

HUMANITARIAN LAW IN ARMED CONFLICTS

From April 21 to June 11, 1976, delegates from 104 countries met in Geneva for the Third Session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law. This was part of the ongoing process of updating and revitalizing the norms of international humanitarian law contained in the Geneva Conventions of August 12, 1949 for the Protection of War Victims by the eventual adoption of two Additional Protocols to these Conventions.

The Canadian delegation was headed by the former director of Legal Operations Division at the Department of External Affairs; the alternate head of the delegation was the senior legal adviser of Canadian Forces in Europe.

This year's session attempted to pursue several difficult issues left from the second session and satisfactorily resolved some but not all of them. The atmosphere was perhaps less conducive towards constructive compromise than last year, but the issues discussed were more intricate and crucial. Such progress as was made in the adoption at committee level of some 23 articles, plus the technical annex of Protocol I on international armed conflicts and 14 articles of Protocol II on non-international armed conflicts, was often accomplished only after prolonged debates and negotiations.

Following is a review of the work done by the committees of the conference.

Committee I:

The most significant accomplishment was the consensus adoption of the grave breach provisions of Protocol I. Despite a list of well over 40 separate suggestions, the resulting article contained only 11 specified grave breaches; some reflect current political pre-occupations of some states (e.g. apartheid war crimes) that may defy adequate translation into national legislation. The committee also made relatively good progress on Protocol II by adopting a basic article on penal responsibility, a useful formulation on reprisals, as well as articles on the execution of the Protocol relating to its dissemination, special agreements and the right of ICRC to offer its services to parties to the conflict. Several developing countries expressed continuing concern, however, that such an offer if made to rebels could both politicize and internationalize such internal armed conflicts. Left to next year were the concepts of taking reprisals under certain conditions, superior orders, the extradition of those committing grave breaches and the proposed commission of enquiry to enforce Protocol I. In addition the committee will have to consider the usual final provisions for both Protocols, with the attendant problem of how non-state national liberation movements can indicate their adherence to Protocol I.