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I: Subject File

WITHDRAWAL SHEET

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ID Doc Type	Document Description	No of Pages	Doc Date	Restrictions
19475 NOTES	HANDWRITTEN BY ROBERTS RE 1/29 LAW OF WAR WORKING GROUP MEETING	1	1/29/1985	B1
19476 MEMO	MIKE MATHESON TO MR. FEITH, ET AL, RE 1/29 WORKING GROUP MEETING	1	2/1/1985	B1
19477 SUMMARY	OF MEETING OF INTERAGENCY LAW-OF-WAR WORKING GROUP	2	2/1/1985	B1
19478 MEMO	MATHESON TO MR. FEITH ET AL, RE 1/29 MEETING (SAME AS 19476)	1	2/1/1985	B1
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19480 MEMO	MATHESON TO MR. FEITH ET AL, RE 1/29 MEETING (SAME AS 19476)	1	2/1/1985	B1
19481 SUMMARY	OF MEETING OF INTERAGENCY LAW-OF-WAR WORKING GROUP (SAME AS 19477)	2	2/1/1985	B1
19482 MEMO	MATHESON TO MR. DYSON ET AL, RE US RATIFICATION OF CWC	2	4/2/1985	B1
19483 MEMO	DRAFT RE US RATIFICATION OF THE 1980 CONVENTIONA WEAPONS CONVENTION	3	3/26/1985	B1
19484 NOTES	FROM 4/22 MEETING	1	4/22/1985	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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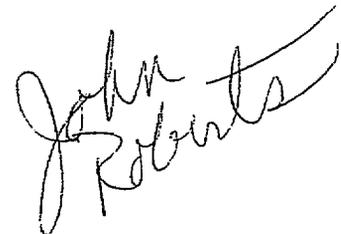
ID Doc Type	Document Description	No of Pages	Doc Date	Restrictions
19485 MEMO	MATHESON TO MR. FEITH, RE LAW OF WAR	1	4/23/1985	B1

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January 22, 1985



MEMORANDUM

TO: OSD/ISP - Mr. Feith
OSD/GC - Mr. McNeill
JCS/J-5 - Commodore Sackett
ACDA/GC - Mr. Graham
NSC - Mr. Kimmitt
White House - Mr. Hauser ✓

FROM: State/L - Mike Matheson *MM*

SUBJECT: Meeting of Law-of-War Working Group

You or your designee(s) are invited to a meeting of the Law-of-War Working Group on Tuesday, January 29 at 2:00 pm, in Room 1406 at the State Department. I propose to ask JCS to give us a status report on the military review of the 1977 Protocols, and to have a preliminary discussion on the question of a separate submission of the 1980 Conventional Weapons Convention to the Senate. (There is no need for agency positions at this stage.) The floor will also be open for discussion of other law-of-war issues.

Please let us know (632-3345) who will attend from your organization. Thanks very much.

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19475 NOTES

1 1/29/1985 B1

HANDWRITTEN BY ROBERTS RE 1/29 LAW OF
WAR WORKING GROUP MEETING

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List of Participants

<u>NAME</u>	<u>ORGANIZATION</u>	<u>TEL. NO.</u>
Mike Matheson	State/L	632-3345
Al Dyson	DOD/OGC	697-9248
Harvey Dalton	Navy JAG	697-5406
Glenn Orgeron	Navy JAG	697-9161
Sam Maizel	NSC	395-3044
John Roberts	W.H. Counsel	456-7953
Steven Hardesty	HA/HR	632-2362
Tom Bleha	H	632-1615
Bob Turner	H	632-1048
Alex Liebowitz	IO/UNP	632-0512
John Campbell	M/CTP	632-7253
Mel Christopher	ACDA/GC	632-3596
Jim Davis	EUR/RPM	632-1328
Dan Gallington	OSD/ISP	697-2247
Sheila Buckley	OSD/ISP	695-5819
B. M. Carnahan	JCS	695-6632

THE WHITE HOUSE
WASHINGTON

2/19/85

TO: John Roberts

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: X

COMMENT: _____

ACTION: _____

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19478	MEMO MATHESON TO MR. FEITH ET AL, RE 1/29 MEETING (SAME AS 19476)	1	2/1/1985	B1

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Jim Davis	EUR/RPM	632-1328
Dan Gallington	OSD/ISP	697-2247
Sheila Buckley	OSD/ISP	695-5819
B. M. Carnahan	JCS	695-6632



United States Department of State

Washington, D.C. 20520

*file -
Law of
War*

April 17, 1985

MEMORANDUM

TO: OSD/ISP - Mr. Feith
OSD/GC - Mr. McNeill
JCS/J-5 - Commodore Sackett
ACDA/GC - Mr. Graham
NSC - Mr. Kraemer
White House Counsel - Mr. Hauser ✓

FROM: State/L - Mike Matheson *NDW*

SUBJECT: Law of War: U.S. Ratification of the
Conventional Weapons Convention (CWC)

I have received several suggestions that another interagency meeting be held to discuss the question of the submission of the CWC to the Senate. You or your designee are therefore invited to attend such a meeting at 2:00 pm on Monday, April 22, in Room 6226 at State. Attached, for your convenience, are copies of: (1) the summary of the last interagency meeting on this subject; and (2) my note of April 2 suggesting a procedure for further action on this question. Please let me know if you have any questions. Thanks very much.

Attachments:
As stated.

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19480	MEMO MATHESON TO MR. FEITH ET AL, RE 1/29 MEETING (SAME AS 19476)	1	2/1/1985	B1

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19481	SUMMARY OF MEETING OF INTERAGENCY LAW-OF-WAR WORKING GROUP (SAME AS 19477)	2	2/1/1985	B1

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Sheila Buckley	OSD/ISP	695-5819
B. M. Carnahan	JCS	695-6632

Dave Graham

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Collection Name

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19482	MEMO MATHESON TO MR. DYSON ET AL, RE US RATIFICATION OF CWC	2	4/2/1985	B1

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19483	MEMO	3	3/26/1985	B1
	DRAFT RE US RATIFICATION OF THE 1980 CONVENTIONA WEAPONS CONVENTION			

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19484 NOTES

1 4/22/1985 B1

FROM 4/22 MEETING

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<u>NAME</u>	<u>AGENCY / OFFICE</u>	<u>TEL. NO.</u>
MIKE MATHESON	State / L	632-3345
HARVEY DALTON	NAVY JAG	697-5406
IRA CLICK	DJCS (J-5)	694-6626
GLENN OREGSON	NAVY JAG	697-9161
Robert Simmons	State PM/TMP	632-4761
Jim Davis	State EUR/RPM	632-1328
Sven Kraemer	NSC	395-5010
Douglas Fatti	OSD / ISP	697-9693
Stella Buckley	OSD / ISP	695-5819
JOHN ROBERTS	W.H. COUNSEL	456-7953
STEVEN HARDESTY	NA / MA	632-2362
Kent Calton	H	632-9022
DAVID ISENBERG	OSD / OASD (Z)	695-2604
Dennis Yodern	AF / JACI	695-9632
Mel Christopher	ACDA / SC	632-3596
Dennis Foreman	L / PM	632-0321

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19485 MEMO

1 4/23/1985 B1

MATHESON TO MR. FEITH, RE LAW OF WAR

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THE WHITE HOUSE
WASHINGTON

TO: *John Roberts*

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: _____

COMMENT: _____

ACTION: _____

*Copy of memo
file*



United States Department of State

Washington, D.C. 20520

April 23, 1985

MEMORANDUM

TO: NSC - Mr. Kraemer

FROM: State/L - Mike Matheson *WDM*

SUBJECT: Law of War - Conventional Weapons Convention (CWC)

As you requested yesterday, attached is a summary of the relationship of the CWC to other law-of-war agreements. Please let me know if you would like further information along these lines.

Attachment:
Summary

cc: NSC - Mr. Kimmett
OSD/ISP - Mr. Feith
OSD/GC - Mr. McNeill
JCS/J-5 - Commo. Sackett
ACDA/GC - Mr. Graham
White House Counsel - Mr. Hauser ✓
PM - Mr. Hawes
EUR - Mr. Dobbins
H - Mr. Fox
D - Mr. Timbie
M/CT - Mr. Oakley
IO - Mr. Kirk
HA - Mr. Matthews

Relationship of the Conventional Weapons
Convention (CWC) to Other
Law-of-War Agreements

A Diplomatic Conference met in Geneva during 1974-77, under the auspices of the Swiss Government and the International Committee of the Red Cross (ICRC), to revise and update the rules of warfare contained in the 1949 Geneva Conventions on the protection of victims of armed conflict, the 1907 Hague Convention on means and methods of combat, and various principles of customary international law. In June 1977 the Conference concluded its work with the adoption by consensus of two Additional Protocols to the 1949 Geneva Conventions, one for international conflicts and one for non-international conflicts.

The Protocols are lengthy and detailed, and deal with many aspects of military operations and conduct during armed conflict. Among other things, they: (1) improve and expand protection of medical units, personnel and transport; (2) upgrade the responsibilities of Parties with respect to search, reporting and care for the missing and remains of the dead; (3) broaden and upgrade provisions for protecting the civilian population from the effects of combat operations, and for relief operations for their benefit; (4) extend law-of-war protections to certain types of irregulars not previously covered; (5) prohibit acts of terrorism and require the prosecution or extradition of their perpetrators as war criminals; and (6) improve the compliance mechanisms of the 1949 Conventions.

The 1974-77 Diplomatic Conference was unable to reach agreement on one item on its agenda -- the question of prohibitions or restrictions on the use of specific types of conventional weapons alleged to cause unnecessary suffering or to have indiscriminate effects, and a separate conference was convened in Geneva in 1979-80 under UN auspices to deal with this subject. Proposals were made by European neutrals and third-world delegations to prohibit a variety of weapons, including incendiaries, modern fragmentation weapons (such as CBUs and flechettes), and high-velocity small arms (such as the M-16). In the end, the Conference adopted by consensus a convention to which were attached three protocols: Protocol I on Non-Detectable Fragments; Protocol II on the Use of Mines, Booby-Traps and Other Devices; and Protocol III on the Use of Incendiary Weapons.

DEPARTMENT OF STATE, U. S. A.
WASHINGTON, D. C. 20520

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Among other things, the Convention and its three protocols: (1) prohibit the use of any weapon relying for its wounding effects on fragments not detectable by x-ray; (2) regulate various aspects of the use of land mines and booby-traps for the purpose of reducing civilian casualties; and (3) limit the use of incendiary weapons against targets located in concentrations of civilians.

Copies of the State Department's current records of signatures, ratifications and accessions to the 1977 Protocols and the CWC are attached.

Attachments:

As stated.

RED CROSS (Protocol I)

DEPARTMENT OF STATE
TREATY RECORD

Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), with annexes. Adopted at Geneva June 8, 1977. Open for signature at Berne December 12, 1977 to December 12, 1978.

SIGNATURES, RATIFICATIONS DEPOSITED, ADHERENCES,
ACCEPTANCES, AND RESERVATIONS (See reverse side).

TEXT: UST

TIAS

UNTS

DEPOSITARY Government of Switzerland

International Legal Materials, Vol. XVI
No. 6, November 1977, p. 1391.

ENTRY INTO FORCE - Date: December 7, 1978

Method: Six months after two instruments of ratification or accession have been deposited. For each party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force 6 months after deposit by such Party of its instrument.

DURATION: Not stated, but may be denounced.

PROCEDURE FOR TERMINATION: Denunciation in writing, effective in respect of the denouncing power; one year notification to Swiss Fed. Council (Art. 99).

AMENDMENTS, EXTENSIONS, ETC.:

TERMINATION - DATE:

Action taken:

AMPLIFICATIONS DEPOSITED

ACCESSIONS DEPOSITED

United States ^{3, 1}	
Austria	August 13, 1982 ^{1,4}
Belgium	
Byelorussian Soviet Socialist Republic	
Canada ¹	
Chile	
Denmark	June 17, 1982 ^{1,4}
Ecuador	April 10, 1979 ✓
Egypt	
El Salvador	November 23, 1978
Finland	August 7, 1980
German Democratic Rep.	
Ghana	February 28, 1978
Guatemala	
Holy See	
Honduras	
Hungary	
Iceland	
Iran	
Ireland	
Italy ¹	
Ivory Coast	
Jordan	May 1, 1979
Liechtenstein	
Luxembourg	
Mongolia	
Morocco	
Netherlands	
Nicaragua	
Norway	December 14, 1981
Pakistan	
Panama	
Peru	
Poland ¹	
Portugal	
Senegal	
Sweden	August 31, 1979
Switzerland ¹	February 17, 1982
Tunisia	August 9, 1979
Ukrainian Soviet Socialist Republic	
Union of Soviet Socialist Republics	
United Kingdom ¹	
Yugoslavia	June 11, 1979
Germany, Federal Republic ¹ - Dec	23, 1977
Upper Volta - Jan. 11, 1978	
Laos - April 18, 1978	November 18, 1980
Romania - March 28, 1978	
Yemen (Sana) - Feb. 14, 1978	
San Marino - June 22, 1978	
Niger - June 16, 1978	June 8, 1979
Madagascar - October 13, 1978	
Spain - November 7, 1978	
New Zealand - November 27, 1978	
Czechoslovakia - Dec. 6, 1978	
Australia - December 7, 1978 ¹	
Korea (Rep. of) - Dec. 7, 1978	January 15, 1982
Bulgaria - Dec. 11, 1978	
Togo - December 12, 1977	June 21, 1984

Libya - June 7, 1978
Botswana - May 23, 1979
Mauritania - March 14, 1980
Gabon - April 8, 1980
Bahamas - April 10, 1980
Bangladesh - Sept. 8, 1980
Mauritius - March 22, 1982
Tanzania - February 15, 1983
United Arab Emirates - March 9, 1983 ¹
People's Rep. of China - September 14, 1983
Saint Vincent and the Grenadines - April 8, 1983
Namibia ¹ - October 18, 1983
People's Rep. of the Congo - Nov. 10, 1983
France - February 24, 1984
Bolivia - Dec. 8, 1983
Costa Rica - Dec. 15, 1983
Cameroon - March 16, 1984
Oman - March 29, 1984
Saint Lucia - October 7, 1982
Central African Rep. - July 17, 1984
Western Samoa - Aug. 23, 1984
Belize - June 29, 1984
Guinea - July 11, 1984
Seychelles - Nov. 8, 1984
Rwanda - Nov. 19, 1984
Kuwait - Jan. 17, 1985

10/24 2.26 5

REFERENCES IN TEXT: Geneva conventions for the protection of war victims, done at Geneva August 12, 1949 (TIAS 3362, 3363, 3364, and 3365).

REMARKS

- 1 With declaration(s)
- 2 With statement(s)
- 3 With understanding(s)
- 4 With reservation(s)

IMPLEMENTING LEGISLATION:

Prepared by: LA 9/21/77
Reviewed by: _____

DEPARTMENT OF STATE
TREATY RECORD

RED CROSS (Protocol II)

Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II). Adopted at Geneva June 8, 1977. Open for signature at Berne December 12, 1977 to December 12, 1978.

SIGNATURES, RATIFICATIONS DEPOSITED, ADHERENCES,
ACCEPTANCES, AND RESERVATIONS (See reverse side).

TEXT: UST
TIAS

UNTS

DEPOSITARY Government of Switzerland

International Legal Materials, Vol. XVI, No. 6,
p. 1442.

ENTRY INTO FORCE - Date: December 7, 1978

Method: Six months after two instruments of ratification or accession have been deposited.

DURATION: Not stated but may be denounced (see Part V, Art. 25).

AMENDMENTS, EXTENSIONS, ETC.:

PROCEDURE FOR TERMINATION: Denunciation in writing, effective in respect of the denouncing power one year notification to Swiss Fed. Council (Art. 25).

TERMINATION - DATE:

Action taken:

ACCESSIONS DEPOSITED

ACCESSIONS DEPOSITED

United States - Dec. 12, 1977^{3 1}
 Austria - December 12, 1977..... August 13, 1982^{1,4}
 Belgium - December 12, 1977
 Byelorussian Soviet Socialist Rep. - Dec. 12, 1977
 Canada - Dec 12, 1977¹
 Chile - Dec. 12, 1977
 Denmark - Dec. 12, 1977 June 17, 1982^{1,4}
 Ecuador - Dec. 12, 1977 April 10, 1979
 Egypt - Dec. 12, 1977
 El Salvador - Dec. 12, 1977..... November 23, 1978
 Finland - Dec. 12, 1977..... August 7, 1980
 German Dem. Rep. - Dec. 12, 1977
 Ghana - Dec. 12, 1977 February 28, 1978
 Guatemala - Dec. 12, 1977
 Holy See - Dec. 12, 1977
 Honduras - Dec. 12, 1977
 Hungary - Dec. 12, 1977
 Iceland - Dec. 12, 1977
 Iran - Dec. 12, 1977
 Ireland - Dec. 12, 1977
 Italy - Dec. 12, 1977¹
 Ivory Coast - Dec. 12, 1977
 Jordan - Dec. 12, 1977 May 1, 1979
 Liechtenstein - Dec. 12, 1977
 Luxembourg - Dec. 12, 1977
 Mongolia - Dec. 12, 1977
 Morocco - Dec. 12, 1977
 Netherlands - Dec. 12, 1977
 Nicaragua - Dec. 12, 1977
 Norway - Dec. 12, 1977 December 14, 1981¹
 Pakistan - Dec. 12, 1977
 Panama - Dec. 12, 1977
 Peru - Dec. 12, 1977
 Philippines - Dec. 12, 1977
 Poland - Dec. 12, 1977¹
 Portugal - Dec. 12, 1977
 Senegal - Dec. 12, 1977
 Sweden - Dec. 12, 1977 August 31, 1979^{1,4}
 Switzerland - Dec. 12, 1977..... February 17, 1982^{1,4}

Tunisia - Dec. 12, 1977 August 9, 1979
 Ukrainian Soviet Socialist Republic - Dec. 12, 1977
 Union of Soviet Socialist Republics - Dec. 12, 1977¹
 United Kingdom - Dec. 12, 1977¹
 Vietnam - Dec. 12, 1977 October 19, 1981
 Yugoslavia - Dec. 12, 1977 June 11, 1979¹
 Germany, Federal Republic - December 23, 1977¹
 Upper Volta - January 11, 1978
 Laos - April 18, 1978 November 18, 1980
 Romania - March 28, 1978
 Greece - March 22, 1978¹
 Yemen (Sana) - February 14, 1978
 Niger - June 16, 1978 June 8, 1979
 San Marino - June 22, 1978
 Madagascar - October 13, 1978
 Cyprus - July 12, 1978 June 1, 1979
 Spain - November 7, 1978¹
 New Zealand - November 27, 1978
 Czechoslovakia - Dec. 6, 1978
 Australia - December 7, 1978
 Korea (Rep. of) - Dec. 7, 1978 January 15, 1982¹
 Bulgaria - December 11, 1978
 Togo - December 12, 1977 June 21, 1984

Libya - June 7, 1978
 Botswana - May 23, 1979
 Bahamas - April 10, 1980
 Gabon - April 8, 1980
 Mauritania - March 14, 1980
 Bangladesh - Sept. 8, 1980
 Mauritius - March 22, 1982
 Zaire (Rep. of) - June 3, 1982
 Tanzania - February 15, 1983
 United Arab Emirates - March 9, 1983¹
 Mexico - March 10, 1983
 Mozambique - March 14, 1983
 Saint Vincent and the Grenadines - April 8, 1983
 People's Republic of China - September 14, 1983⁴
 Namibia^{U.N. Council for} - October 18, 1983
 People's Rep. of the Congo - Nov. 10, 1983
 Syrian Arab Rep. - Nov. 14, 1983⁴
 Bolivia - Dec. 8, 1983
 Costa Rica - Dec. 15, 1983
 Cameroon - March 16, 1984
 Oman - March 29, 1984¹
 Saint Lucia - October 7, 1982
 Cuba - November 25, 1982
 Belize - June 29, 1984
 Guinea, Rep. of - July 11, 1984
 Central African Rep. - July 17, 1984
 Western Samoa - Aug. 23, 1984
 Angola - Sept. 20, 1984¹
 Seychelles - Nov. 8, 1984
 Rwanda - Nov. 19, 1984
 Kuwait, - Jan. 17, 1985

39 7
 2-26-85

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REFERENCES IN TEXT: Geneva conventions for the protection of war victims (TIAS 3362, 3363, 3364, and 3365), done at Geneva August 12, 1949.

REMARKS

- 1 With declaration(s)
- 2 With statement(s)
- 3 With understanding(s)
- 4 With reservation(s)

IMPLEMENTING LEGISLATION:

Prepared by: TIA 3362-2197
Reviewed by:

Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Adopted at Geneva October 10, 1980. Open for signature in New York for a period of 12 months from April 10, 1981.

SIGNATURES, RATIFICATIONS DEPOSITED, ADHERENCES,
ACCEPTANCES, AND RESERVATIONS (See reverse side).

TEXT: UST

TIAS

UNTS

DEPOSITARY Secretary-General of the United Nations

Final Act appears in Int'l Legal
Materials, Vol. XIX, #6, Nov. 1980,
p. 1523.

ENTRY INTO FORCE - Date: December 2, 1983

Method: Six (6) months after the date of deposit of the 20th instrument of ratification, acceptance, approval or accession (Art. 5); thereafter six months after a State deposits its acceptance, approval, accession or ratification.

DURATION: Not stated. However, any High Contracting Party to this Convention may propose amendments to the Convention or Protocols, or propose additional Protocols. If, after 10 yrs. neither has been proposed, any High Contracting Party may request the Depositary to convene a conference to review the Convention and the Protocols annexed thereto (Art. 8).

TERMINATION - DATE:

Action taken:

PROTOCOLS]

MULTILATERAL

DEPARTMENT OF STATE
TREATY RECORD

WEAPONS, CONVENTIONAL

Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Adopted at Geneva October 10, 1980. Open for signature in New York for a period of 12 months from April 10, 1981.

SIGNATURES, RATIFICATIONS DEPOSITED, ADHERENCES,
ACCEPTANCES, AND RESERVATIONS (See reverse side).

TEXT: UST
TIAS
UNTS

DEPOSITARY Secretary-General of the United Nations

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TERMINATION - DATE:

Action taken:

United States - April 8, 1982²
 Afghanistan
 Austria March 14, 1983 (R)
 Belgium
 Bulgaria October 15, 1982 (R)
 Byelorussian Soviet Socialist
 Republic June 23, 1982 (R)
 Canada
 Cuba
 Czechoslovakia August 31, 1982 (R)
 Denmark July 7, 1982 (R)
 Egypt
 Finland April 8, 1982 (R)
 France^{1,2,3}
 German Dem. Rep. July 20, 1982 (R)
 Fed. Rep. of Germany
 Greece
 Hungary June 14, 1982 (R)
 Iceland
 Ireland
 Italy¹
 Luxembourg
 Mexico February 11, 1982 (R)
 Mongolia June 8, 1982 (R)
 Morocco
 Netherlands
 New Zealand
 Norway June 7, 1983 (R)
 Poland June 2, 1983 (R)
 Portugal
 Spain
 Sudan
 Sweden July 7, 1982 (R)
 Ukrainian S.S.R. June 23, 1982 (R)
 USSR June 10, 1982 (R)
 United Kingdom²
 Vietnam
 Sierra Leone - May 1, 1981
 Yugoslavia - May 5, 1981 May 24, 1983 (R)
 India - May 15, 1981 March 1, 1984 (R)
 Philippines - May 15, 1981
 Nicaragua - May 20, 1981
 Switzerland - June 18, 1981 August 20, 1982 (R)
 Ecuador - September 9, 1981 May 4, 1982 (R)
 Togo - September 15, 1981²
 China - September 14, 1981² April 7, 1982 (R)
 Japan - September 22, 1981 June 9, 1982 (AC)
 Argentina - December 2, 1981
 Nigeria - January 26, 1982
 Pakistan - January 26, 1982 April 1, 1985 (R)
 Liechtenstein - February 11, 1982
 Australia - April 8, 1982 September 29, 1983 (R)
 Romania - April 8, 1982²
 Turkey - March 26, 1982

Lao People's Dem. Rep. -
 January 3, 1983
 Guatemala - July 21, 1983

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 4/22/85

[ALL RATIFYING
 OR ACCEDING
 STATES ACCEPTED
 ALL THREE
 ATTACHED
 PROTOCOLS]

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Response to U.S. NATO's Request
for Guidance for a May 14 POLADs Exchange
on Ratification of the 1977 Protocols

State Deputy Legal Adviser Mike Matheson has asked for our views on a proposed guidance cable to be sent to the U.S. NATO Mission. At the last Law of War Working Group meeting, on April 22, the participants were advised that a meeting of the NATO Political Committee would be held on May 14, and that one of the items on the agenda would be the status of ratification of the 1977 Protocols to the 1949 Geneva Convention. The 1977 Protocols update and revise the famous 1949 Geneva Convention on the acceptable conduct of war and treatment of prisoners of war. The 1977 conference was unable to reach agreement on limitations on the use of specific types of weapons, so another conference was held in 1979-1980 that gave rise to the Conventional Weapons Convention, with three additional Protocols.

It is important to keep distinct the 1977 Protocols and the Protocols to the Conventional Weapons Convention. The upcoming NATO meeting concerns only the 1977 Protocols. The United States has not yet decided whether to seek ratification of the 1977 Protocols, pending review by the Joint Chiefs of Staff. That review is not yet complete, but all indications are that the Chiefs will recommend against ratification. The proposed guidance cable accordingly points out the major areas of concern, so the NATO Allies are aware that we may well decide not to ratify. The main objection is found in paragraph four: the Protocols would treat many terrorist organizations as if they were countries engaged in war, legitimizing their activities and offering them protections and courtesies that should not be extended to common criminals.

I have no objections. The cable embodies the reality that the military concerns of the Department of Defense are prevailing in these discussions over the diplomatic objectives of the Department of State.

Attachment

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR MIKE MATHESON
DEPUTY LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft Response to U.S. NATO's Request
for Guidance for a May 14 POLADs Exchange
on Ratification of the 1977 Protocols

Counsel's Office has reviewed the above-referenced proposed guidance cable, and finds no objection to it from a legal perspective.

RAH:JGR:aea 5/8/85

cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

July 22, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Law of War

I participate on a regular basis, in Mr. Hauser's stead, in the law of war working group that has been meeting at the State Department for several years to monitor and coordinate consideration of the 1977 Protocols to the 1949 Geneva Convention and the separate Conventional Weapons Convention. Recent publicity surrounding the apparent decision of the Joint Chiefs of Staff to object formally to the 1977 Protocols (attached) prompts this background memorandum.

You are of course familiar with the 1949 Geneva Convention. A diplomatic conference was held in 1974-1977, also in Geneva, to update that famous Convention. That conference resulted in two protocols to the 1949 Convention, known as the 1977 Protocols, which the Carter Administration signed (over the objections of the Joint Chiefs). The 1974-1977 conference was unable to resolve several issues concerning the use of specific conventional weapons in wartime (particularly booby-traps and incendiaries); resulting in the convening of another conference in 1979-1980, which gave rise to the Conventional Weapons Convention.

The 1977 Protocols (1) improve and expand protection of medical units, personnel and transport; (2) upgrade the responsibilities of Parties with respect to search, reporting and care for the missing and remains of the dead; (3) broaden and upgrade provisions for protecting the civilian population from the effects of combat operations, and for relief operations for their benefit; (4) extend law-of-war protections to certain types of irregulars not previously covered; (5) prohibit acts of terrorism and require the prosecution or extradition of their perpetrators as war criminals; and (6) improve the compliance mechanisms of the 1949 Convention. The Conventional Weapons Convention (1) prohibits the use of any weapon relying for its wounding effects on fragments not detectable by x-ray; (2) regulates various aspects of the use of land mines and booby-traps for the purpose of reducing civilian casualties; and (3) limits the use of incendiary weapons against targets located in concentrations of civilians.

State became interested in moving toward ratification of both the 1977 Protocols and the Convention on Conventional Weapons last year, primarily to blunt international criticism of the United States for not agreeing to what appeared to be humane documents and, against the backdrop of failure to conclude a nuclear arms agreement, to demonstrate that the Administration was interested in such international agreements. The Joint Chiefs consistently opposed the 1977 Protocols because they extended belligerent status to terrorist, so-called "liberation movements," and opposed the Convention on Conventional Weapons because they wished to retain flexibility to use certain booby traps (in a retreating army scenario) and certain incendiary bombs.

State asked Defense for a formal position on these issues; apparently the Chiefs have decided to adhere to their opposition, at least according to the Times article. I advised Mr. Hauser by memorandum dated May 8, 1985, that everyone expected this result, but I had no advance warning that a decision was about to be reached or that it had been leaked.

cc: Richard A. Hauser

'ar Law Fact aces Objection Of Joint Chiefs

BY LESLIE H. GELB

Special to The New York Times

WASHINGTON, July 21.—The Joint Chiefs of Staff have recommended that United States ratification of the General Convention on Treatment of Prisoners of War be withheld until the Convention is amended to include provisions for the protection of guerrillas and regular soldiers who would be blurred. As a result, these critics say, guerrillas could claim the same protection granted regular prisoners of war and thus avoid prosecution under the criminal laws of a sovereign nation for what might otherwise be considered terrorist acts.

Officials said the Joint Chiefs had delayed coming to grips with the protocols because of the lengthy and complicated legal text, the cumbersome military bureaucracy and the fact that until the most recent encounters with terrorists, the issue was low on the list of Administration priorities. The question that Administration officials say they are now wrestling with is whether the concerns of the Joint Chiefs and others can be eliminated by ratification with reservations or whether Protocol I in particular is inherently flawed.

One reason the Carter Administration agreed to sign in 1977 before these issues were fully discussed was that the protocols would also strengthen the right to search for and be given information about Americans missing in action in Vietnam. Another was powerful pressure from the International Committee of the Red Cross, which won approval in the protocols for added protections for its medical personnel.

The laws of war are generally grouped under the Hague Convention of 1907, which limited means and methods of warfare such as weapons and targets, and the four Geneva Conventions of 1949, which mandated humane treatment of the sick and wounded in the field and at sea, for prisoners of war and for civilians.

Perhaps the most powerful argument against ratification on any terms comes from a commentary to be published soon by Douglas J. Feith, Deputy Assistant Secretary of Defense for Negotiations Policy and the key official in the Pentagon on this issue.

He writes of Protocol I, "It amounted to an endorsement, in the politically potent form of a legal instrument, of both the rhetoric and the anticivilian practices of terrorist organizations that fly the banner of self-determination. He calls it 'a pro-terrorist treaty masquerading as humanitarian law.'"

His commentary was not formally approved by the Pentagon as an official statement of its position, but officials there said it did represent the thinking of senior Pentagon policy makers.

Other Administration officials are said to acknowledge the problems raised by Mr. Feith, but are looking into the possibility of fixing them by approving the protocols with reservations. The reservations would specifically reject the objectionable provisions.

These officials maintain that the bulk of the protocols are worth salvaging because of provisions that would strengthen extradition and prosecution of terrorists, and attach legal teeth and consequences to taking hostages and using force indiscriminately.

Mr. Feith, in his commentary, argues that this would abolish the traditional definition of international conflicts as being between two or more sovereign nations by giving regional political groups the right to confer on national liberation movements the trappings of sovereignty. Delegates opposed to this language, according to Mr. Feith, seemed to console themselves with the argument that nations would simply refuse to apply provisions of the protocol to liberation movements since to do so would be to admit they were racist or colonial or alien.

Some Administration officials say that this defect can be overcome by a reservation stating that the United States reserves the right to apply or not apply the provisions to any group of its choosing.

Mr. Feith counters in his commentary that not applying the provisions would only weaken international law generally. He further contends that whatever the legal applicability, the protocol language constitutes a "fatal political concession" to liberation and terrorist groups.

Article 43 also represents a serious problem for critics of Protocol I in that it could be read as conferring prisoner of war status on irregulars or terrorists. It says that those covered are government "or an authority not recognized by an adverse party."

This could exempt terrorists, if captured, from prosecution under criminal law by a sovereign nation. The Geneva

organization also was passed nearly four years, produced two protocols, adding up to 121 pages of text.

Article 1 of Protocol I says that the provisions apply to nations and "peoples" who "are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination." The protocol also provides that regional political organizations, such as the League of Arab States and the Organization of African Unity, will judge which "peoples" constitute a legitimate party to armed struggle.

Article 44 recognizes that there are situations where "owing to the nature of the hostilities an armed combatant cannot so distinguish himself." In these circumstances he can retain combatant status if he carries arms "openly." But openly is defined as "during each military engagement, in other words during an actual attack, or during 'military deployment,' a vague phrase.

Irregulars, Mr. Feith argues, would habitually seek to conceal themselves from regular combatants and civilians until the last moment and kill, retain prisoner of war status if captured.

Other officials studying how this might be overcome reply that irregulars might have incentives to comply with a strict interpretation of the protocol if they wanted prisoner of war status. But they also acknowledge that there may be problems here.

The study, officials said, contemplates legal ratification of Protocol I and approval of Protocol II with reservations.

Perhaps the most powerful argument against ratification on any terms comes from a commentary to be published soon by Douglas J. Feith, Deputy Assistant Secretary of Defense for Negotiations Policy and the key official in the Pentagon on this issue.

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These officials maintain that the bulk of the protocols are worth salvaging because of provisions that would strengthen extradition and prosecution of terrorists, and attach legal teeth and consequences to taking hostages and using force indiscriminately.

Conventions of 1949 confer prisoner of war status only on regular uniformed combatants whether or not recognized by an adverse party.

Article 44, in Mr. Feith's view, further blurs the distinction between regulars and irregulars or guerrillas and between irregulars and noncombatants. It would do so by weakening the requirements of the Geneva Convention for combatants to have a "fixed distinctive sign recognizable at a distance," namely a uniform, to carry "arms openly" and to conduct "their operations in accordance with the laws and customs of war."

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