Geneva Conventions Amendment Bill 1989

Date Introduced: 2 March 1989
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose
To provide additional protection for the victims of international armed conflicts, and to include breaches of the new protections in the range of offences under the Geneva Conventions Act 1957 (the Principal Act).

Background
On 12 August 1949 a diplomatic conference in Geneva approved the text of four conventions on the laws of war. They deal with wounded and sick armed forces in the field; wounded, sick and ship - wrecked armed forces at sea; prisoners of war; and civilians. The central purpose of the four 1949 Geneva Conventions is the protection of victims of war. To date 147 nations have either acceded to or ratified the four Conventions. Australia ratified the four Conventions on 14 October 1958.

After adoption of the four Conventions, developments in the character of warfare led to a growing realisation that the laws of war required adaptation to the conditions of modern conflicts. For example, many armed conflicts occurring since the Second World War have been regarded by some as non-international in character, and hence the need arose to clarify the application of the law in relation to such conflicts. In addition, the widespread resort to guerrilla warfare raised questions concerning the application of the Conventions, because in most cases the activities of guerrillas challenged the existing legal conditions for combatant status. On 8 June 1977 the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts adopted two Protocols additional to the four Conventions.

Protocol 1 relates to the protection of victims of international armed conflicts. Protocol 1 supplements the four Conventions. Protocol 1 contains a number of internationally controversial provisions. Article 1 provides that the Protocol 1 applies in situations described in common Article 2 of the four Conventions and to armed conflicts in which people are fighting against colonial domination, foreign occupation, and against racist regimes in the exercise of their right of self-determination. The principle of self-determination of peoples is enshrined in the Charter of the United Nations. The concept has been developed by the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.
According to prevailing views, only peoples that have not yet exercised their right to self-determination may qualify. In addition, Protocol 1 deals only with specific types of armed conflict and not with the legal status of particular groups. The Friendly Relations Declaration makes it clear that a secessionist movement cannot expect its struggle against a central government to be recognised as a war of liberation. Neither can minorities dissatisfied with the majority or political opponents of a government rely on the right of self-determination to voice their grievances.

Article 44 of Protocol 1 affords legal recognition to certain types of guerrilla activity by modifying the requirements of distinctive emblems and carrying arms openly. Article 47 of Protocol 1 states that mercenaries shall not have the status of a combatant or prisoner of war. However, a capturing party to a conflict may choose to accord combatant or prisoner status to captured mercenaries who, in any case, remain under the protection of the fundamental guarantees, applicable to all persons, as set out in Article 75. Although these provisions have attracted considerable attention, Protocol 1 incorporates other important developments including the identification and protection of medical aircraft; provisions with respect to the protection of civilians from indiscriminate attacks; and the first reference to civil defence in an international agreement on the laws of war.

At 30 June 1987, 68 states were parties to Protocol 1. Several NATO countries and other members of the Western Group have ratified Protocol 1, but not the Soviet Union and its Eastern European allies. The U.S. President Reagan had urged the U.S. Senate on 29 January 1987 not to ratify Protocol 1 because the Department of State was of the view that Protocol 1 would undermine humanitarian law and endanger civilians in war; would treat as an international conflict any wars of ‘national liberation’ thereby politicising humanitarian law and eliminating the distinction between international and non-international conflict; that combat status would be granted to non-combatant forces possibly endangering civilians; and that the Joint Chiefs of Staff had concluded that a number of the provisions of Protocol 1 were militarily unacceptable. To date, the U.S. has not ratified Protocol 1.1

Main Provisions

Clause 5 will insert into the Principal Act certain offences which, under Protocol 1, are required to be punished. These offences are found in Articles 11 and 85 of Protocol 1, and include such acts as physical mutilation; medical or scientific experiments on prisoners of war or refugees; making the civilian population or individual civilians the object of a military attack; and making non-defended localities and demilitarised zones the object of a military attack.

Where a person, who has taken part in hostilities against Australia, comes under the control of Australian authorities and claims status as a protected prisoner of war they may apply to a Supreme Court for a declaration that they have the status of a protected prisoner of war. The Court may exclude the public, or persons specified by the Court, from a sitting of the Court where the Court is satisfied that the presence of the public or those persons would be contrary to the interests of justice or the public interest (clause 7).
A new subsection 15(1) (e), to be inserted into the Principal Act by clause 8, will provide that a person is not, without appropriate authorisation, to use for any purpose emblems, identity cards, signs, signals, insignia or uniforms as prescribed by Protocol 1. The maximum penalty for a breach of this provision will be a fine of $1000 (clause 8).

Clause 9 will insert a new Schedule 5 into the Principal Act which will set out the text of Protocol 1.

References

For further information, if required, contact the Law and Government Group.

10 March 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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