

ic those protections aimed at ensuring that noncombatants to conflicts are safeguarded as much as possible. Equally important, the protocols go beyond the Geneva Conventions in setting out a number of specific combat rules for armed forces. As such, they represent an important milestone in humanitarian law.

Honourable senators, Canada's record in the field of humanitarian law is a strong one. We participated actively in the drafting of the 1949 Geneva Conventions and ratified them in 1965. We also played a leading role at the 1974-to-1977 conference where the protocols were prepared, and we signed these instruments at the conclusion of the meeting. To continue this commitment it is important that the protocols be ratified by Canada. However, as many of you are no doubt aware, this can only be achieved if the legislation implementing the obligations of the protocols is in place. Bill C-25 fulfills that function, and hence deserves our immediate attention and consideration.

The bill before us contains provisions relating to Canada's obligations under the protocols as well as several consequential amendments necessary to ensure that all relevant Canadian legislation conforms with the provisions of the protocols. The principal piece of legislation to be amended by Bill C-25 is the Geneva Conventions Act of 1965. That act constituted the Canadian implementing legislation for the 1949 conventions. It was originally thought that when Canada came to ratify the protocols a completely new piece of legislation would be enacted. However, for reasons I shall explain in a moment, it was ultimately decided that an amendment to the Geneva Conventions Act was more appropriate. Therefore, just as that act approved the conventions themselves, clause 1 of Bill C-25 approves the two protocols, while clause 6 provides that they are included as schedules to the Geneva Conventions Act.

The most important provisions contained in Bill C-25 are those relating to grave breaches, or war crimes as they are more commonly known. Clause 2 of the legislation is intended to make grave breaches of both the Geneva Conventions and the protocols direct offences under Canadian law. This approach differs from the one utilized in the original Geneva Conventions Act. Under that act grave breaches were not direct offences under Canadian law. Rather, a double criminality test was used, according to which an act or omission had to constitute both a grave breach and an offence under other Canadian law to be punishable. That approach was sufficient to fulfil Canada's obligations under the Geneva Conventions, since the grave breaches in those instruments were analogous to offences in the Canadian law.

However, the double criminality test was found not to be appropriate for the grave breaches of the protocols. While some of those breaches are analogous to existing Canadian offences, others, such as launching an indiscriminate attack affecting the civilian population, are not. Once it was determined that a different approach was required with respect to the protocols' grave breaches, it was decided that amendments should be made to the Geneva Conventions Act in order to ensure consistency.

Clause 2 of Bill C-25 thus makes all grave breaches, whether found in the conventions or the protocols, direct offences under Canadian law. That clause provides other amendments to ensure that this approach is consistent with the war crimes legislation enacted in the Criminal Code. For example, Bill C-25 provides for the offence of a grave breach, whether the incident in question takes place within or outside Canada. This important provision will help to ensure that alleged offenders are brought to justice, regardless of where the grave breach is committed.

The change in approach for grave breaches necessitated certain consequential amendments. These are found in clauses 3 through 5 of Bill C-25, and again are designed to ensure consistency with other legislation, such as that relating to the prosecution of war crimes.

The remaining clauses of Bill C-25 relate to changes to the National Defence Act and to the Trade-marks Act. With regard to the former, the Code of Service Discipline provides for statutory limitations on prosecution of military offences. Since the protocols do not provide for such limitations on the prosecution of grave breaches, the National Defence Act Code of Service Discipline is amended to ensure compliance. The Trade-marks Act provides for protection of the distinctive emblems of the Red Cross. The protocols created a new symbol relating to an international distinctive sign for civil defence. This symbol will be added to the list of protected signs through the amendment of the Trade-marks Act contained in clause 8.

Bill C-25 is but one step in the process of ensuring Canadian compliance with the obligations of the protocols. Many of the provisions of these instruments apply during times of armed conflict. It is thus crucial that the members of our armed forces be fully cognizant of the international rules under which they are to operate. The Department of National Defence is therefore currently revising its manuals to take account of the new rules contained in the protocols.

Finally, I believe that all honourable senators share my conviction that the protocols are fundamental humanitarian instruments deserving Canadian ratification. Many of our allies have already ratified and more are expected to follow suit. The enactment of Bill C-25 is an important step in the process leading to Canadian ratification.

I hope my comments today have assisted in clarifying the highlights of this legislation and its importance to Canada. I conclude that this is another one of the occasions when I am thinking very strongly of Genesis 27:22.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I want to congratulate Senator Macquarrie for his customary thorough and limpid presentation.

Senator Petten: As always.

Senator Frith: I hope that Senator Beaudoin will forgive me for not congratulating him on his intervention, which I thought was also of a very high standard. Both of them, I think, represented model presentations at second reading.

Senator Doody: That must be what they mean by "suave."