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OFFICE OF THE SECRETARY OF DEFENSE

September 26, 1975

Memo For MR. ALDRICH

George,

You may be interested in the attached JCS paper. Please hold for your personal use.

Dwayne S. Anderson
Dwayne S. Anderson
Deputy Director
Negotiations and Arms Control

Attachment 1
MJCS 328-75,
w/att, dtd.
23 Sep 75

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Authority NND66774

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WHEN WITH ATTACHMENTS

MJCS 328-75
23 SEP 1975

SECRETARY OF DEFENSE
AFFAIRS) (POLICY

Reaffirmation and
Humanitarian Law
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a. The Joint Chiefs of Staff continue to adhere to the view that the threat of reprisals against the civilian population and civilian objects under the control of the adverse party is an essential means for deterring serious violations of the Law of War.*

Classified by Director, J-5
SUBJECT TO GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
AUTOMATICALLY DOWNGRADED AT TWO
YEAR INTERVALS
DECLASSIFIED ON DECEMBER 31 1981

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I-10186/25

*File - Human Rights
in Armed Conflicts*

Gilly



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THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20301

*File - Human Rights
in Armed Conflicts*

Gilly

MJCS 328-75

23 SEP 1975

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY OF DEFENSE
(INTERNATIONAL SECURITY AFFAIRS) (POLICY
PLANS AND NSC AFFAIRS)

Subject: Diplomatic Conference on the Reaffirmation and
Development of International Humanitarian Law
Applicable in Armed Conflicts (Short title:
Diplomatic Conference) (U)

1. (U) Reference your memorandum I-8245/75, dated
13 August 1975, subject as above, which requested that
the Joint Chiefs of Staff review and comment on the 74
articles adopted thus far in the main conference committees.

2. (U) The articles have been reviewed with particular
attention given to the potential impact on commanders and
military operations in combat and non-combat environments.
The DOD Law of War (LOW) Working Group assessment of the
effect on US commanders is considered valid and has been
used as a point of departure for the comments offered in
the enclosure. In addition to these effects, there will
be an additional training requirement to assure that all
US military personnel are aware of their legal obligations.

3. (C) Although comments on the proposed positions with
respect to all articles under consideration at the confer-
ence will be made in early 1976, the following comments are
considered pertinent at this point:

a. The Joint Chiefs of Staff continue to adhere to the
view that the threat of reprisals against the civilian
population and civilian objects under the control of
the adverse party is an essential means for deterring
serious violations of the Law of War.*

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b. The Joint Chiefs of Staff recognize that it would not be feasible to attempt to make the provisions of these Protocols pertaining to the conduct of hostilities applicable to the protection of civilians in the event of general nuclear war.** In view of the possibility that certain articles could be interpreted as prohibiting nuclear weapons, it is considered appropriate to establish clearly and emphatically the US position on this matter. This particularly applies to Part III, Methods and Means of Combat and Part IV, Civilian Population, Protocol I.

c. The provisions of Articles 33 and 48 bis will require further evaluation and coordination within the US Government. The committee report to the effect that "battlefield damage incidental to conventional warfare would not normally be proscribed by the provision" and the reference to "long term major health problems" suggests that nuclear weapons might be affected by these articles. Depending on the intensity of fallout, some long term health and genetic effects may be expected from Cesium 137 and Carbon 14. This emphasizes the necessity of establishing emphatically that provisions of the Protocol dealing with methods and means of combat are not intended to affect nuclear weapons. Further, there are apparent variances as regards the definition of "long term" and "long lasting" effects. According to paragraph 3 of the DOD LOW Working Group comments on Article 33, "long term was considered by some to be measured in decades, with reference made to twenty to thirty years as a minimum." State message 198673/210049Z August 1975, subject: "CCD: Questions and Answers Concerning Draft ENMOD Convention," defines long lasting effects as those "which persisted for periods of months, or more than one season, rather than weeks." It should be made clear that the terms "long term" and "long lasting" are unrelated and are intended to have distinct meanings and to serve different purposes.

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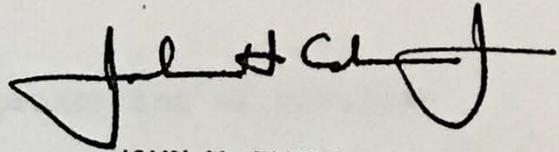
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4. (U) It is requested that the Joint Chiefs of Staff be afforded adequate opportunity to review and comment on the proposed positions with respect to all articles to be considered at the 1976 Diplomatic Conference.

For the Joint Chiefs of Staff:



JOHN H. ELDER, JR.
Lieutenant General, USA
Director, Plans and
Policy Directorate ✓

Attachment
a/s

References:

- *JCSM-473-74, 12 Dec 74, "Laws of War Conference Preparation (U)"
- **Attachment to JCSM-473-74

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ENCLOSURE

ASSESSMENT OF IMPACT OF ARTICLES ON COMMANDERS AND MILITARY OPERATIONS

PROTOCOL I

Article 13 - Discontinuance of protection of civilian medical units:

Without recognition of the inherent right of self defense as well as comparable provisions of the 1949 Geneva Conventions, paragraph 1 might be construed to restrict the ability of military elements, particularly aircraft, to defend themselves against attack from weapons operating within civilian medical units. The second sentence implies that a warning must be given before a response to fire can be made. Weapons could be relocated in the interval during which a warning of impending response is promulgated.

Article 19 - States not Party to a conflict:

The DOD Law of War (LOW) Working Group assessment states that there is no effect on US Commanders as this article deals with responsibilities of neutral or other States, not Parties to a conflict. It must be recognized that the US can easily fall into the category of "other States, not Parties to a conflict." As a result, US Commanders will be responsible for complying with the provisions of this Protocol in respect of such persons protected by Part II who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find. This requirement will require training and awareness of responsibilities.

Article 29 - Restrictions on operations of medical aircraft:

It should be noted that aircraft used for medical evacuation frequently carry mixed loads of both patients and other personnel. Additionally, some equipment not associated with the medical evacuation mission is not removable. This article could hamper long haul medical

Enclosure

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evacuation and the capability to carry non-medical evacuation personnel and/or equipment on large aircraft if protection is desired for temporary medical aircraft. It could restrict flexible employment of general purpose aircraft to the extent that protection is desired.

Article 33 - Basic rules:

Present wording of the article allows wide interpretation of its applicability to current as well as future weapons. Without caveats to the contrary, this article could be interpreted as prohibiting nuclear and chemical warfare as well as certain conventional weapons. Impact of this article on commanders could be substantial.

Article 48 bis - Protection of the natural environment:

Without caveats to the contrary, this article could be interpreted as prohibiting nuclear and chemical warfare. If these means of warfare are prohibited, impact on commanders as well as strategic and tactical concepts will be unacceptable.

Article 49 - Works and installations containing dangerous forces:

Many power stations provide power into a national grid and it is likely to be impossible to verify whether power from a given plant is being used for support of military operations. Moreover, power from one installation can be directed to meet civilian needs thus freeing power from another perhaps less vulnerable installation for use in supporting military operations. Accordingly, it is necessary to establish some presumption as to what constitutes regular, direct support. Lacking this, Article 49 is vague as to the extent of protection for hydroelectric and nuclear electric facilities.

PROTOCOL II

Article 17 - Protection of medical units and transports:

Without recognition of the inherent right of self defense as well as comparable provisions of the 1949 Geneva Conventions, paragraph 2 might be construed to

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restrict the ability of military elements, particularly aircraft, to defend themselves against attack from weapons operating within civilian medical units. The second sentence implies that a warning must be given before a response to fire can be made. Weapons could be relocated in the interval during which a warning of impending response is promulgated.

Article 28 bis - Protection of the natural environment:

Without caveats to the contrary, this article could be interpreted as prohibiting nuclear and chemical weapons.

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