

Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill

Government Bill

As reported from the Foreign Affairs,
Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill seeks to implement New Zealand's obligations under the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (the Third Protocol). The bill would amend the Geneva Conventions Act 1958, and the Flags, Emblems and Names Protection Act 1981.

The Third Protocol institutes a new emblem, known as the Red Crystal, to be used in a similar way to the Red Cross, Red Crescent, and

Red Lion and Sun. The new emblem is intended to have no religious or political connotations, which have made the existing emblems difficult to use in some conflicts. The Red Crystal would give users the same protection from hostile acts in armed conflicts as the other emblems under the Geneva Conventions framework.

Order of the definitions

We recommend an amendment to clause 4(1) to delete “The Third Convention” and replace it with “The Second Protocol”. Reprints of the Geneva Conventions Act 1958 reordered the definitions of the Geneva Conventions and Protocols. Our amendment would follow the revised order of the definitions, thus avoiding the potential misconception that the Third Protocol is linked only to the Third Convention.

Perfidious use

We recommend the insertion of new clause 4A(3) to amend section 3(2) of the Geneva Conventions Act, to make it clear that perfidious use of the Red Crystal emblem constitutes a grave breach of the Third Protocol for the purposes of the Act. The Third Protocol does not itself specify that the perfidious use of the new emblem is to be treated as a grave breach, but we agree that this is a reasonable interpretation of the obligation to treat all four emblems as having equal status under the Geneva Conventions framework.

Updating gender references

Finally, we recommend a series of amendments to update gender-specific references throughout the Geneva Conventions Act to reflect current gender-neutral drafting practice.

Appendix

Committee process

The Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill was referred to the committee on 28 June 2012. The closing date for submissions was 27 July 2012. We received and considered one submission from the International Committee of the Red Cross.

We received advice from the Ministry of Foreign Affairs and Trade.

Committee membership

John Hayes (Chairperson)

Hon Phil Goff

Dr Kennedy Graham

Hon Tau Henare

Dr Paul Hutchison

Su'a William Sio

Lindsay Tisch

Geneva Conventions (Third Protocol—Red
Crystal Emblem) Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Murray McCully

**Geneva Conventions (Third
Protocol—Red Crystal Emblem)
Amendment Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Act **2010**.
- 2 Commencement** 5
(1) **Section 5(3)(b)** comes into force on the day after the date on which this Act receives the Royal assent.
(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council.
- 3 Principal Act amended** 10
This Act amends the Geneva Conventions Act 1958.

Part 1
Principal Act amended

- 4 Interpretation**
(1AA) The definition of the Protecting Power in section 2(1) is amended by omitting “he” in each place where it appears and substituting in each case “he or she”. 15
- (1) Section 2(1) is amended by inserting the following definition after the definition of ~~The Third Convention~~ the Second Protocol: 20
“The the Third Protocol means the Protocol ~~additional~~ Additional to the Conventions and relating to the adoption of an additional distinctive emblem, adopted at Geneva on the 8th day of December 2005, a copy of which is set out in **Schedule 7**”. 25

- (2) The definition of ~~The the~~ **Protocols** in section 2(1) is amended by omitting “and the Second Protocol” and substituting “, the Second Protocol, and the Third Protocol”.
- (3) Section 2(2) is amended by omitting “of either of”.

4A **Punishment for grave breaches of Conventions or First Protocol** 5

- (1) The heading to section 3 is amended by adding “or Third Protocol”.

- (2) Section 3(1) is amended by inserting “or the Third Protocol” after “the First Protocol”. 10

- (3) Section 3(2) is amended by adding the following paragraph:

“(f) a grave breach of the Third Protocol is a breach of that Protocol involving the perfidious use, in violation of Article 37 of the First Protocol, of the distinctive emblem of the red crystal (as if it were a distinctive emblem specified in paragraph (3)(f) of Article 85 of the First Protocol).” 15

4B **Notice of trial of protected persons to be served on Protecting Power, etc**

- (1) Section 4(1)(b) is amended by inserting “or her” after “him”. 20

- (2) Section 4(2) is amended by omitting “his” in each place where it appears and substituting in each case “his or her”.

- (3) Section 4(2)(c) is amended by inserting “or she” after “he”.

4C **Legal representation of prisoners of war**

- (1) Section 5(2) is amended by inserting “or her” after “him”. 25

- (2) Section 5(3) is amended by inserting “or her” after “him”.

4D **Appeals by protected persons**

- (1) Section 6(1) is amended by omitting “his” in each place where it appears and substituting in each case “his or her”.

- (2) Section 6(1)(b) is amended by inserting “or she” after “he”. 30

- (3) Section 6(3) is amended by inserting “or her” after “his”.

**4E Reduction of sentence, and custody of protected prisoners
of war and internees**

Section 7(2) is amended by inserting “or her” after “his”.

5 Use of Red Cross and other emblems

- (1) Section 8(1) is amended by inserting “or her” after “him”. 5
- (2) Section 8(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) the emblem of a red crystal, composed of a red frame in the shape of a square on edge on a white ground, or the designation ‘Red Crystal’.”. 10
- (3) Section 8(2) is amended by—
- (a) inserting “or she” after “he”; and
- (b) omitting “\$1,000” and substituting “\$10,000”.
- (4) Section 8 is amended by inserting the following subsection after subsection (4): 15
- “(4A) In the case of a trade mark registered before **subsection (1)(ba)** comes into force, subsections (1) to (3) do not apply by reason only of the trade mark consisting of or containing a design or wording that reproduces or resembles the emblem or the designation specified in **subsection (1)(ba)**.” 20
- (5) Section 8(5) is amended by omitting “of this section” and substituting “**or (4A)**”.
- (6) Section 8(5)(a) is amended by inserting “or **subsection (1)(ba)** comes into force (as the case may be)” after “this Act”. 25
- (7) Section 8(5)(b) is amended by adding “or **subsection (1)(ba)** comes into force (as the case may be)” after “this Act”.
- (7A) Section 8(5) is repealed and the following subsection substituted:
- “(5) If a person is charged with using a design or wording to which subsection (4) or **(4A)** applies for any purpose and it is proved that he or she used it otherwise than as, or as part of, a trade mark registered as aforesaid, it is a defence for him or her to prove—
- “(a) that he or she lawfully used that design or wording for that purpose before the passing of this Act or **subsection (1)(ba)** comes into force (as the case may be); or 30 35

- “(b) in a case where he or she is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he or she acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act or **subsection (1)(ba)** comes into force (as the case may be).” 5
- (8) Section 8(6) is amended by inserting “or she” after “he”.
- 6 New section 10 substituted** 10
Section 10 is repealed and the following section substituted:
“**10 Application to Tokelau**
“(1) This Act is in force in Tokelau.
“(2) In this Act, except in this section, **New Zealand** includes Tokelau. 15
“(3) Every reference in this Act to the Attorney-General includes, in relation to Tokelau, the Administrator of Tokelau.
“(4) The other Ministers specified in this Act may exercise the powers conferred on them by this Act in Tokelau.”
- 7 New Schedule 7 added** 20
The Schedule 7 set out in the Schedule of this Act is added.

Part 2

Consequential amendment

- 8 Flags, Emblems, and Names Protection Act 1981 amended** 25
This Part amends the Flags, Emblems, and Names Protection Act 1981.
- 9 Schedule 3 amended** 30
Schedule 3 is amended by inserting “Red Crystal” below “Red Crescent” in the second column of the item relating to the Geneva Conventions Act 1958.

Schedule	s 7
New Schedule 7 added	
Schedule 7	s 2(1)
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem	5
Protocol III	
Preamble	
<i>The High Contracting Parties,</i>	10
(PP1) <i>Reaffirming</i> the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems,	15
(PP2) <i>Desiring</i> to supplement the aforementioned provisions so as to enhance their protective value and universal character,	
(PP3) <i>Noting</i> that this Protocol is without prejudice to the rec- ognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obliga- tions under the Geneva Conventions and, where applicable, the Protocols additional thereto,	20
(PP4) <i>Recalling</i> that the obligation to respect persons and ob- jects protected by the Geneva Conventions and the Protocols additional thereto derives from their protected status under international law and is not dependent on use of the distinctive emblems, signs or signals,	25
(PP5) <i>Stressing</i> that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political sig- nificance,	30
(PP6) <i>Emphasizing</i> the importance of ensuring full respect for the obligations relating to the distinctive emblems recognized in the Geneva Conventions, and, where applicable, the Proto- cols additional thereto,	35

Schedule 7—*continued*

(PP7) *Recalling* that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

(PP8) *Recalling further* that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used in the country where the activity takes place and in the country or countries of transit, 5

(PP9) *Recognizing* the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems, 10

(PP10) *Noting* the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems, 15

Have agreed on the following:

Article 1

Respect for and scope of application of this Protocol 20

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. This Protocol reaffirms and supplements the provisions of the four Geneva Conventions of 12 August 1949 (“the Geneva Conventions”) and, where applicable, of their two Additional Protocols of 8 June 1977 (“the 1977 Additional Protocols”) relating to the distinctive emblems, namely the red cross, the red crescent and the red lion and sun, and shall apply in the same situations as those referred to in these provisions. 25

Article 2 30

Distinctive emblems

1. This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive em-

Schedule 7—*continued*
Article 2—*continued*

- blems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.
2. This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the “third Protocol emblem”. 5
 3. The conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols. 10
 4. The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection. 15

Article 3

Indicative use of the third Protocol emblem

1. National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes: 20
 - a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or
 - b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol. 25
Incorporation shall conform to the illustration in the Annex to this Protocol. 30
2. A National Society which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legisla-

Schedule 7—*continued*

Article 3—*continued*

tion, use the designation of that emblem and display it within its national territory.

3. National Societies may, in accordance with national legislation and in exceptional circumstances and to facilitate their work, make temporary use of the distinctive emblem referred to in Article 2 of this Protocol. 5
4. This Article does not affect the legal status of the distinctive emblems recognized in the Geneva Conventions and in this Protocol, nor does it affect the legal status of any particular emblem when incorporated for indicative purposes in accordance with paragraph 1 of this Article. 10

Article 4

International Committee of the Red Cross
and International Federation of Red Cross
and Red Crescent Societies 15

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may use, in exceptional circumstances and to facilitate their work, the distinctive emblem referred to in Article 2 of this Protocol. 20

Article 5

Missions under United Nations auspices

The medical services and religious personnel participating in operations under the auspices of the United Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2. 25

Article 6

Prevention and repression of misuse

1. The provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems shall apply 30

Schedule 7—*continued*

Article 6—*continued*

equally to the third Protocol emblem. In particular, the High Contracting Parties shall take measures necessary for the prevention and repression, at all times, of any misuse of the distinctive emblems mentioned in Articles 1 and 2 and their designations, including the perfidious use and the use of any sign or designation constituting an imitation thereof. 5

2. Notwithstanding paragraph 1 above, High Contracting Parties may permit prior users of the third Protocol emblem, or of any sign constituting an imitation thereof, to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, and provided that the rights to such use were acquired before the adoption of this Protocol. 10

Article 7 15

Dissemination

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that this instrument may become known to the armed forces and to the civilian population. 20

Article 8

Signature 25

This Protocol shall be open for signature by the Parties to the Geneva Conventions on the day of its adoption and will remain open for a period of twelve months.

Article 9

Ratification 30

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal

Schedule 7—*continued*

Article 9—*continued*

Council, depositary of the Geneva Conventions and the 1977
Additional Protocols.

Article 10

Accession

This Protocol shall be open for accession by any Party to the 5
Geneva Conventions which has not signed it. The instruments
of accession shall be deposited with the depositary.

Article 11

Entry into force

1. This Protocol shall enter into force six months after two in- 10
struments of ratification or accession have been deposited.
2. For each Party to the Geneva Conventions thereafter ratifying
or acceding to this Protocol, it shall enter into force six months
after the deposit by such Party of its instrument of ratification
or accession. 15

Article 12

Treaty relations upon entry into force of this
Protocol

1. When the Parties to the Geneva Conventions are also Parties 20
to this Protocol, the Conventions shall apply as supplemented
by this Protocol.
2. When one of the Parties to the conflict is not bound by this
Protocol, the Parties to the Protocol shall remain bound by it in
their mutual relations. They shall furthermore be bound by this
Protocol in relation to each of the Parties which are not bound 25
by it, if the latter accepts and applies the provisions thereof.

Article 13

Amendment

1. Any High Contracting Party may propose amendments to this 30
Protocol. The text of any proposed amendment shall be com-

Schedule 7—*continued*

Article 13—*continued*

municated to the depositary, which shall decide, after consultation with all the High Contracting Parties, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, whether a conference should be convened to consider the proposed amendment. 5

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol.

Article 14

Denunciation

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1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation. 15
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.
3. The denunciation shall have effect only in respect of the denouncing Party. 20
4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict or occupation, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective. 25

Article 15

Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol, of: 30

Schedule 7—*continued*

Article 15—*continued*

- a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 8, 9 and 10;
- b) the date of entry into force of this Protocol under Article 11 within ten days of said entry into force; 5
- c) communications received under Article 13;
- d) denunciations under Article 14.

Article 16

Registration

- 1. After its entry into force, this Protocol shall be transmitted 10
by the depositary to the Secretariat of the United Nations for
registration and publication, in accordance with Article 102 of
the Charter of the United Nations.
- 2. The depositary shall also inform the Secretariat of the United 15
Nations of all ratifications, accessions and denunciations re-
ceived by it with respect to this Protocol.

Article 17

Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Geneva Conventions. 20

Schedule 7—*continued*

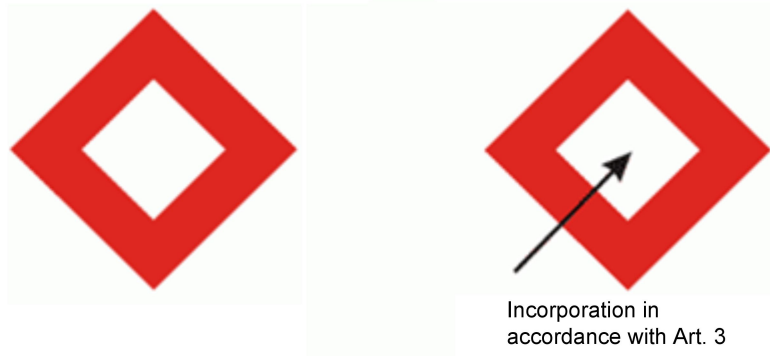
Annex
Third Protocol Emblem
(Article 2, paragraph 2 and Article 3, paragraph
1 of the Protocol)

Article 2—Distinctive emblems

5



Article 3—Indicative use of the third Protocol emblem



**Geneva Conventions (Third Protocol—Red
Crystal Emblem) Amendment Bill**

Legislative history

24 August 2010
28 June 2012

Introduction (Bill 127–1)
First reading and referral to Foreign Affairs,
Defence and Trade Committee
