

**Documents tabled on 9 May 2007:**

**National Interest Analysis [2007] ATNIA 7**

**with attachment on consultation**

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the  
Adoption of an Additional Distinctive Emblem (Protocol III),  
done at Geneva on 8 December 2005  
[2006] ATNIF 6**

**Background information:**

**Current Status List of Parties**

## **NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY**

### **SUMMARY PAGE**

#### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005 [2006] ATNIF 6**

##### **Nature and timing of proposed treaty action**

1. It is proposed that Australia take binding treaty action to ratify the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III).
2. 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. Protocol III supplements the Geneva Conventions and Protocols insofar as it designates an additional protective emblem for use by national red cross/red crescent societies and other eligible organisations. 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 (a complete list of states parties to the Protocol is attached).

##### **Overview and national interest summary**

3. Protocol III establishes a third universal and distinctive emblem for the Red Cross/Red Crescent Movement (the Movement), which has no religious, ethnic, racial, regional, or political connotations. The emblem (known as “the red crystal”) would enable those national societies which do not use either the red cross or red crescent to join the Movement, by adopting the proposed Protocol. The Israeli national society, Magen David Adom, is one such society which until recently has been precluded from becoming a member of the Movement.
4. The new emblem would be of immeasurable benefit in combat zones in helping secure the safety of eligible humanitarian workers of all countries. Ratification of Protocol III would also be consistent with our longstanding support for the Geneva Conventions. Australia was an active participant throughout negotiation of the Protocol and the final outcome fully reflects our preferred position. Ratification would further enhance our well-established credentials in international humanitarian law and would enable us to encourage states not yet party to the Protocol to ratify it, both within our region and beyond.

## **Reasons for Australia to take the proposed treaty action**

5. Australia has been a strong supporter of the need for an additional, protective emblem for the Red Cross/Red Crescent Movement (the Movement) for many years. Since its inception, the Movement has utilized the red cross and red crescent emblems as devices to protect its medical services in the field, and to enable recognition of its national societies. However, some countries have not wished to make use of either of these emblems, arguing that they have religious connotations. Israel's national society, Magen David Adom, 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.

6. Protocol III was adopted in Geneva on 8 December 2005 by a Diplomatic Conference hosted by Switzerland as depositary of the Geneva Conventions. The Protocol adopts a new emblem, a red diamond on white foreground, known as the "red crystal", and accords this emblem the same status as the red cross and crescent. The new emblem has no religious, ethnic, racial, regional or political connotations. The Protocol has already received considerable international support, with Switzerland, Norway, the Netherlands and Philippines being among those countries which have ratified it early. 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.

7. The adoption of the Protocol has resolved a long-standing issue which has constrained the capacity of humanitarian organisations to deliver assistance, freely, safely and efficiently in certain parts of the world. The new emblem can be expected to be of immeasurable benefit in combat zones in helping secure the safety of eligible humanitarian workers from all countries, regardless of their location or political situation. Australia took an active part in negotiations on Protocol III in the lead up to its adoption and the final text fully accords with our position. Ratification of Protocol III would also be consistent with our longstanding support for the Geneva Conventions and their Additional Protocols I and II. Ratification would further enhance our well-established credentials in international humanitarian law and would enable us to encourage states not yet party to the Protocol to ratify it, both within our region and beyond.

8. In June 2006 the International Conference of the Movement adopted a resolution amending the statutes of the Movement to bring Protocol III into operation. This resolution enabled the admission of the Palestine Red Crescent Society (PRCS) and the Israeli national society Magen David Adom (MDA) to the Movement. In this manner Protocol III has already enhanced prospects for universalisation of the Movement.

## **Obligations**

9. Ratifying Protocol III would require Australia to respect, and ensure respect for, the Protocol in all circumstances (article 1). Australia would also be obliged to recognise the additional distinctive emblem in the same fashion as we currently recognise the red cross, crescent and related emblems (article 2). Further, Australia would be obliged to take steps to prevent and repress misuse of the new emblem (article 6). Finally, Australia would be required to disseminate the Protocol as broadly as possible within its territory (article 7).

10. 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). These provisions would not give rise to any obligations on the part of the Government were Australia to become a party to the Protocol.

## **Implementation**

11. Should Australia ratify Protocol III, it would be necessary to amend the *Geneva Conventions Act 1957*, and make minor consequential amendments to the *Criminal Code*, as follows.

12. Section 15 of the *Geneva Conventions Act* currently prohibits the use of Red Cross emblems and other insignia for any purpose, save when authorized by the Attorney-General or his delegate. The section 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.

13. 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". 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'.

14. 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.

15. The subject matter of Protocol III is something over which the Commonwealth has traditionally exercised jurisdiction. The Attorney-General's Department has assessed that no State/Territory legislation is necessary for Australia to give effect to this instrument.

16. The new emblem is unlikely to be used in Australia for either indicative or protective purposes given the long-standing recognition accorded to the symbol of the red cross. It is more likely that the emblem could 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.

## **Costs**

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

## **Regulation Impact Statement**

18. Guidelines provided by the Office of Best Practice Regulation (Productivity Commission) show that a Regulation Impact Statement is not required.

## **Future treaty action**

19. Any state party may propose an amendment to Protocol III (article 13). The Depository of the Protocol then decides whether a conference should be convened to consider the proposed amendment, following consultation with all states parties and the Movement. Australian acceptance of any future amendment would be subject to our domestic treaty process.

## **Withdrawal or denunciation**

20. 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.

## **Contact Details**

International Law & Transnational Crime Section  
International Organisations and Legal Division  
Department of Foreign Affairs and Trade.

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## **CONSULTATION**

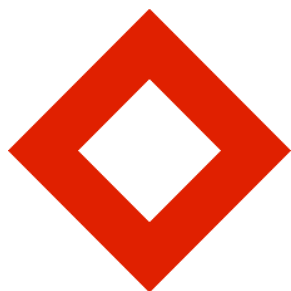
1. Ratification of Protocol III would have minimal impact upon States and Territories. As noted above, the new emblem is unlikely to be used within Australia given the long-standing recognition accorded to the red cross. The Commonwealth Government and the Australian Red Cross will have carriage of the obligation to disseminate the Protocol in accordance with article 7.
2. Protocol III has been on the agenda of the Standing Committee on Treaties (SCOT) for some time which has alerted States and Territories to this issue. Updates have been provided on the SCOT Schedules twice a year to the States and Territories, and they have not raised any concerns.
3. The International Committee of the Red Cross and the Australian Red Cross strongly support Australian ratification of Protocol III.
4. In February 2006, Mr Downer wrote to the Prime Minister, the Attorney-General and the Minister for Defence seeking their approval for signature of the Protocol, which was granted. Relevant Commonwealth Government agencies (the Attorney-General's Department, the Department of Defence, and the Department of Foreign Affairs and Trade) were consulted throughout the negotiation of Protocol III and support Australian ratification.

# ANNEX

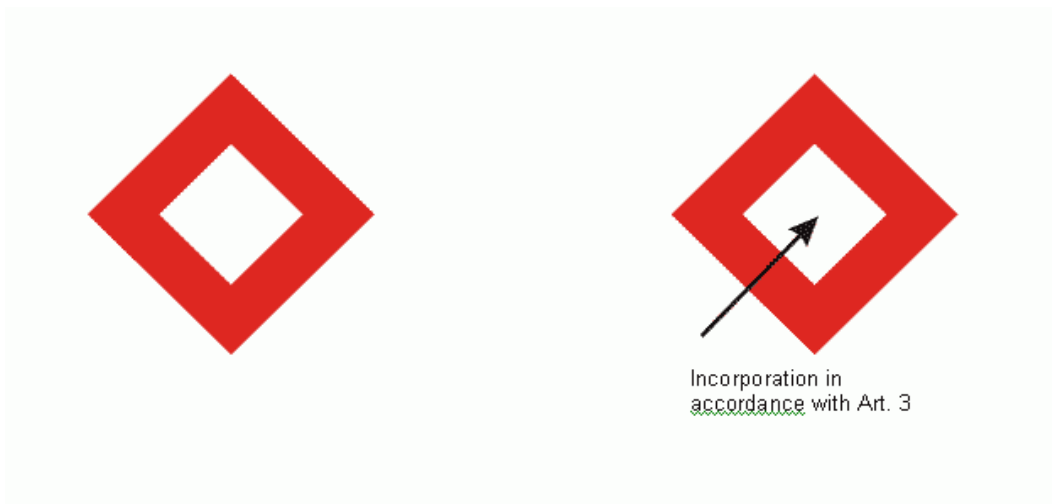
## **THIRD PROTOCOL EMBLEM**

(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*



**Protocol additional to the Geneva Conventions of 12 August  
1949, and relating to the Adoption of an Additional  
Distinctive Emblem (Protocol III), 8 December 2005**

<b>State Signatories</b>	<b>Signature</b>	Ratification / Accession <sup>1)</sup>	Reservation / Declaration <sup>2)</sup>
Angola	14.03.2006		
Argentina	13.03.2006		
Australia	08.03.2006		
Austria	08.12.2005		
Belgium	08.12.2005		
Bolivia	08.12.2005		
Bosnia-Herzegovina	14.03.2006		
Brazil	14.03.2006		
Bulgaria	14.03.2006	13.09.2006	
Burkina Faso	07.12.2006		
Burundi	08.12.2005		
Canada	19.06.2006		
Cape Verde	10.01.2006		
Chile	08.12.2005		
Colombia	08.12.2005		
Congo	08.12.2005		
Costa Rica	08.12.2005		
Croatia	29.05.2006		
Cyprus	19.06.2006		
Czech Republic	12.04.2006		
Denmark	08.12.2005		
Dominican Republic	26.07.2006		
Ecuador	08.12.2005		
El Salvador	08.03.2006		



Estonia	14.03.2006	
Ethiopia	13.03.2006	
Finland	14.03.2006	
Former Yugoslav Republic of Macedonia	18.05.2006	
France	08.12.2005	
Georgia	28.09.2006	
Germany	13.03.2006	
Ghana	14.06.2006	
Greece	08.12.2005	
Guatemala	08.12.2005	
Haiti	06.12.2006	
Honduras	13.03.2006	08.12.2006
Hungary	19.06.2006	15.11.2006
Iceland	17.05.2006	04.08.2006
Ireland	20.06.2006	
Israel	08.12.2005	
Italy	08.12.2005	
Jamaica	05.12.2006	
Kenya	30.03.2006	
Korea, RO	02.08.2006	
Latvia	20.06.2006	
Liechtenstein	08.12.2005	24.08.2006
Lithuania	06.12.2006	
Luxembourg	08.12.2005	
Netherlands	14.03.2006	13.12.2006
Norway	08.12.2005	13.06.2006
Madagascar	08.12.2005	
Malta	08.12.2005	
Mexico	16.11.2006	

Moldova (Republic of)	13.09.2006	
Monaco	15.03.2006	
Nauru	27.06.2006	
Nepal	14.03.2006	
New Zealand	19.06.2006	
Nicaragua	08.03.2006	
Panama	19.06.2006	
Paraguay	14.03.2006	
Peru	08.12.2005	
Philippines	13.03.2006	22.08.2006
Poland	20.06.2006	
Portugal	08.12.2005	
Romania	20.06.2006	
Russian Federation	07.12.2006	
San Marino	19.01.2006	
Serbia (Republic of)	31.03.2006	
Sierra Leone	20.06.2006	
Singapore	02.08.2006	
Slovakia	25.04.2006	
Slovenia	19.05.2006	
Spain	23.12.2005	
Sweden	30.03.2006	
Switzerland	08.12.2005	14.07.2006
Tanzania (United Rep.of)	08.12.2005	
Timor-Leste	08.12.2005	
Togo	26.06.2006	
Turkey	07.12.2006	07.12.2006 (text)
Ukraine	23.06.2006	
United Kingdom	08.12.2005	

United States of America      08.12.2005  
Uruguay                              13.03.2006

1) **Ratification** : a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, in the appropriate circumstances, succeed to them.  
**Accession** : instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

2) **Reservation / Declaration** : unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).