

The implementation of the Additional Protocols in Belgium

by **André Andries**

In November 1977 the Belgian Government appointed an interdepartmental commission to study questions relating to the ratification of the Protocols additional to the Geneva Conventions. This was done even before the Protocols, which had been adopted on 8 June of that year, were open for signature. The commission's work at that point was both to determine whether there was cause for Belgium to make an interpretative declaration or even announce a reservation when ratifying the Protocols, and to draft a bill for a law approving that ratification. This required consultation not only between the various ministerial departments concerned with implementing the Protocols but also between the Belgian Government and the governments of member countries of the military alliance to which Belgium belongs. It will be noted that the two NATO countries which ratified the Protocols before Belgium¹ had decided not to make an interpretative declaration accompanying their ratification and did not therefore have to await the result of that consultation. The only reservation formulated by Denmark related to a question of judicial procedure in its national law.

The interdepartmental commission's work lasted almost four years (until September 1981) and resulted in a technically complete preliminary draft law. The Government was then able to enter the political phase of the ratification procedure.

In the meantime, a number of legal and humanitarian associations took action to help prepare the implementation of the Protocols in Belgium.

The 1980-1981 session of the Seminar on military penal law and the law of war devoted itself to preparing the Ninth International Congress of the International Society of Military Law and the Law of War, held in Lausanne, Switzerland from 2 to 6 September 1982 on the theme "Armed forces and the development of the law of war".

The questionnaire sent by the organizers of the Congress to the various national delegations contained, among others, the following question: "What changes of your penal law does the Protocol make necessary?" It

¹ Norway (on 14 December 1981) and Denmark (on 17 June 1982).

should be pointed out that the Belgian Parliament had not yet fulfilled the commitment it had made when it passed, on 3 September 1952, the bill ratifying the 1949 Geneva Conventions, each of which requires States to “enact any legislation necessary to provide effective penal sanctions” for persons committing grave violations of the Conventions.

To begin with, the Belgian Government took an innovative step in this area by submitting to the International Committee of the Red Cross a draft model law which could be proposed to all signatory States to ensure that the provisions of the Conventions received uniform integration into the national penal legislation of those countries.² When nothing came of this proposal, it placed Bill 577 before the Chamber of Representatives on 27 May 1963. However, this bill, which dealt with the repression of grave violations of the Conventions, was withdrawn when it was announced that there would be a diplomatic conference on the reaffirmation and development of international humanitarian law. This was because the government wished there to be a single law integrating into Belgian penal legislation all of the provisions relating to violations of humanitarian law which might be included in international instruments.

As a result, the Seminar on military penal law and the law of war took the initiative of assigning a group of specialists to look into the question of what technical changes to Bill 577 would be implied by the ratification of Additional Protocol I and the general development of international law.

This working group was made up of members of the standing committee which had drawn up Bill 577, the committee established to revise the Penal Code, the interdepartmental commission for the ratification of the Additional Protocols and the interdepartmental commission set up to revise the Code of Military Penal Procedure. The Minister of Justice delegated a legal adviser attached to the Ministry's legislative service to attend their sessions as an observer.

The document amending Bill 577, which was adopted unanimously both by the working group and by the Seminar's plenary meeting, was forwarded to the Minister of Justice on 11 February 1982.

After being informed of the amendment, the Belgian Red Cross asked its legal committee, assisted by several university professors, to examine the Seminar's text. When this had been done, its central committee voted unanimously to support the amended version of Bill 577. His Royal Highness Prince Albert, in his capacity as National President of the Belgian Red Cross, wrote letters to the Prime Minister and the Ministers of Justice and Foreign Affairs urging them to promote the adoption by Parliament of

² Dautricourt, J. Y., «La protection pénale des conventions internationales humanitaires — Une conception de loi-type», *Revue de droit public (R.D.P.)*, 1953-54, p. 191.

those penal provisions which Belgium's international humanitarian obligations had made indispensable.

The legislative service of the Ministry of Justice forwarded this letter to the Judge Advocate General of the Military Court requesting any suggestions he might have for promoting the legislation.

On 18 January 1983, the Judge Advocate General replied with what he felt were the reasons why the Protocols additional to the Geneva Conventions should be ratified. In addition, he pointed out that the United Nations General Assembly had adopted Resolutions 32/44 and 34/51 and the Parliamentary Assembly of the Council of Europe had adopted Recommendation 945 in order to expedite their ratification. Moreover, he stated that, with several minor corrections, the Seminar's text was one he could support.

In May 1983 the law faculties of all the country's universities made a solemn appeal to the Minister of Foreign Affairs requesting Belgium's ratification of the instruments of humanitarian law in armed conflicts which it had signed in Geneva in June 1977. This appeal was the result of a campaign begun on "University Peace Day" in the month of March of that year.

On 6 June 1983 the Minister of Foreign Affairs replied, stating "I am pleased to inform you that I will very shortly be able to present the bill for the ratification of these Protocols to the Cabinet. In addition, I have raised with the Minister of Justice the question of submitting a bill to the Chamber of Representatives and the Senate concerning the repression of grave violations of the Geneva Conventions and Additional Protocol I".

The Minister of Justice replied on 17 August 1983 that the text drawn up by the Seminar on military penal law and the law of war had been studied by his Ministry. "It was among other things a matter of determining whether a bill along the lines of the text proposed by the Seminar should be drawn up at the present time or whether it is better to wait for Protocol I to be ratified before tabling such a bill. I have given instructions for the ratification of the Protocol and the adaptation of national law to be combined in a single bill".

The ratification bill received Cabinet approval on 7 September 1984. Article 3 of the bill contained the authorization necessary for the executive to sign a declaration recognizing, in the name of Belgium, the competence of the International Fact-Finding Commission provided for in Article 90 of Protocol I. The annex to the statement of grounds contained the interpretative declarations which the government intended to make when it deposited the instruments of ratification. There are seven of them and they concern:

1. limitation of the purpose of the Protocol to increasing the protection afforded by humanitarian law exclusively in conventional warfare;
2. missions assigned to the Belgian police in periods of armed conflict under Article 43 of Protocol I;
3. interpretation of the expression "précautions utiles" ("feasible precautions") in Article 41;
4. the conditions for the application of Article 44 and the interpretation of the term "deployment" therein;
5. interpretation of the term "military advantage" in Articles 51 and 57;
6. the criteria on which military commanders must base decisions concerning the protection of civilians;
7. the concept of authority within the meaning of Article 96, paragraph 3.

On 8 October 1984 the Council of State rendered an opinion on the bill. On the subject of the first interpretative declaration, it stated the following:

"The consensus on this point which has formed between the great powers possessing nuclear arms, which have often been termed a "case apart", must be interpreted as relating exclusively to the new rules set out in Protocol I. The rules contained in other international instruments, such as The Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949, are not affected by it and thus retain all their validity."

The bill was presented to Parliament on 9 January 1985 and was adopted without amendment. The Act of Parliament, dated 16 April 1986, that ratified Protocol I was published in the "Moniteur" of 7 November 1986. The instruments of ratification were deposited on 20 May 1986 in order for the Protocols to enter into force in Belgium on 20 November of that year. One week later, on 27 and 28 November, the Belgian Red Cross held a symposium on the implementation of these new rules of international humanitarian law.

Both the general press and publications specializing in military or legal affairs reported on the event, which brought together a number of experts and representatives of public authorities concerned with implementing this law.

At the inaugural ceremony, HRH Prince Albert, President of the Belgian Red Cross, congratulated the government for the action it had taken to bring about ratification. Mr. Alexandre Hay, President of the ICRC, described experiences from other countries which demonstrated the necessity for governments permanently to co-ordinate all implementation measures. Mr. Eric Suy, then Director-General of the Office of the United Nations at Geneva, spoke about the main contributions of the Protocols.

Finally, in a much-applauded speech, Prime Minister Wilfried Martens expressed the government's determination to take the decisions necessary to ensure that Belgium met its international commitments. Indeed, after 20 February 1987, the Council of State appointed an interdepartmental commission, chaired by General A. Everaert, for the application of the Protocols.

In organizing its symposium, the National Society assigned three commissions to study three main issues. The first commission, chaired by Mr. A. Vanhee, administrative director of penal legislation, examined and recommended the draft text on repression at the national level of grave violations of the Geneva Conventions and their Additional Protocols mentioned above. Mr. Vanhee had been assigned by the Minister of Justice to finalize the text of the ratification bill.

The second commission, chaired by General A. Bats, Commander of the Royal Defence Institute, studied possibilities for appointing legal advisers to the armed forces. General Bats has since reported on this matter to the Chief of Staff, who has instructed his staff to submit to him the information required for a decision by the end of June 1987.

The third commission was chaired by Professor B. De Schutter of the Flemish-speaking University in Brussels. It defined the various aspects of the obligation to disseminate knowledge of humanitarian law in the designated circles.

The liveliness of the debates in the closing plenary meeting, which benefited from the vigorous chairmanship of Mr. R. Legros, the Royal Commissioner for the reform of the penal code, reflected the participants' personal commitment on the issue of controlling the spread of armed conflicts, as the very survival of civilization is today at stake.

Since the symposium, the dissemination of knowledge of humanitarian law in the armed forces has been aided by the inclusion of the Royal Military Academy in the annual lecture tour of Belgian universities by an ICRC delegate. Much, however, remains to be done in this area, according to a report by Major J. P. Blondieau presented in May 1985 to the Royal Defence Institute.

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