*, a national society which does not use one of the recognised symbols as its emblem has to incorporate its unique symbol into the Red Crystal, based on the previously mentioned condition about communicating its unique symbol to the state parties of the Geneva Conventions.
- *For protective use*, only the symbols recognised by the Geneva Conventions can be used. Specifically, those national societies which do not use one of the recognised symbols as their emblem have to use the Red Crystal without incorporation of any additional symbol.²²

5.18 The Protocol has already received considerable international support.²³

20 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 26.

21 ICRC Press Release, 22 June 2006, see:
<www.icrc.org/Web/Eng/siteeng0.nsf/html/geneva-news-220606!OpenDocument>

22 See "ICRC Notes" About the adoption of an additional emblem: questions and answers" at <www.icrc.org/Web/Eng/siteeng0.nsf/html/emblem-questions-answers-281005>

23 Some of the countries which have ratified the Protocol early include Switzerland, Norway, the Netherlands and Philippines. The United States, the United Kingdom, Canada, New Zealand, and many European Union states are among those countries which have signed the Protocol and are moving towards ratification. Israel signed the Protocol in December 2005

- 5.19 Adoption of Protocol III was accompanied by agreement to the admission to the Movement of the Palestine Red Crescent Society and the Israeli national society (MDA).²⁴

Australian policy

- 5.20 Australia has been a strong supporter of the need for an additional, protective emblem for the Red Cross/Red Crescent Movement that would be devoid of any religious, ethnic or political connotations as this would increase the universality of the Movement²⁵ and be of very significant benefit in combat zones in helping secure the safety of eligible humanitarian workers from all countries, regardless of their location or political situation.²⁶
- 5.21 Ratification of Protocol III would be consistent with Australia's longstanding support for the Geneva Conventions and their Additional Protocols I and II. Ratification would further enhance our credentials in international humanitarian law. It would enable Australia to encourage states not yet party to the Protocol to ratify it, both within our region and beyond.²⁷
- 5.22 The Committee questioned a representative from the Defence Department and DFAT in relation to where Australia might use the Red Crystal symbol and under what circumstances. The Department of Defence advised that to date the Australian Army has used the Red Cross, and only the Red Cross as a protective symbol and that there would be no immediate move to employ the Red Crystal because there was not yet widespread recognition of the new symbol: "Not enough countries have signed up or ratified it, let alone enough people in the international community and domestic population of some of these countries recognise it."²⁸ That said, the Defence Department advised that an Australian Defence Force commander "would certainly reserve the right to use that if he thought it would be useful for an indicative or a protective purpose."²⁹

24 NIA, para. 8.

25 NIA, para. 5.

26 NIA, para. 4.

27 NIA, para. 6.

28 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 26.

29 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 23.

5.23 The DFAT noted that there was a very high level of recognition for the Red Cross and the Red Crescent and that use of the new symbol would be inclusive rather than exclusive: "There is certainly no requirement that parties to a conflict restrict themselves to one or even two emblems."³⁰ The Department further observed: "Dissemination of this third emblem and educating people as to its meaning will be essential but, yes, there may well be situations in which all three emblems will be used and the key will be making sure that everyone recognises the equal validity of each of those three."³¹

5.24 The Committee had some concern in relation to how the Red Crystal would acquire the desired degree of recognition and respect to be as effective as the Red Cross and Crescent. The Committee was told:

Upon becoming party to the third additional protocol we will have an obligation to protect use of the protocol to prevent misuse and also to educate people within Australian territory about the meaning of the emblem. We do that, in a practical sense, through our close engagement with both the International Committee of the Red Cross and the Australian National Society for the Australian Red Cross in a range of ways to ensure dissemination, and I think I can confidently predict that this will be part of our dissemination activities into the future upon ratification.³²

5.25 The Department of Defence also emphasised the challenges of securing recognition from organisations, such as armed militias not necessarily under the direct control of governments:

Unfortunately, use of particular emblems can sometimes only be worthwhile if there is actually recognition of them by the belligerent parties. While you can get states to sign up to treaties and states can enforce their international legal obligations on their armed forces, that is not always the case with some parties to some conflicts. So, whenever you are looking at using an emblem like the Red Crystal, you can only use it if it will get recognised and be respected.³³

30 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 23.

31 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 23.

32 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 24.

33 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 26.

- 5.26 In evidence to the Committee, the Australian Red Cross similarly emphasised the importance of efforts to secure the widest possible recognition and respect for all symbols:

Obviously, developing that awareness in domestic peacetime increases their protective power in conflict.³⁴

- 5.27 The Australian Red Cross also highlighted the importance of measures to prevent the misuse of the distinctive emblems:

It is essential that the Australian government take effective steps to promote knowledge of, respect for, and protection of the distinctive emblems. Misuse of the distinctive emblems in peacetime and in conflict significantly reduces the protective power of the emblems, endangering the lives of those who depend upon the emblems' protection in situations of armed conflict.

Despite unauthorised use of the Red Cross emblem being a criminal offence in Australia, there have been no prosecutions and the Australian Red Cross is notified of a significant number of instances of misuse each month. Given continuing domestic misuse of the distinctive emblems by hospitals, medical centres, pharmacies and the producers of medical related products, Australian Red Cross would welcome the Australian government taking additional steps to ensure enhanced protection of the distinctive emblems from misuse, and continued support for promoting awareness of the need to respect the emblems at all times.³⁵

- 5.28 Asked by the Committee about action taken in response to alleged domestic misuse of the Red Cross symbol, the Australian Red Cross advised that usual protocol was to contact the person who misuses the Red Cross symbol and "to inform them that it is a protected emblem under domestic legislation and that misuse incurs strict liability for that misuse".³⁶

Obligations

- 5.29 Ratifying Protocol III would require Australia to:
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34 Ms Pia Riley, *Transcript of Evidence*, 22 June 2007, p. 25.

35 Australian Red Cross, *Submission 3*, p. 3-4.

36 Ms Pia Riley, *Transcript of Evidence*, 22 June 2007, p. 25.

- respect, and ensure respect for, the Protocol in all circumstances (Article 1);
 - recognise the additional distinctive emblem – the Red Crystal – in the same fashion as we currently recognise the Red Cross, Crescent and related emblems (Article 2);
 - take steps to prevent and repress misuse of the new emblem (Article 6); and,
 - to disseminate the Protocol as broadly as possible within its territory (Article 7).³⁷
- 5.30 The remaining substantive provisions of the Protocol give national societies of states parties, societies forming part of the Movement, and missions under United Nations auspices the option of using the new emblem for indicative purposes (Articles 3, 4 and 5).³⁸
- 5.31 These provisions would not give rise to any obligations on the part of the Government were Australia to become a party to the Protocol.³⁹

Entry into force and withdrawal

- 5.32 Australia signed Protocol III on 8 March 2006. Pursuant to Article 11(2), Protocol III would enter into force for Australia six months after the deposit of our instrument of ratification with the Swiss Federal Council, the depositary of the 1949 Geneva Conventions and the 1977 Additional Protocols.⁴⁰
- 5.33 Should Australia ratify Protocol III, it would be necessary to amend the *Geneva Conventions Act 1957 (Cth)* ('the Act'), and make minor consequential amendments to the Criminal Code, as follows.⁴¹
- Section 15 of the Act currently prohibits the use of Red Cross emblems and other insignia for any purpose, save when authorised by the Attorney-General or his delegate, this would need to be amended so as to specifically incorporate a reference to (and description of) the red crystal emblem and Protocol III. Protocol III would also need to be annexed in a schedule to the Act;

37 NIA, para. 9.

38 NIA, para. 10.

39 NIA, para. 10.

40 NIA, para. 2.

41 NIA, para. 11.

- Minor amendments would also be required to the Criminal Code to include reference to the emblem created by Protocol III in section 268.44 of the Code, such that the new emblem was covered by the offence of “improper use of the emblems of the Geneva Conventions” and it would also be necessary to incorporate in the Dictionary to the Code a definition of 'Third Additional Protocol' and to include Protocol III as part of the definition of 'Protocols to the Geneva Conventions'.⁴²
- 5.34 In order to give effect to the obligation on dissemination contained in Article 7 of Protocol III, Australia would be required to disseminate the proposed Protocol as widely as possible, in particular through including it in military instruction programs and through encouraging its study in the civilian education sector.⁴³
- 5.35 No State or Territory legislation is necessary for Australia to give effect to this instrument.⁴⁴
- 5.36 The new emblem is unlikely to be used in Australia given the long-standing recognition accorded to the symbol of the Red Cross. The emblem could however be used by Australian medical personnel (or other Australian personnel protected under the Geneva Conventions), who are associated with the Movement and who are engaged in humanitarian operations in certain regions overseas.⁴⁵
- 5.37 A state party may withdraw from Protocol III by giving written notification to the depositary. Such denunciation would take effect one year after the date of receipt of the instrument of denunciation, unless the state party is engaged in armed conflict or occupation at that time, in which case the denunciation would take effect at the conclusion of that armed conflict or occupation (Article 14). Should Australia wish in the future to withdraw from the Protocol, any such withdrawal action would be subject to our domestic treaty process.⁴⁶

42 NIA, para. 12.

43 NIA, para. 14.

44 NIA, para. 15.

45 NIA, para. 16.

46 NIA, para. 20.

Consultation

- 5.38 The Commonwealth Government and the Australian Red Cross will have carriage of the obligation to disseminate the Protocol in accordance with Article 7.⁴⁷
- 5.39 Protocol III has been on the agenda of the Commonwealth and State/Territory Standing Committee on Treaties (SCOT) for some time which has alerted States and Territories to this issue.⁴⁸
- 5.40 In February 2006, The Minister for Foreign Affairs, Mr Downer wrote to the Prime Minister and the relevant ministers seeking their approval for signature of the Protocol, which was granted. Relevant Commonwealth Government agencies were consulted throughout the negotiation of Protocol III and support Australian ratification.⁴⁹

Costs

- 5.41 Ratification of Protocol III would have no financial implications at the Commonwealth or State/Territory levels.

Recommendation

Recommendation 4

The Committee supports the *Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem* and recommends that binding treaty action be taken.

47 The International Committee of the Red Cross and the Australian Red Cross strongly support Australian ratification of Protocol III, NIA, Consultation, paras. 1 and 3.

48 Updates have been provided on the SCOT Schedules twice a year to the States and Territories, and they have not raised any concerns. NIA, Consultation, para. 2.

49 NIA, Consultation, para. 4.

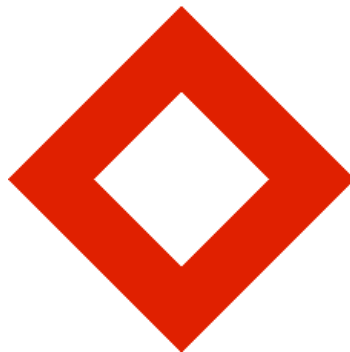
Distinctive Emblems of the Geneva Conventions



Red Cross



Red Crescent



Red Crystal

