

New Parties to the Additional Protocols to the Geneva Conventions

CANADA RATIFIES THE PROTOCOLS

On 20 November 1990 Canada ratified the Protocols additional to the Geneva Conventions of 12 August 1949 relative to the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, adopted in Geneva on 8 June 1977.

The instrument of ratification was accompanied by reservations, statements of understanding and a declaration regarding the International Fact-Finding Commission. These texts are given below:

Protocol I

Protocol relating to the Protection of Victims of International Armed Conflicts

RESERVATIONS

Article 11 - Protection of persons

(Medical procedures)

The Government of Canada does not intend to be bound by the prohibitions contained in Article 11, sub-paragraph 2 (c), with respect to Canadian nationals or other persons ordinarily resident in Canada who may be interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1, so long as the removal of tissue or organs for transplantation is in accordance with Canadian laws and applicable to the population gener-

ally and the operation is carried out in accordance with normal Canadian medical practices, standards and ethics.

Article 39 - Emblems of nationality

(Enemy uniforms)

The Government of Canada does not intend to be bound by the prohibitions contained in paragraph 2 of Article 39 to make use of military emblems, insignia or uniforms of adverse parties in order to shield, favour, protect or impede military operations.

STATEMENTS OF UNDERSTANDING

(Conventional weapons)

It is the understanding of the Government of Canada that the rules introduced by Protocol I were intended to apply exclusively to conventional weapons. In particular, the rules so introduced do not have any effect on and do not regulate or prohibit the use of nuclear weapons.

Article 38 - Recognized emblems

(Protective emblems)

It is the understanding of the Government of Canada that, in relation to Article 38, in situations where the Medical Service of the armed forces of a party to an armed conflict is identified by another emblem than the emblems referred to in Article 38 of the *First Geneva Convention of August 12, 1949*, that other emblem, when notified, should be respected by the adverse party as a protective emblem in the conflict, under analogous conditions to those imposed by the Geneva Conventions of 1949 and the Additional Protocols of 1977 for the use of emblems referred to in Article 38 of the *First Geneva Convention* and Protocol I. In such situations, misuse of such an emblem should be considered as misuse of emblems referred to in Article 38 of the *First Geneva Convention* and Protocol I.

Articles 41, 56, 57, 58, 78 and 86

(Meaning of "feasible")

It is the understanding of the Government of Canada that in relation to Articles 41, 56, 57, 58, 78 and 86 the word "feasible" means that which is

practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 44 - Combatants and prisoners of war

(Combatant status)

It is understanding of the Government of Canada that:

- a. the situation described in the second sentence of paragraph 3 of Article 44 can exist only in occupied territory or in armed conflicts covered by paragraph 4 of Article 1; and
- b. the word "deployment" in paragraph 3 of Article 44 includes any movement towards a place from which an attack is to be launched.

Part IV, Section I -

General protection against effects of hostilities

(Standard for decision-making)

It is the understanding of the Government of Canada that, in relation to Articles 48, 51 to 60 inclusive, 62 and 67, military commanders and others responsible for planning, deciding upon or executing attacks have to reach decisions on the basis of their assessment of the information reasonably available to them at the relevant time and that such decisions cannot be judged on the basis of information which has subsequently come to light.

Article 52 - General protection of civilian objects

(Military objectives)

It is the understanding of the Government of Canada in relation to Article 52 that:

- a. a specific area of land may be a military objective if, because of its location or other reasons specified in the Article as to what constitutes a military objective, its total or partial destruction, capture or neutralization in the circumstances governing at the time offers a definite military advantage; and
- b. the first sentence of paragraph 2 of the Article is not intended to, nor does it, deal with the question of incidental or collateral damage resulting from an attack directed against a military objective.

Article 53 - Protection of cultural objects and of places of worship

(Cultural objects)

It is the understanding of the Government of Canada in relation to Article 53 that:

- a. such protection as is afforded by the Article will be lost during such time as the protected property is used for military purposes; and
- b. the prohibitions contained in sub-paragraphs (a) and (b) of this Article can only be waived when military necessity imperatively requires such a waiver.

Articles 51, sub-paragraph 5 (b), 52, paragraph 2, and 57, clause 2 (a) (iii)

(Military advantage)

It is the understanding of the Government of Canada in relation to sub-paragraph 5 (b) of Article 51, paragraph 2 of Article 52, and clause 2 (a) (iii) of Article 57 that the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack.

Article 62 - General protection

(Protection of civil defence personnel)

It is the understanding of the Government of Canada that nothing in Article 62 will prevent Canada from using assigned civil defence personnel or volunteer civil defence workers in Canada in accordance with nationally established priorities regardless of the military situation.

Article 96 - Treaty relations upon entry into force of this Protocol, paragraph 3

(Declaration by national liberation movement)

It is the understanding of the Government of Canada that the making of a unilateral declaration does not, in itself, validate the credentials of the person or persons making such declaration and that States are entitled to satisfy themselves as to whether in fact the makers of such declaration constitute an authority referred to in Article 96. In this respect, the fact that such authority has or has not been recognized as such by an appropriate regional inter-governmental organization is relevant.

DECLARATION

Article 90 - International Fact-Finding Commission

The Government of Canada declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to enquire, as authorized by Article 90 of Protocol I, into allegations by such other Party that it has been the victim of violations amounting to a grave breach or other serious violation of the Geneva Conventions of 1949 or of Protocol I.

Protocol II

Protocol relating to the Protection of Victims of Non-International Armed Conflicts

STATEMENT OF UNDERSTANDING

The Government of Canada understands that the undefined terms used in Additional Protocol II which are defined in Additional Protocol I shall, so far as relevant, be construed in the same sense as those definitions.

The understandings expressed by the Government of Canada with respect to Additional Protocol I shall, as far as relevant, be applicable to the comparable terms and provisions contained in Additional Protocol II.

Canada is the **twentieth State** to make the declaration accepting the competence of the International Fact-Finding Commission. This means that the conditions are now fulfilled for Switzerland, the depositary State, to proceed with the establishment of the Commission.

In accordance with their provisions, the Protocols will come into force for Canada on 20 May 1991.

Canada is the **98th State** to become party to Protocol I and the **88th** to Protocol II.