

Message Text

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PAGE 01 GENEVA 04637 01 OF 02 100939Z
ACTION L-03

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DPW-01 CIAE-00 H-02 INR-07 NSAE-00 NSC-05 PA-02
PRS-01 SP-02 SS-15 USIA-15 AF-10 ARA-14 EA-09
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INFO SECDEF WASHDC
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UNCLAS SECTION 1 OF 2 GENEVA 4637

DOD ALSO PASS TO AF/JA, NAVY JAG, DAJA-IA, DCPA

EO 11652: NA
TAGS: ICRC, PARM, PFOR
SUBJ: CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW - FINAL
STATEMENT

1. FOLLOWING IS FINAL STATEMENT MADE BY AMB ALDRICH
WHICH SUMMARIZES THE VIEWS OF THE DELEGATION ON THE
ACCOMPLISHMENTS OF THE CONFERENCE. BEGIN TEXT:

THE UNITED STATES WELCOMES THE ADOPTION OF PROTOCOL I.
WE ARE SATISFIED THAT THIS PROTOCOL REPRESENTS A MAJOR
ADVANCE IN INTERNATIONAL HUMANITARIAN LAW, AN ADVANCE OF
WHICH THIS CONFERENCE CAN BE PROUD. WE HOPE THAT IT WILL
BE SIGNED AND RATIFIED BY ALL THE STATES REPRESENTED IN
THIS CONFERENCE.

THE DELEGATION OF THE US IS PARTICULARLY
HAPPY TO WELCOME THE INCLUSION IN THE PROTOCOL OF THE PRO-
VISIONS ON THE PROTECTION OF MEDICAL AIRCRAFT, WHICH WILL
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PAGE 02 GENEVA 04637 01 OF 02 100939Z

FOR THE FIRST TIME GIVE SUCH AIRCRAFT SIGNIFICANT IMMUNITY
FROM ATTACK. WE ALSO WELCOME THE ARTICLES DESIGNED TO
ENSURE ACCOUNTING FOR THOSE WHO ARE MISSING IN ACTION AND
THE PROTECTION OF THE REMAINS OF THE DEAD.

WE BELIEVE THE PROVISIONS ON PROTECTING POWERS, ALTHOUGH
THEY FALL SHORT OF OUR DESIRES, REPRESENT AN IMPROVEMENT

OVER THE GENEVA CONVENTIONS AND WILL, AT LEAST, MAKE IT MORE DIFFICULT AND EMBARRASSING IN THE FUTURE FOR A STATE TO REFUSE TO PERMIT EXTERNAL OBSERVATION OF HOW IT TREATS ITS PRISONERS. IN THIS CONNECTION, WE WELCOME THE CLEAR STATEMENT IN THE PREAMBLE THAT NO PERSON PROTECTED BY THE CONVENTIONS OR THE PROTOCOL CAN BE DENIED THESE PROTECTIONS THROUGH CHARGES OF AGGRESSION AND THE STATEMENT IN ARTICLE 44 THAT A SOLDIER CANNOT BE DEPRIVED OF HIS STATUS AS A PRISONER OF WAR BY ALLEGATIONS OF WAR CRIMES. HISTORY HAS SHOWN, UNFORTUNATELY, THAT PROTECTIONS SUCH AS THESE ARE NEEDED.

THE DELEGATION OF THE US LOOKS WITH SATISFACTION ON A NUMBER OF OTHER IMPORTANT ADVANCES IN THE LAW MADE BY THIS PROTOCOL. IN PARTICULAR, WE NOTE THE PROHIBITION OF INDISCRIMINATE ATTACKS, INCLUDING TARGET AREA BOMBARDMENT IN CITIES, THE CLEAR AND HELPFUL DEFINITION OF MILITARY OBJECTIVES, THE PROHIBITION OF STARVATION OF CIVILIANS AS A METHOD OF WARFARE AND OF DESTRUCTION OF CROPS AND FOOD SUPPLIES, AND THE SPECIAL PROTECTION, WITH REASONABLE EXCEPTIONS, ACCORDED DAMS, DIKES, AND NUCLEAR POWER STATIONS. MY DELEGATION BELIEVES THE CONFERENCE CAN TAKE SATISFACTION IN HAVING ACHIEVED THE FIRST CODIFICATION OF THE CUSTOMARY LAW RULE OF PROPORTIONALITY, IN HAVING WORKED OUT A GOOD DEFINITION OF MERCENARIES THAT SHOULD NOT BE OPEN TO ABUSE, AND IN SETTING MINIMUM, HUMANITARIAN STANDARDS THAT MUST BE ACCORDED TO ANYONE WHO IS NOT ENTITLED TO BETTER TREATMENT.

DURING THESE PLENARY SESSIONS WE HAVE ALREADY COMMENTED UNCLASSIFIED

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PAGE 03 GENEVA 04637 01 OF 02 100939Z

ON A NUMBER OF ARTICLES WHICH, BECAUSE OF COMPROMISE OR VAGUE LANGUAGE REQUIRED CLARIFICATION. I SHALL NOT REPEAT THOSE PREVIOUS STATEMENTS, BUT THERE ARE A FEW REMAINING QUESTIONS ON WHICH I WISH TO COMMENT.

THE PROBLEM OF ASSURING COMPLIANCE WITH THE CONVENTIONS AND THE PROTOCOL, NOT ONLY BY INDIVIDUALS, BUT ALSO BY GOVERNMENTS IS EXTRAORDINARILY DIFFICULT. IN ADDITION TO THE PROVISION ON PROTECTING POWERS, WE WELCOME THE EMPHASIS PLACED ON DISSEMINATION, ON THE PROVISION FOR LEGAL ADVISORS TO THE MILITARY FORCES, AND ON THE RESPONSIBILITY OF COMMANDERS AND OTHERS IN AUTHORITY TO TAKE STEPS TO PREVENT VIOLATIONS. THESE PROVISIONS WILL PROMOTE INCREASED TRAINING FOR BOTH CIVILIANS AND THE ARMED FORCES, AND SUCH TRAINING IS NECESSARY TO IMPROVE COMPLIANCE WITH THE LAW. THE STRUCTURE OF "GRAVE BREACHES" ESTABLISHED IN THE CONVENTIONS WAS TAKEN OVER BY THE PROTOCOL AND ENLARGED UPON. WE WELCOME THE PROVISION ON GRAVE BREACHES, BUT IN ORDER TO AVOID POSSIBLE MISUNDERSTANDING, WE WOULD

EMPHASIZE THAT TO CONSTITUTE A "GRAVE BREACH" AN ACT
MUST VIOLATE ONE OR MORE SUBSTANTIVE RULES OF THE PROTOCOL
OR THE CONVENTIONS.

THE PROVISIONS ON RESPONSIBILITY AND COOPERATION OF
GOVERNMENTS ARE IMPORTANT FOR THE REAFFIRMATION OF EXISTING
LAW. HOWEVER, AS BETWEEN ADVERSARIES RECIPROCITY AND
MUTUALITY OF INTEREST REMAIN PERHAPS THE MOST POWERFUL
PRESSURES FOR COMPLIANCE. THE PROTOCOL HAS GONE FAR TO
REMOVE THE DETERRENT OF REPRISALS. THIS HAS BEEN DONE FOR
UNDERSTANDABLE AND COMMENDABLE REASONS IN VIEW OF PAST ABUSES.

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PAGE 01 GENEVA 04637 02 OF 02 100953Z
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UNCLAS SECTION 2 OF 2 GENEVA 4637

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HOWEVER, IN THE EVENT OF MASSIVE AND CONTINUING VIOLATIONS
OF THE CONVENTIONS AND THE PROTOCOL, THIS SERIES OF
PROHIBITIONS ON REPRISALS MAY PROVE UNWORKABLE. MASSIVE
AND CONTINUING ATTACKS DIRECTED AGAINST A NATION'S
CIVILIAN POPULATION COULD NOT BE ABSORBED WITHOUT A
RESPONSE IN KIND. BY DENYING THE POSSIBILITY OF SUCH A
RESPONSE AND NOT OFFERING ANY WORKABLE SUBSTITUTE, THE
PROTOCOL IS UNREALISTIC AND, IN THAT RESPECT, CANNOT BE
EXPECTED TO WITHSTAND THE TEST OF FUTURE ARMED CONFLICTS.

AS I MENTIONED EARLIER, THE GOVERNMENT OF THE US
CONSIDERS THAT THE PROTOCOL IS DESIGNED TO AFFORD
THE GREATEST POSSIBLE PROTECTION TO CIVILIANS AND OTHER

VICTIMS OF WAR DURING INTERNATIONAL ARMED CONFLICT. TO THAT END IT IMPOSES A NUMBER OF SIGNIFICANT RESTRAINTS ON THE USE OF MEANS AND METHODS OF WARFARE. FROM THE OUTSET OF THE CONFERENCE, IT HAS BEEN OUR UNDERSTANDING THAT THE RULES TO BE DEVELOPED HAVE BEEN DESIGNED WITH A VIEW TO CONVENTIONAL WEAPONS. DURING THE COURSE OF THE CONFERENCE UNCLASSIFIED

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PAGE 02 GENEVA 04637 02 OF 02 100953Z

WE DID NOT DISCUSS THE USE OF NUCLEAR WEAPONS IN WARFARE. WE RECOGNIZE THAT NUCLEAR WEAPONS ARE THE SUBJECT OF SEPARATE NEGOTIATIONS AND AGREEMENTS, AND FURTHER THAT THEIR USE IN WARFARE IS GOVERNED BY THE PRESENT PRINCIPLES OF INTERNATIONAL LAW. IT IS THE UNDERSTANDING OF THE UNITED STATES THAT THE RULES ESTABLISHED BY THIS PROTOCOL WERE NOT INTENDED TO HAVE ANY EFFECT ON AND DO NOT REGULATE OR PROHIBIT THE USE OF NUCLEAR WEAPONS. I WE FURTHER BELIEVE THAT THE PROBLEM OF REGULATION OF NUCLEAR WEAPONS REMAINS AN URGENT CHALLENGE TO ALL NATIONS WHICH MUST BE DEALT WITH IN OTHER FORUMS AND BY OTHER AGREEMENTS.

WITH RESPECT TO PROTOCOL II, WE WERE HAPPY TO JOIN IN THE CONSENSUS AND WE SHALL ENCOURAGE THE SUCCESSFUL APPLICATION OF THE PROTOCOL. MY GOVERNMENT SUPPORTS THE POSITION THAT INTERNATIONAL CONCERN FOR HUMANITARIANISM IN ARMED CONFLICT CANNOT BE LIMITED TO INTERNATIONAL CONFLICTS. HOWEVER, WE RECOGNIZE THAT THE EXTENT OF INTERNATIONAL REGULATION IN CONFLICTS NOT OF AN INTERNATIONAL CHARACTER MUST BE CONSIDERABLY NARROWER, TO TAKE ACCOUNT OF THE SOVEREIGN RESPONSIBILITY OF THE GOVERNMENT CONCERNED. THE FACT THAT STATES HAVE OFTEN BEEN UNWILLING TO ACKNOWLEDGE THE APPLICABILITY OF ARTICLE 3 COMMON TO THE CONVENTIONS, SHOULD HAVE BEEN A STERN WARNING TO THE CONFERENCE TO TEMPER OVERLY AMBITIOUS GOALS AND TO AVOID EVEN THE SUGGESTION OF INTERFERENCE WITH THE SOVEREIGN AUTHORITY OF STATES BEYOND THAT MINIMUM REQUIRED TO MANDATE HUMANITARIAN TREATMENT FOR ALL PERSONS AFFECTED BY THE CONFLICT. ULTIMATELY, THE CONFERENCE CAME TO SHARE THIS VIEW, AND THE PROTOCOL WE HAVE JUST ADOPTED SHOULD, UPON CAREFUL STUDY, PROVE ACCEPTABLE TO MOST GOVERNMENTS. IN THIS CONNECTION, I WOULD LIKE TO EXPRESS OUR DEEP APPRECIATION TO THE REPRESENTATIVE OF CANADA, MR MILLER, AND TO THE REPRESENTATIVE OF PAKISTAN, JUDGE HUSSAIN. WITHOUT THEIR VISION AND UNTIRING EFFORTS, WE WOULD NOT HAVE A PROTOCOL II.

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PAGE 03 GENEVA 04637 02 OF 02 100953Z

IT WAS WITH FULL APPRECIATION OF THE PRACTICAL PROBLEMS CREATED BY ATTEMPTS TO DEVELOP REGULATIONS FOR INTERNAL CONFLICTS AND WITH THE PRACTICE OF STATES WITH RESPECT TO COMMON ARTICLE 3 BEHIND US, THAT MY GOVERNMENT SOUGHT A PROTOCOL II WITH A LOW THRESHOLD OF VIOLENCE REQUIRED TO BRING IT INTO EFFECT. WE ARE DISAPPOINTED THAT THE CONFERENCE ADOPTED A PROTOCOL II WITH A RELATIVELY HIGH THRESHOLD. WE FEAR THAT, WHILE THE PROTOCOL SHOULD NOT IN ANY SIGNIFICANT WAY INFRINGE UPON THE SOVEREIGNTY OF ANY STATE, AND THEREFORE SHOULD BE WIDELY ACCEPTED, THE HIGH THRESHOLD OF VIOLENCE REQUIRED BY ARTICLE 1 WILL SERVE AS A CONVENIENT EXCUSE TO REFUSE TO ADMIT ITS APPLICABILITY EXCEPT IN VERY LIMITED SITUATIONS. ACCORDINGLY, WHILE WELCOMING PROTOCOL II, WE ARE FORCED TO QUESTION THE EXTENT TO WHICH IT ADVANCES THE CAUSE OF HUMANITARIANISM IN NON-INTERNATIONAL ARMED CONFLICTS BEYOND THAT ALREADY EMBODIED IN ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949.

NEVERTHELESS, WE CAN HOPE THAT PROTOCOL II WILL PROVE TO BE A SIGNIFICANT FORCE FOR GREATER HUMANITY IN CIVIL WARS. ONLY TIME WILL TELL. MY GOVERNMENT, IN ANY EVENT, WILL SUPPORT THIS PROTOCOL AND HOPES THAT IT WILL BE BROADLY SUPPORTED BY THE NATIONS OF THE WORLD. END TEXT. SORENSON

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