

# The Protocols of 1977 and The Netherlands Red Cross

by Frits Kalshoven

## 1. The Netherlands and the Protocols of 1977

The Netherlands contributed vigorously to the drafting of the Protocols of 1977, and it was among the States that signed these instruments at the first opportunity, on 12 December 1977 in Berne. Yet, up to the present day, it has not ratified the Protocols. Why the delay?

There are several reasons for this. For one thing, The Netherlands is a member of the North Atlantic Treaty Organization, or NATO, and that organization needed a considerable amount of time to evaluate the Protocols in the light of its military defence plans. Then, according to constitutional rules and practice, whenever the Dutch Government wishes to ratify a treaty it must first obtain the agreement of both Chambers of Parliament; and in the case of important and fairly complex treaties such as the two Protocols, even the submission to Parliament (which is done in the form of a draft bill approving the treaty) requires thorough preparation and, hence, time.

The total amount of time required for these various departmental, interdepartmental and international preparations was just under seven years: on 3 March 1984, the Government finally submitted the draft bills approving both Protocols, as well as the Conventional Weapons Convention of 1980, to Parliament. (As the latter Convention is not relevant to the present article, it shall not be mentioned further. Suffice it to indicate that it shared entirely the fate of the Protocols).

As always in the parliamentary treatment of draft legislation, the Second Chamber was called upon to deal with the draft bill approving the Protocols first. It took this Chamber another two years, till 11 March 1986, to arrive at a unanimously positive verdict. To understand why this phase of the procedure had again taken so much time, it may suffice to recall that

the period in question was characterized by heated debate about the possible installation of certain new American weapons (viz., nuclear missiles of intermediate range) in various European countries, with The Netherlands among them. In the Second Chamber, the matter of acceptance of the Protocols unfortunately became entangled with this nuclear issue, and it was only after long and difficult debate that the vote could finally be taken.

With that, the matter went to the First Chamber. Here, the Protocols did not meet any serious obstacles of a substantive order. The only problems this time were procedural in character: this Chamber of Parliament meets far less frequently than the Second Chamber, and it simply proved difficult to find time on its crowded agenda for the required debate, first, in committee, and then in a public session of the full Chamber and in the presence of the (frequently absent) Minister of Foreign Affairs. Ultimately, on 10 March 1987, also the First Chamber expressed itself in favour of the Protocols.

With this, the road lays open for the Government to take the final steps leading to ratification of the Protocols. It should be noted that even after such a positive verdict of both Chambers of Parliament, ratification of a treaty still requires an express decision to that effect of the Government, and in practice it takes this decision only after a final, careful scrutiny of all relevant political and legal aspects of the treaty in question. In the case of the Protocols, it appears entirely justified to expect a positive outcome of this final examination and, as a consequence, ratification on a date not too far-removed from the tenth anniversary of the Protocols.

## **2. Role of The Netherlands Red Cross with respect to ratification**

As may be evident from the above exposé, most factors leading to the delay in ratification of the Protocols were beyond the control of The Netherlands Red Cross. Yet, over the years, it has taken a variety of steps to influence the authorities and public opinion in a positive manner. Thus, the President and others repeatedly approached responsible persons in governmental and parliamentary circles, asking them to speed up the procedure for parliamentary approval of the Protocols to the best of their ability. Particular activity was developed in this respect in the months preceding the recent Twenty-fifth International Conference of the Red Cross, in hopes of achieving ratification prior to that event. Unfortunately, these efforts failed to bring the desired result.

One specific contribution, not by the Red Cross but on its behalf, was the statement made by the present author in a committee meeting of the Second Chamber of Parliament. As mentioned before, questions had arisen in that forum with respect to the implications of nuclear warfare for the application of Protocol I, and it was argued in certain quarters that ratification of that instrument would be incompatible with NATO's nuclear defence posture. The statement successfully defused this argument.

Efforts to create and maintain an interest for the Protocols, and humanitarian law in general, among public opinion were repeatedly undertaken throughout this past ten-year period. Thus, already in September 1978, the National Society held an international symposium under the title "The New Humanitarian Law in War and Conflict". In 1980 followed a conference (this time in Dutch) about the international legal aspects of the use of nuclear weapons. And in 1984, the Belgian and Dutch Societies together held a symposium in Antwerp, Belgium, about "Guerrilla and International Humanitarian Law". The attempts made each time to attract the attention of the media were more successful in Belgium than in The Netherlands: in the latter country, it proves very difficult to interest the media in any matter that does not appear to be of immediate concern.

Besides these major events, The Netherlands Red Cross introduced in its bi-monthly review a regular column devoted to topical questions of humanitarian law. Although this review is technically an internal Red Cross publication, it reaches very many people in The Netherlands. Also, the present author has contributed articles on the same type of subjects to a variety of Dutch publications.

### **3. Importance of the Protocols for The Netherlands**

As a country not actually involved in, or threatened by, armed conflict, The Netherlands is in the fortunate position that it can regard the Protocols, as, indeed, the whole body of international humanitarian law applicable in armed conflicts, with a certain equanimity. In particular the actual application of Protocol II seems difficult to visualize: although the country obviously has its share of political and social unrest, the outbreak of an internal armed conflict seems a very remote possibility indeed.

Although an international armed conflict appears no more imminent, The Netherlands, both individually and as a member of NATO, maintains a level of preparedness for its military defence. This means that in fact the greater part of the provisions of Protocol I is of direct concern to those involved in these defence preparations. Indeed, it seems easier to identify those few parts of the Protocol that one may regard as of less immediate

interest to this country: they are, mainly, the provisions on, or relating to, "war of national liberation", those on non-defended localities, and those relating to occupied territory.

Particular importance attaches, on the other hand, to the majority of the provisions relating to the protection of the civilian population, including those on civil defence, as well as to those on combatant and prisoner-of-war status. The relevance of the latter rules arises in particular from the circumstance that the ministry of defence employs numerous people, mostly in technical functions, who as yet are not incorporated in the armed forces but who in time of armed conflict might have to perform their duties in situations where without further provision an adversary might be inclined to regard them as "civilians taking a direct part in hostilities", in the sense of Article 51, paragraph 3. Various ways to avoid this consequence are presently under consideration.

#### **4. Significance of the Protocols for The Netherlands Red Cross**

The primary significance of the Protocols for The Netherlands Red Cross resides probably in the fact that their adoption and subsequent signature by the Netherlands Government made it acutely aware of the need to start a serious dissemination effort. In this context it should be mentioned that the Society was the initiator of the Chair of International Humanitarian Law, established in the University of Leiden and occupied by the present author since 1975. Obviously, however, even in a country at peace, dissemination of knowledge on the academic level could not suffice.

Equally obviously, the dissemination of knowledge of humanitarian law is first and foremost a Government responsibility. As the Government thus far shows very little inclination to discharge its responsibility in this respect towards the civilian population, the Red Cross has in the past few years developed several dissemination activities aimed at this category. Mention was already made of the symposium it (co-)organized and the publicity efforts it is making. Besides these efforts, it also has started teaching programmes aimed at various categories of its workers and volunteers. In this respect, a point of particular interest is that in a recent revision of its Statutes, a provision has been introduced which makes it obligatory for the local chapters to contribute to the dissemination of humanitarian law. Evidently, it will take some time to give effect to such a drastic innovation.

Protocol I has gained particular significance for The Netherlands Red Cross Society in a totally different manner as well, viz., through the role assigned to it in disaster preparedness. Until quite recently, civil defence in the event of armed conflict was a task allotted to a special branch of the public services. When the authorities decided some time ago to dissolve this organization, they also decided that the various functions of civil defence would be distributed among other existing organizations. In that context, the Government formally requested The Netherlands Red Cross to assume responsibility for a specific part of the task of collecting and caring for the wounded among the civilian population, and the Red Cross, conscious of its history and primary purpose, accepted this challenge.

Obviously, even the decision to accept this role in time of armed conflict, and to prepare for it in time of peace, could hardly fail to evoke strong reactions among Red Cross volunteers, who suddenly, and for many of them quite unexpectedly, saw themselves confronted with the need to evaluate the possible impact of international armed conflict on their functioning in such a situation. Humanitarian law, and in particular the provisions in Protocol I on the protection of the civilian population and the treatment of the wounded and sick, thus became a matter of prime interest, even for a National Society in a country at peace. The process of adaptation to the new situation, initiated by the decision to accede to the Government request, has certainly not come to an end.

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