

6- International Humanitarian Law in Armed Conflicts

(a) Up-Dating of 1949 Geneva Conventions

The Legal Bureau has been working closely with the Judge Advocate General's Office of the Department of National Defence and the Canadian Red Cross Society in the different stages of diplomatic activity, under the auspices of the International Committee of the Red Cross (ICRC), which it is hoped will lead to adoption in 1974 of two Protocols adapting the four Geneva Conventions of August 12, 1949 for the Protection of War Victims to the realities of contemporary armed conflict situations.

To its credit the ICRC was among the first to recognize the inadequacies of the Geneva Conventions. At the 21st International Conference of the Red Cross in Istanbul in September, 1969, the ICRC tabled a report entitled "Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts". At the Conference Canada and Sweden co-sponsored a resolution requesting the ICRC to propose as soon as possible concrete rules to supplement existing humanitarian law, submit these proposals to governments for comment, and, if desirable, recommend the convening of diplomatic conferences of States Parties to the Geneva Conventions and other interested states to elaborate international legal instruments incorporating these proposals. Canada also co-sponsored a resolution recalling the unfortunate fact that since 1949 non-international armed conflicts had been increasing, and requesting the ICRC, with the co-operation of government experts, to devote special attention to this subject.

Encouraged by the U.N. Secretary-General, the ICRC convened a First Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in Geneva in May, 1971. The ICRC prepared extensive background documentation for the Conference. 39 governments provided delegations composed of some 200 diplomatic, legal, military and medical experts. The Canadian Delegation was composed of senior officers from the Legal Bureau and the Office of the Judge Advocate General of DND. Among other things the Delegation promoted vigorously the view that, building upon common Article 3 of the 1949 Geneva Conventions, there should be a basic minimum standard of humanitarian treatment applied in all armed conflict situations whether these are characterized as "international" or "non-international". The Canadian experts presented a draft protocol embodying this concept for which a number of other experts expressed support or interest.

On the basis of the comments of government experts and further statements made by governments during consideration of this subject in the Third (Social and Human Rights) Committee at the 1971 session of the U.N. General Assembly, the ICRC formulated two draft protocols, and accompanying commentaries, to the Geneva Conventions - one, concerning international armed conflicts and the other, which was based on the draft proposed by Canada at the First Conference but which went far beyond the Canadian draft by introducing rules of combat as opposed to purely humanitarian rules, concerning armed conflicts not of an international character. After a preparatory meeting of National Red Cross experts in Vienna in March, 1972, the ICRC convened a Second Conference of Government Experts in Geneva from May 3 to June 3, 1972 to consider the two draft protocols. Over 460 experts attended from 76 states as well as observers from the United Nations and interested non-governmental organizations.