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PROTOCOL II ADDITIONAL TO THE 1949 GENEVA CONVENTIONS, AND RELATING TO THE PROTECTION OF VICTIMS OF NONINTERNATIONAL ARMED CONFLICTS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL II ADDITIONAL TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NONINTERNATIONAL ARMED CONFLICTS, CONCLUDED AT GENEVA ON JUNE 10, 1977

JANUARY 29, 1987.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 29, 1987.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977. I also enclose for the information of the Senate the report of the Department of State on the Protocol.

The United States has traditionally been in the forefront of efforts to codify and improve the international rules of humanitarian law in armed conflict, with the objective of giving the greatest possible protection to victims of such conflicts, consistent with legitimate military requirements. The agreement that I am transmitting today is, with certain exceptions, a positive step toward this goal. Its ratification by the United States will assist us in continuing to exercise leadership in the international community in these matters.

The Protocol is described in detail in the attached report of the Department of State. Protocol II to the 1949 Geneva Conventions is essentially an expansion of the fundamental humanitarian provisions contained in the 1949 Geneva Conventions with respect to non-international armed conflicts, including humane treatment and basic due process for detained persons, protection of the wounded, sick and medical units, and protection of noncombatants from attack and deliberate starvation. If these fundamental rules were observed, many of the worst human tragedies of current internal armed conflicts could be avoided. In particular, among other things, the mass murder of civilians is made illegal, even if such killings would not amount to genocide because they lacked racial or religious motives. Several Senators asked me to keep this objective in mind when adopting the Genocide Convention. I remember my commitment to them. This Protocol makes clear that any deliberate killing of a noncombatant in the course of a non-international armed conflict is a violation of the laws of war and a crime against humanity, and is therefore also punishable as murder.

While I recommend that the Senate grant advice and consent to this agreement, I have at the same time concluded that the United States cannot ratify a second agreement on the law of armed conflict negotiated during the same period. I am referring to Protocol I additional to the 1949 Geneva Conventions, which would revise the rules applicable to international armed conflicts. Like all other efforts associated with the International Committee of the Red Cross, this agreement has certain meritorious elements. But Protocol I is fundamentally and irreconcilably flawed. It contains provisions

that would undermine humanitarian law and endanger civilians in war. One of its provisions, for example, would automatically treat as an international conflict any so-called "war of national liberation." Whether such wars are international or non-international should turn exclusively on objective reality, not on one's view of the moral qualities of each conflict. To rest on such subjective distinctions based on a war's alleged purposes would politicize humanitarian law and eliminate the distinction between international and non-international conflicts. It would give special status to "wars of national liberation," an ill-defined concept expressed in vague, subjective, politicized terminology. Another provision would grant combatant status to irregular forces even if they do not satisfy the traditional requirements to distinguish themselves from the civilian population and otherwise comply with the laws of war. This would endanger civilians among whom terrorists and other irregulars attempt to conceal themselves. These problems are so fundamental in character that they cannot be remedied through reservations, and I therefore have decided not to submit the Protocol to the Senate in any form, and I would invite an expression of the sense of the Senate that it shares this view. Finally, the Joint Chiefs of Staff have also concluded that a number of the provisions of the Protocol are militarily unacceptable.

It is unfortunate that Protocol I must be rejected. We would have preferred to ratify such a convention, which as I said contains certain sound elements. But we cannot allow other nations of the world, however numerous, to impose upon us and our allies and friends an unacceptable and thoroughly distasteful price for joining a convention drawn to advance the laws of war. In fact, we must not, and need not, give recognition and protection to terrorist groups as a price for progress in humanitarian law.

The time has come for us to devise a solution for this problem, with which the United States is from time to time confronted. In this case, for example, we can reject Protocol I as a reference for humanitarian law, and at the same time devise an alternative reference for the positive provisions of Protocol I that could be of real humanitarian benefit if generally observed by parties to international armed conflicts. We are therefore in the process of consulting with our allies to develop appropriate methods for incorporating these positive provisions into the rules that govern our military operations, and as customary international law. I will advise the Senate of the results of this initiative as soon as it is possible to do so.

I believe that these actions are a significant step in defense of traditional humanitarian law and in opposition to the intense efforts of terrorist organizations and their supporters to promote the legitimacy of their aims and practices. The repudiation of Protocol I is one additional step, at the ideological level so important to terrorist organizations, to deny these groups legitimacy as international actors.

Therefore, I request that the Senate act promptly to give advice and consent to the ratification of the agreement I am transmitting today, subject to the understandings and reservations that are described more fully in the attached report. I would also invite an expression of the sense of the Senate that it shares the view that the

United States should not ratify Protocol I, thereby reaffirming its support for traditional humanitarian law, and its opposition to the politicization of that law by groups that employ terrorist practices.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 13, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmission to the Senate for its advice and consent to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977.

PROTOCOL II

Protocol II to the 1949 Geneva Conventions was negotiated by a diplomatic conference convened by the Swiss Government in Geneva, which met in four annual sessions from 1974–77. This Protocol was designed to expand and refine the basic humanitarian provisions contained in Article 3 common to the four 1949 Geneva Conventions with respect to non-international conflicts. While the Protocol does not (and should not) attempt to apply to such conflicts all the protections prescribed by the Conventions for international armed conflicts, such as prisoner-of-war treatment for captured combatants, it does attempt to guarantee that certain fundamental protections be observed, including: (1) humane treatment for detained persons, such as protection from violence, torture, and collective punishment; (2) protection from intentional attack, hostage-taking and acts of terrorism of persons who take no part in hostilities; (3) special protection for children to provide for their safety and education and to preclude their participation in hostilities; (4) fundamental due process for persons against whom sentences are to be passed or penalties executed; (5) protection and appropriate care for the sick and wounded, and medical units which assist them; and (6) protection of the civilian population from military attack, acts of terror, deliberate starvation, and attacks against installations containing dangerous forces. In each case, Protocol II expands and makes more specific the basic guarantees of common Article 3 of the 1949 Conventions. Its specific provisions are described in greater detail in the attached section-by-section analysis.

The final text of Protocol II did not meet all the desires of the United States and other western delegations. In particular, the Protocol only applies to internal conflicts in which dissident armed groups are under responsible command and exercise control over such a part of the national territory as to carry out sustained and concerted military operations. This is a narrower scope than we would have desired, and has the effect of excluding many internal

conflicts in which dissident armed groups occupy no significant territory but conduct sporadic guerrilla operations over a wide area. We are therefore recommending that U.S. ratification be subject to an understanding declaring that the United States will apply the Protocol to all conflicts covered by Article 3 common to the 1949 Conventions (and only such conflicts), which will include all non-international armed conflicts as traditionally defined (but not internal disturbances, riots and sporadic acts of violence). This understanding will also have the effect of treating as non-international these so-called "wars of national liberation" described in Article 1(4) of Protocol I which fail to meet the traditional test of an international conflict.

Certain other reservations or understandings are also necessary to protect U.S. military requirements. Specifically, as described in greater detail in the attached annex, a reservation to Article 10 is required to preclude the possibility that it might affect the administration of discipline of U.S. military personnel under The Uniform Code of Military Justice, under the guise of protecting persons purporting to act in accordance with "medical ethics". However, this is obviously not intended in any way to suggest that the United States would deliberately deny medical treatment to any person in need of it for political reasons or require U.S. medical personnel to perform procedures that are unethical or not medically indicated.

Also, we recommend an understanding with respect to Article 16 to confirm that the special protection granted by that article is required only for a limited class of objects that, because of their recognized importance, constitute a part of the cultural or spiritual heritage of peoples, and that such objects will lose their protection if they are used in support of the military effort. This understanding is generally shared by our allies, and we expect it to appear in the ratification documents of many of them.

Finally, we recommend an understanding to deal with any situation in which the United States may be providing assistance to a country which has not ratified Protocol II and would therefore feel under no obligation to comply with its terms in the conduct of its own operations. Our recommended understanding would make clear that our obligations under the Protocol would not exceed those of the State being assisted. The United States would of course comply with the applicable provisions of the Protocol with respect to all operations conducted by its own armed forces.

With the above caveats, the obligations contained in Protocol II are no more than a restatement of the rules of conduct with which U.S. military forces would almost certainly comply as a matter of national policy, constitutional and legal protections, and common decency. These obligations are not uniformly observed by other States, however, and their universal observance would mitigate many of the worst human tragedies of the type that have occurred in internal conflicts of the present and recent past. I therefore strongly recommend that the United States ratify Protocol II and urge all other States to do likewise. With our support, I expect that in due course the Protocol will be ratified by the great majority of our friends, as well as a substantial preponderance of other States.

PROTOCOL I

The Departments of State, Defense, and Justice have also conducted a thorough review of a second law-of-war agreement negotiated during the same period—Protocol I Additional to the Geneva Conventions of 12 August 1949. This Protocol was the main object of the work of the 1973–77 Geneva diplomatic conference, and represented an attempt to revise and update in a comprehensive manner the 1949 Geneva Conventions on the protection of war victims, the 1907 Hague Conventions on means and methods of warfare, and customary international law on the same subjects.

Our extensive interagency review of the Protocol has, however, led us to conclude that Protocol I suffers from fundamental shortcomings that cannot be remedied through reservations or understandings. We therefore must recommend that Protocol I not be forwarded to the Senate. The following is a brief summary of the reasons for our conclusion.

In key respects Protocol I would undermine humanitarian law and endanger civilians in war. Certain provisions such as Article 1(4), which gives special status to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination," would inject subjective and politically controversial standards into the issue of the applicability of humanitarian law. Protocol I also elevates the international legal status of self-described "national liberation" groups that make a practice of terrorism. This would undermine the principle that the rights and duties of international law attach principally to entities that have those elements of sovereignty that allow them to be held accountable for their actions, and the resources to fulfill their obligations.

Equally troubling is the easily inferred political and philosophical intent of Protocol I, which aims to encourage and give legal sanction not only to "national liberation" movements in general, but in particular to the inhumane tactics of many of them. Article 44(3), in a single subordinate clause, sweeps away years of law by "recognizing" that an armed irregular "cannot" always distinguish himself from non-combatants; it would grant combatant status to such an irregular anyway. As the essence of terrorist criminality is the obliteration of the distinction between combatants and non-combatants, it would be hard to square ratification of this Protocol with the United States' announced policy of combatting terrorism.

The Joint Chiefs of Staff have conducted a detailed review of the Protocol, and have concluded that it is militarily unacceptable for many reasons. Among these are that the Protocol grants guerrillas a legal status that often is superior to that accorded to regular forces. It also unreasonably restricts attacks against certain objects that traditionally have been considered legitimate military targets. It fails to improve substantially the compliance and verification mechanisms of the 1949 Geneva Conventions and eliminates an important sanction against violations of those Conventions. Weighing all aspects of the Protocol, the Joint Chiefs of Staff found it to be too ambiguous and complicated to use as a practical guide for military operations, and recommended against ratification by the United States.

We recognize that certain provisions of Protocol I reflect customary international law, and other appear to be positive new developments. We therefore intend to consult with our allies to develop appropriate methods for incorporating these provisions into rules that govern our military operations, with the intention that they shall in time win recognition as customary international law separate from their presence in Protocol I. This measure would constitute an appropriate remedy for attempts by nations to impose unacceptable conditions on the acceptance of improvements in international humanitarian law. I will report the results of this effort to you as soon as possible, so that the Senate may be advised of our progress in this respect.

CONCLUSION

I believe that U.S. ratification of the agreement which I am submitting to you for transmission to the Senate, Protocol II to the 1949 Geneva Conventions, will advance the development of reasonable standards of international humanitarian law that are consistent with essential military requirements. The same is not true with respect to Protocol I to the 1949 Geneva Conventions, and this agreement should not be transmitted to the Senate for advice and consent to ratification. We will attempt in our consultations with allies and through other means, however, to press forward with the improvement of the rules of international humanitarian law in international armed conflict, without accepting as the price for such improvements a debasement of our values and of humanitarian law itself.

The effort to politicize humanitarian law in support of terrorist organizations have been a sorry develoment. Our action in rejecting Protocol I should be recognized as a reaffirmation of individual rights in international law and a repudiation of the collectivist apology for attacks on non-combatants.

Taken as a whole, these actions will demonstrate that the United States strongly supports humanitarian principles, is eager to improve on existing international law consistent with those principles, and will reject revisions of international law that undermine those principles. The Departments of State and Justice support these recommendations.

Respectfully submitted.

GEORGE P. SHULTZ.

Attachments:

1—Detailed Analysis of Provisions

2—Recommended Understandings and Reservations

DETAILED ANALYSIS OF PROVISIONS

The following is a detailed analysis of the various provisions of Protocol II Additional to the Geneva Conventions of 12 August 1949 (Protocol II).

Protocol II consists of four preambular clauses and twenty-eight operative articles.

THE PREAMBLE

The first paragraph of the Preamble states that the humanitarian principles in Article 3 common to the four Geneva Conventions of 1949 constitute the foundation of respect for the human person in cases of armed conflict not of an international character. The fundamental guarantees of common Article 3 continue to apply to all non-international conflicts even in cases where such a conflict is not technically covered by Protocol II. As explained more fully below, we recommend that U.S. ratification be subject to a declaration that the United States will apply Protocol II to all such conflicts.

The second and third paragraphs recall that existing international instruments relating to human rights offer basic protection to the human person, but emphasize the need to ensure better protection for the victims of non-international armed conflicts.

The fourth paragraph recalls that, in cases not covered by specific legal provisions, the human person remains under the protection of the principles of humanity and the dictates of public conscience.

ARTICLE 1

Article 1 defines the scope of application of Protocol II. Paragraph 1 provides that the Protocol applies to all armed conflicts not covered by Article 1 of Protocol I Additional to the 1949 Geneva Conventions, and which take place in the territory of a party to Protocol II between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the Protocol. Paragraph 2 provides that Protocol II will not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

This Article technically excludes four types of situations from the scope of the Protocol: (1) international armed conflicts as defined in the traditional sense in Article 2 common to the four 1949 Geneva Conventions, that is, conflicts between two or more states (whether or not a state of war is recognized between them) or cases of occupation by one state of the territory of another state (whether or not the occupation meets with armed resistance); (2) the so-

called wars of "national liberation" defined as international armed conflicts by Article 1(4) of Protocol I Additional to the 1949 Geneva Conventions; (3) non-international conflicts covered by common Article 3 to the 1949 Conventions but falling below the threshold in Article 1 of Protocol II, such as guerrilla conflicts in which insurgent groups do not control substantial territory on a permanent basis or conduct sustained and concerted regular military operations; and (4) situations of internal violence that have not been traditionally considered as armed conflicts and are not covered by the 1949 Conventions, such as riots and sporadic terrorist acts.

The first and fourth types of situations should not be subject to Protocol II and their exclusion presents no problems. However, the exclusion of the second and third categories is inappropriate. The second category—so-called "liberation wars" defined in Protocol I—are often in fact non-international conflicts, and are distinguished by Protocol I from other non-international conflicts only on the basis of highly politicized and undesirable criteria which detract from the integrity of international humanitarian law; the United States should therefore reject this distinction. The third category—guerrilla wars and other conflicts where insurgents do not occupy territory and conduct sustained military operations on a regular basis—should be subject to the fundamental humanitarian provisions of Protocol II; most western states resisted their exclusion at the diplomatic conference that negotiated the Protocol.

Accordingly, while we cannot now, as a legal matter, compel other parties to Protocol II to accept a broader scope of application than is presently defined in Article 1, the United States can and should declare, as part of its ratification, that it will apply the Protocol to all conflicts covered by Article 3 common to the 1949 Conventions and only such conflicts, and encourage other states to do likewise.

ARTICLE 2

Article 2 states that Protocol II shall be applied to all persons affected by an armed conflict, as defined in Article 1, without any adverse distinction based on race, sex, religion, national or social origin, or any similar criteria. It also provides that, at the end of such an armed conflict, all persons whose liberty has been deprived or restricted shall continue to enjoy the protections of the relevant provisions of the Protocol until their liberty is restored.

ARTICLE 3

Article 3 states that nothing in Protocol II affects the sovereignty or national unity of any state or the responsibility of its government to maintain law and order, or justifies intervention by any other state in its internal affairs. The recognition of this point is essential in persuading states to accept Protocol II and apply its provisions to conflicts within their territory.

ARTICLE 4

Article 4 states a series of fundamental guarantees that must be provided to all persons not taking part in hostilities.

Paragraph 1 states generally that such persons (whether or not they are in detention or their liberty is otherwise restricted) are entitled to respect for their person, honor, convictions and religious practices, and must be treated humanely, without any adverse distinction, in all circumstances. It is prohibited to order that there shall be no survivors.

Paragraph 2 prohibits a series of specific acts with respect to such persons, including:

(1) violence to life, health, and physical or mental well-being, in particular by murder, torture, mutilation or corporal punishment;

(2) collective punishments, hostage-taking, acts of terrorism, or pillage; and

(3) outrages upon personal dignity, in particular rape, enforced prostitution and indecent assault.

Paragraph 3 requires that children be provided with the care and aid they require, and provides in particular that:

(1) they must receive an education, including religious and moral education, in keeping with the wishes of their parents;

(2) all appropriate steps must be taken to facilitate the reunion of families temporarily separated;

(3) children below the age of fifteen must not be recruited into the armed forces or allowed to take part in hostilities; and

(4) where necessary, measures must be taken to remove children temporarily from any area in which hostilities are taking place, accompanied by persons responsible for their safety and well-being.

ARTICLE 5

Article 5 provides additional protections for persons who are under detention or otherwise deprived of liberty for reasons related to the conflict. In particular, paragraph 1 provides that:

(1) such persons are to be provided, to the same extent as the local civilian population, with food, drinking water, safeguards for health and hygiene, protection from the climate and the dangers of armed conflict, and access to relief;

(2) they are to be allowed to practice their religion and have spiritual assistance; and

(3) they must, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

Paragraph 2 further provides that those responsible for the detention of such persons also take the following actions, within the limits of their capabilities:

(1) place men and women in separate quarters, except for families living together;

(2) permit the sending and receiving of letters;

(3) refrain from locating places of detention close to the combat zone; and

(4) provide medical examinations, and refrain from any unjustified act or omission endangering their physical or mental health and integrity.

Paragraphs 3 and 4 require that all persons detained be treated humanely and that necessary measures be taken to ensure their safety when released.

ARTICLE 6

Article 6 applies to the prosecution and punishment of criminal offenses related to the conflict. It sets forth a series of requirements to guarantee fundamental due process, including:

(1) a requirement that the accused be informed without delay of the particulars of the alleged offense, and upon conviction be informed of his appeal rights;

(2) a prohibition on collective penal responsibility, or conviction for acts that were not an offense when committed, or subjection to heavier penalties than applied at the time of the offense, or the imposition of the death penalty on persons under 18, pregnant women or mothers of small children; and

(3) a requirement for trial in the presence of the accused, a presumption of innocence until guilt is proven, and a prohibition against self-incrimination.

The Article requires that, at the end of hostilities, the authorities endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict and to persons whose liberty has been restricted for reasons related to the armed conflict. Unlike the rules of international armed conflict. Unlike the rules of international armed conflict, however, no immunity as such from the operation of local law is granted by Protocol II to persons who have engaged in hostilities against enemy combatants.

ARTICLE 7

Article 7 requires that all the wounded, sick and shipwrecked be respected and protected, whether or not they have taken part in the conflict. They must be treated humanely in all circumstances and receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition, with no distinction on any grounds other than medical ones.

ARTICLE 8

Article 8 requires, when circumstances permit, that all possible measures be taken without delay to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, and to search for, protect and decently dispose of the remains of the dead.

ARTICLE 9

Article 9 requires that medical and religious personnel be respected and protected and granted all available help for the performance of their duties. They may not be compelled to carry out tasks incompatible with their humanitarian mission, nor may medical personnel be required to give priority to any person except on medical grounds.

ARTICLE 10

Article 10 provides that under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, nor compelled to perform acts inconsistent with medical ethics or other rules designed for the benefit of the wounded and sick. Subject to national law, medical personnel may not be penalized for refusing to give information concerning the wounded and sick under their care.

A reservation to this Article is necessary to preserve the ability of the U.S. Armed Forces to control the actions of their medical personnel, who might otherwise feel entitled to invoke these provisions to disregard, under the guise of "medical ethics", the priorities and restrictions established by higher authority. But for a few general principles established in war crime tribunals after World War II, there is no internationally agreed legal definition of the term "medical ethics". Use of the concept in this context therefore invites political manipulation. For example, military personnel might refuse service in certain areas due to their political opposition to United States policy; or such military medical personnel might disregard procedures established by higher levels within the military medical establishment regarding treatment priorities and methods. To ensure discipline and control within the Armed Forces, U.S. ratification should be subject to a reservation to Article 10 to the extent that it would affect the internal administration of U.S. Armed Forces, including the administration of military justice. At the same time, we should make clear that this reservation is not intended in any way to suggest that the United States would deliberately deny medical treatment to any person in need of it for political reasons or require U.S. medical personnel to perform procedures that are unethical or not medically indicated.

ARTICLE 11

Article 11 provides that medical units and transports shall be respected and protected at all times and not be made the object of attack. This protection ceases only if such units or transports are used to commit hostile acts outside their humanitarian function, and then only after a warning has been given and remains unheeded.

ARTICLE 12

Article 12 requires that the distinctive emblem of the red cross (or red crescent) be displayed by medical and religious personnel, medical units and medical transports, and that this emblem be respected and not be used improperly.

ARTICLE 13

Article 13 states the general principles protecting the civilian population. It states that the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations, and shall not be the object of attack or acts or threats of violence designed to spread terror. Civilians only

enjoy these protections for such time as they do not take a direct part in hostilities.

ARTICLE 14

Article 14 prohibits the starvation of civilians as a method of combat. It prohibits attacking, destroying or removing objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock, water supplies and irrigation works.

ARTICLE 15

Article 15 prohibits making works or installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of attack if that may cause the release of dangerous forces and consequent severe losses among the civilian population.

ARTICLE 16

Article 16 prohibits any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and any use of them in support of the military effort. To avoid confusion, U.S. ratification should be subject to an understanding confirming that the special protection granted by this article is only required for a limited class of objects that, because of their recognized importance, constitute a part of the cultural or spiritual heritage of peoples, and that such objects will lose their protection if they are used in support of the military effort.

ARTICLE 17

Article 17 provides that the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand, and in any event that all possible measures be taken to provide adequately for their safety and health. Civilians may not be compelled to leave their own territory for reasons connected with the conflict.

ARTICLE 18

Article 18 provides that relief societies and the civilian population itself may offer their services for the care of the wounded and sick, and relief of the civilian population. It further provides that if the civilian population is suffering undue hardship from a lack of essential supplies, relief actions of an exclusively humanitarian and impartial nature shall be undertaken, subject to the consent of the party concerned. This important provision was the subject of considerable debate, and reflects compromise with those delegations which were unwilling to accept an unconditional obligation to permit and facilitate relief shipments. For its part, the United States would expect that the requirement of consent by the party concerned would not be implemented in an arbitrary manner, and that essential relief shipments would only be restricted or denied for the most compelling and legitimate reasons. If so implemented, this article, together with Article 14, could help to reduce some of

the more tragic circumstances of internal conflicts of the present and recent past.

ARTICLES 19–28

These articles incorporate the final clauses necessary for such an international convention. They include provisions for ratification, amendments, and possible denunciation on six-months' notice. There are no restrictions on reservations, and no mandatory dispute-settlement procedures.

Recommended Understandings and Reservations Relating to Protocol II to 1949 Geneva Conventions

The ratification of the United States is subject to the following:

1. The United States reserves as to Article 10 to the extent that it would affect the internal administration of the United States Armed Forces, including the administration of military justice.

2. The United States understands that Article 16 establishes a special protection for a limited class of objects that, because of their recognized importance, constitute a part of the cultural or spiritual heritage of peoples, and that such objects will lose their protection if they are used in support of the military effort.

3. The United States understands that when a High Contracting Party provides assistance to a State whose armed forces are engaged in a conflict of the type described in Article 1(1), any obligations which may arise for that High Contracting Party pursuant to this Protocol will not in any event exceed those assumed by the State being assisted. However, such a High Contracting Party must comply with the Protocol with respect to all operations conducted by its armed forces, and the United States will encourage all States to whom it provides assistance to do likewise.

4. The United States declares that it will apply this Protocol only to those conflicts covered by Article 3 common to the Geneva Conventions of 12 August 1949 and to all such conflicts, and encourages all other States to do likewise.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

PREAMBLE

The High Contracting Parties,

Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience.

Have agreed on the following:

PART I.—SCOPE OF THIS PROTOCOL

Article 1.—Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Article 2.—Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Article 3.—Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

PART II.—HUMANE TREATMENT

Article 4.—Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents or, in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Article 5.—Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:

(a) the wounded and the sick shall be treated in accordance with Article 7;

(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) they shall be allowed to receive individual or collective relief;

(d) they shall be allowed to practice their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

(d) they shall have the benefit of medical examinations;

(e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1(a), (c) and (d), and 2(b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6.—Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was commited; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

PART III.—WOUNDED, SICK AND SHIPWRECKED

Article 7.—Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 8.—Search

Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Article 9.—Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

Article 10.—General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

2. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.

3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.

4. Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

Article 11.—Protection of medical units and transports

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.

2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Article 12.—The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

PART VI.—CIVILIAN POPULATION

Article 13.—Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Article 14.—Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for the purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Article 15.—Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Article 16.—Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or place of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Article 17.—Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Article 18.—Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

PART V.—FINAL PROVISIONS

Article 19.—Dissemination

This Protocol shall be disseminated as widely as possible.

Article 20.—Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Article 21.—Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Article 22.—Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 23.—Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 24.—Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Convention, whether or not they are signatories of this Protocol.

Article 25.—Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

Article 26.—Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

(a) signatories affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;

(b) the date of entry into force of this Protocol under Article 23; and

(c) communications and declarations received under Article 24.

Article 27.—Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications and accessions received by it with respect to this Protocol.

Article 28.—Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.