

IN AUGUST 1990, THE CANADIAN AND QUEBEC governments called on the Canadian armed forces in two very different situations. On 6 August, the Government of Quebec made a formal request for aid from the Canadian armed forces in order to deal with the confrontation between the Mohawk Indians and the Sûreté du Québec (SQ) at Oka and at the Mercier Bridge. Four days later, on 10 August, Prime Minister Mulroney announced that two naval destroyers and a supply ship, along with eight hundred personnel, would travel to the Persian Gulf to aid the multinational force gathering there to enforce UN sanctions against Iraq. In both cases, authority for the actions undertaken derives from the National Defence Act.

The National Defence Act or Defence of Canada Act is a lengthy document which outlines the regulations governing the Canadian Armed Forces, including inter alia, regulations for court martials, calling up and releasing men and women from the armed forces, and regulations for reserve forces.

#### **Aid to the Civil Power: The Army at Oka and Kahnawake**

Part XI of the National Defence Act provides for aid of the civil power. This means that the armed forces can be called to aid the civil power in instances where it can no longer control a situation. This differs from the 1970 use of the armed forces in Quebec during the FLQ crisis. In that case the federal government declared that a state of apprehended insurrection existed. Under the War Measures Act this gave them special powers of arrest.

The War Measures Act has since been replaced by a new Emergencies Act which contains a number of safeguards against abuse of the powers to be used in an emergency, provides for Parliamentary review and gives provinces a greater role than they had under the War Measures Act. Since the actions at Oka and the Mercier Bridge were carried out under the authority of the National Defence Act, it must be assumed that it was determined that an emergency did not exist.

According to the National Defence Act, the request for aid must be made by the attorney general of the province in which the situation arises. The request can be made on the initiative of the attorney general but may also be based on information received from a judge of a superior, county or district court.

Section 275 states that aid can be requested

## CALLING OUT THE TROOPS

### *The National Defence Act and How It's Used*

when "... a riot or disturbance of the peace, beyond the powers of the civil authorities to suppress, prevent or deal with ... occurs or is, in the opinion of an attorney general, considered as likely to occur." The attorney general must make the request in writing. The act provides an outline of the wording that should be used in the request.

The request is made to the Chief of the Defence Staff who from that point onwards makes decisions about the number of forces needed, and may increase or decrease them as he sees fit. The forces stay in place until notification is received from the attorney general that the aid is no longer required. Previously, the National Defence Act required the province requesting the aid to pay all costs incurred in using the armed forces. Under the new Emergencies Act, this provision was changed and the federal government now pays for the use of the forces. Within seven days of the request from a province, the attorney general must hold an inquiry into the circumstances requiring the call-up of forces and give the report to the Secretary of State of Canada.

In the incident at Oka, the army initially undertook to relieve the SQ at Oka and Kahnawake. On 27 August, when the Government of Quebec determined that negotiations had broken down, it asked the armed forces to proceed with the mandate initially given to them by the Quebec government. The mandate included removal of the barricades, restoration of freedom of movement on roads and bridges, removal of strong points, and the restoration of public order. The Chief of the Defence Staff, General John de Chastelain, gave the orders to the forces in place to proceed with this mandate.

#### **Active Status: Canadian Navy to the Persian Gulf**

■ The use of the armed forces in the defence

of Canada is also provided for by the National Defence Act. Section 31 states that the

... Governor in Council may place the Canadian Forces or any component, ... thereof ... on active service anywhere in or beyond Canada at any time when it appears advisable to do so (a) by reason of an emergency, for the defence of Canada; or (b) in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada.

Under Section 32, if Parliament is not meeting at the time the forces are placed on active service, "... a proclamation shall be issued for the meeting of Parliament within ten days..."

Traditionally, an order-in-council is used to place troops on active service. The three naval vessels assigned to join the multinational force in the Gulf by Prime Minister Mulroney left Canada on 24 August. However, at the time, no order-in-council was signed placing the forces on active service. Parliament was due to reconvene on 24 September. To avoid calling Parliament any sooner, the naval forces could not officially be placed on active service until 14 September.

This presented a problem of timing when the Canadian contingent found itself ready to enter the Suez Canal two days prior to the expected order-in-council. According to the regulations in United Nations resolutions establishing the sanctions and their enforcement, those military forces taking part in the enforcement process are on active status once they enter the zone. Since the Canadians would enter the zone immediately upon leaving the Canal, the Canadian ships remained in Sicily until their passage through the Canal would coincide with active status.

Once on active status, the Canadian forces receive their orders from the Chief of the Defence Staff. Canadian forces operate under rules of engagement established prior to departure. The multinational force undertaking to enforce the UN sanctions has been operating under general guidelines established by the UN and developed through consultations among the military chiefs of the countries involved. □

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