



2 February 2009

Dr Kathleen Dermody
Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email fadt.en@aph.gov.au

Dear Dr Dermody,

RE: AUSTRALIAN RED CROSS SUBMISSION TO THE INQUIRY INTO THE PROVISIONS OF THE DEFENCE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2008

Australian Red Cross greatly appreciates the invitation to provide a written submission in respect to the Defence Legislation (Miscellaneous Amendments) Bill 2008 (the Bill). In particular, Australian Red Cross will address the proposed amendments found in Schedule 1 of the Bill relating to the third additional protocol to the Geneva Conventions of 1949.

As you may be aware, Australian Red Cross has a unique mandate to assist the Australian Government in its obligations to disseminate international humanitarian law (IHL). As part of the International Red Cross and Red Crescent Movement, Australian Red Cross educates the broader public on matters relating to the laws of war and also works closely with the Australian Defence Force, the Australian Federal Police and other groups who directly engage in IHL related matters.

One of the tasks Australian Red Cross undertakes within its IHL Program is the regulation of the correct use of the red cross emblem, pursuant to Article 15 of the Geneva Conventions Act 1957. In this respect Australian Red Cross warmly welcomes the amendments proposed in Schedule 1, which will allow for the domestic implementation of the third protective emblem.

Attached is a short submission providing background information on why a third additional protocol was needed as well as a number of key issues and practical implications arising from the Bill. I have also included some information about the role of Australian Red Cross as auxiliary to Government and joint commitments made between the Australian Government and Australian Red Cross. This information has been sent to sitting members of Federal Parliament to ensure that there is an understanding of the importance of the Bill to Australian Red Cross.

Should you require any further information please do not hesitate to contact me directly or Dr Helen Durham, Strategic Adviser International Law on hdurham@redcross.org.au. We would also greatly appreciate the opportunity to appear before the Committee, if this was deemed appropriate.

Yours sincerely,

ROBERT TICKNER
Chief Executive Officer

AUSTRALIAN RED CROSS SUBMISSION TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

1. BACKGROUND

1.1. The International Red Cross and Red Crescent Movement

The International Red Cross and Red Crescent Movement (Movement) is the largest humanitarian network in the world with a unique mandate under international law. The Movement has over 100 million members and volunteers and consists of three components: the International Committee of the Red Cross (ICRC) with a focus upon assisting during times of armed conflict; 186 Red Cross and Red Crescent National Societies (such as Australian Red Cross) providing humanitarian services to people within their own countries and internationally; and the International Federation of Red Cross and Red Crescent Societies which co-ordinates the assistance provided by National Societies during times of natural disasters.

1.2. The Geneva Conventions and the emblems of the Red Cross and Red Crescent

The Geneva Conventions of 1949 and their 1977 Additional Protocols are part of international humanitarian law (IHL). IHL is a set of rules which seek to limit the effects of armed conflict on people and objects. Also known as the law of war or law of armed conflict, IHL protects certain categories of people and restricts the methods and means of warfare. The key messages of IHL are simple:

Do not attack people who do not or no longer take part in armed conflict (such as civilians, medics and aid workers, prisoners of war and wounded troops);
Do not use weapons that make no distinction between civilians and combatants, or cause unnecessary suffering and damage (such as biological and chemical weapons).

At the conferences held in Geneva in 1864 to create the first Geneva Convention, a red cross on a white background was adopted as a neutral emblem, to protect medical personnel from attack during conflicts. This was not a religious symbol. Rather it was simply the reversal of the colours of the Swiss flag and as such it was felt that it would embody the fundamental requirement of neutrality.

However at negotiations to create a second Geneva Convention, concerns were raised by the Ottoman Empire on the use of the cross due to historical and cultural associations of this symbol. Instead the use of the red crescent became the practice for the Ottoman Empire and in 1929 it was agreed at a diplomatic conference that recognition would be granted to the red crescent. In order to forestall further requests and a possible proliferation of emblems in the future, the conference made a point of stating that no new emblems would be recognised. Since that time, the Red Crescent emblem has become widely used by many countries. Proposals by other countries for alternative emblems have not been agreed upon by the international community.

The Conventions and their Additional Protocols contain several articles on the emblem. Among other things, they specify the use, size, purpose and placing of the emblem, the persons and property it protects, who can use it and what respect for the emblem entails. International law also specifies that each State party to the Geneva Conventions is required to take steps to prevent and punish misuse of the emblem in wartime and peacetime alike, and to enact law on the protection of the emblem.

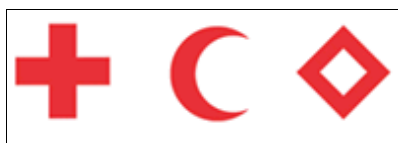
2. KEY ISSUES

2.1 A need for and adoption of Additional Protocol III and the Red Crystal

Although in use since the nineteenth century, the emblems of the Red Cross and Red Crescent unfortunately do not always enjoy the respect they are entitled as visible signs of the strict neutrality of humanitarian work. Moreover, certain States find it difficult to identify with one or the other. Unfortunately, the Red Cross and Red Crescent emblems are sometimes wrongly perceived as having religious, cultural or political connotations. This has affected respect for the emblems and has diminished the protection the emblems offer to victims and to humanitarian and medical personnel.

The debate that led to the adoption of Additional Protocol III was brought on by both the need to provide protection in cases where neither the Red Cross nor the Red Crescent is respected as neutral, and to meet the needs of those countries where other emblems have been in use for many years. An example is the society known as Magen David Adom in Israel, founded in 1930. Israel has argued that it should be able to use the red shield of David in national operations. Some other societies, for example that of Eritrea, would like to use both the Red Cross and Red Crescent together. This was not possible under the existing rules.

To resolve these issues, the States party to the Geneva Conventions adopted a Third Additional Protocol to the Conventions at the diplomatic conference in December 2005. Australia signed the Additional Protocol III in March 2006. The Protocol entered into force generally on 14 January 2007 and as at September 2008, 33 States have ratified.



The coming into force of this Protocol and with it the additional Red Crystal is considered a concrete sign of the predominance of humanitarian principles over any other considerations. The possibility of using the Red Crystal will make it easier for national societies who do not wish to use the Red Cross or the Red Crescent emblems to be recognised and admitted to the Movement. This consolidates the International Red Cross and Red Crescent Movement's universality and demonstrates once again, that its mission is founded on humanitarian needs with the capacity to leave aside political and religious motives.

Under international law, the Red Crystal offers the same protection as the Red Cross and Red Crescent when marking military medical personnel, establishments and transport; the staff of national societies; staff, vehicles and structures of the ICRC and the International Federation. The ICRC and the International Federation are allowed to use the Red Crystal in exceptional circumstances, if they consider it necessary for their work but they will not change their present emblems or names.

3.1. Admission of Palestine Red Crescent Society and Magen David Adom (Israel National Society) into the Red Cross and Red Crescent Movement

After the adoption of Additional Protocol III, it was necessary to adapt the Statutes of the International Red Cross and Red Crescent Movement to ensure the additional emblem could be used within the Movement. In order to be admitted as a member of the International Red Cross and Red Crescent Movement, a national society must fulfill ten conditions one of which is to use an existing emblem in conformity with the Geneva Conventions. This had previously precluded a number of national societies who did not wish to use the Red Cross or the Red Crescent. In June 2006, the International Conference of the Red Cross and Red Crescent amended the Movement's statutes to incorporate the new emblem and formally adopted the name Red Crystal resulting in the admission of the Magen David Adom in Israel and Palestine Red Crescent Society as full members of the Movement.

4. PRACTICAL IMPLEMENTATION

4.1. Australia's ratification

As at September 2008, 33 countries have ratified Additional Protocol III. Within Australia the ratification of the Protocol requires a straightforward but significant amendment to domestic law, namely the amendment of the Geneva Conventions Act 1957 and the Criminal Code to add the third emblem to the list of already protected emblems, including the Red Cross and Red Crystal. Australia's ratification provides options for the use of the Red Crystal. This will ensure additional protection and safety for Australian humanitarian workers and medical and personnel of the Australian armed forces, as well as humanitarian workers of the Australian Red Cross, particularly in countries where the Red Crescent and Red Cross may not be well understood.

4.2. Australia's legal obligation to regulate usage and prevent abuse of the emblems

Due to their standing under international law, the government of a State has legal responsibility to regulate usage and prevent misuse of the Red Cross, Crescent and now Crystal. It is States who have the ultimate authorisation for the use of the emblems, rather than the National Society. In Australia, the responsibility for authorising the use of the Red Crystal (and Red Cross and Red Crescent) sits with the Minister of Defence.

Like the Red Cross and Red Crescent, the Red Crystal serves two purposes. It may be used as a "protective" emblem in times of armed conflict to protect civilians, relief workers, medical personnel and facilities and transport. As an "indicative emblem", it can be used in peacetime to show the link the person or an object has to the Movement. To this end, Australian Red Cross is authorised to use the Emblem and the words 'Red Cross' by virtue of a Ministerial Authorisation dated 29 January 1981.

In times of armed conflict, the emblem may be used as a protective device only by:

- o armed forces medical and religious services and their equipment ;
- o National Red Cross and Red Crescent Societies duly recognised and authorised by their governments to lend assistance to the medical services of armed forces;
- o civilian hospitals and other medical facilities recognised as such by the government and authorised to display the emblem for protective purposes (first-aid posts, ambulances, etc.);

IHL also specifies that each State party to the Geneva Conventions is required to take steps to prevent and punish misuse of the emblem in wartime and peacetime alike, and to enact a law on the protection of the emblem. In Australia, this is enacted by the Geneva Conventions Act (1957).

Australian Red Cross assists the Government with its obligation to prevent and repress the misuse of the emblem. At first instance where the emblem is used by an unauthorised person or company, Australian Red Cross contacts the party concerned to explain the importance of respect of the emblem and request that the use be immediately stopped. Where no positive response is received, Red Cross may refer the matter to the Minister of Defence who may consider prosecution. Australian Red Cross is committed to working with the Government to fulfill the obligation of ensuring that the community understands the significance of and respect for these important emblems.

4.3. Australian Red Cross' Role As Auxiliary to Government

To become a formally recognised Red Cross or Red Crescent society, the society must meet ten conditions set out by Movement statutes. Of particular relevance here is the third condition, to “be duly recognised by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field”.

As a party to the Conventions and Protocols, Australia has assumed an obligation to disseminate IHL as widely as possible in particular to the military and civilian populations (Article 83, Additional Protocol 1). In its auxiliary role, the Australian Red Cross provides significant support to the Australian Government in fulfilling its obligations to disseminate and educate Australian military personnel and the public as well as promoting respect for and monitoring the use of the emblem.

4.4. Joint commitments of the Australian Government and Australian Red Cross

The obligation to disseminate IHL has also been the subject of regular resolutions and pledges at the International Conferences of the Red Cross and Red Crescent which Australia attends as a State party to the Geneva Conventions.

The aim of the International Conference is to bring together governments and all components of the Movement to debate and agree on key humanitarian priorities for the four years ahead. These priorities are passed in the form of resolutions and pledges. Resolutions are adopted unanimously by Conference participants while pledges are a formal commitment made either individually or shared between a government and its Red Cross or Red Crescent Society.

At the 30th International Conference of the Red Cross Red Crescent held in Geneva in November 2007 at which the Australian Government participated, the Conference adopted a resolution unanimously in relation to the “Reaffirmation and Implementation of International Humanitarian Law” which, in particular, encourages States to intensify their efforts in the education of the civilian population about IHL and emphasises the need to adopt such measures for the use and protection of the distinctive emblems of the Red Cross, Red Crescent and Red Crystal.

In addition the Australian Government and Australian Red Cross jointly pledged: “to promote respect for the protective emblem and to take all measures necessary for the effective prevention of cases of misuse of the emblems of the Red Cross, Red Crescent and Red Crystal, in particular through cooperation of the National Society and the Government on monitoring misuse of the emblem. Such prevention will include promoting awareness and understanding of the emblems within the Australian community.”

Other pledges in relation to the promotion of IHL included a pledge to work together to address the humanitarian impact of weapons on civilians with particular emphasis given to taking action against cluster munitions; a pledge to encourage Pacific countries to ratify international IHL instruments and a pledge regarding the implementation and dissemination of IHL to the defence force and police.