

THE SECRETARY OF STATE  
WASHINGTON

March 21, 1986

MEMORANDUM FOR: THE PRESIDENT

From: George P. Shultz *GPS*Subject: 1977 Protocols Additional to the Geneva  
Conventions of 1949 on Protection of War  
Victims

The Joint Chiefs of Staff and the Departments of State, Defense and Justice have completed their reviews of the two 1977 Protocols, which would revise and update the rules of warfare contained in the 1949 Geneva Conventions on the protection of victims of armed conflict. Protocol I deals with international armed conflicts, and Protocol II with non-international armed conflicts. Both were signed by the Carter Administration in 1977, but have never been submitted to the Senate. Together, these Protocols would represent a comprehensive reworking of the humanitarian law of armed conflict, and are of considerable legal and political significance.

We have concluded that Protocol I is unacceptable. Some key provisions of the Protocol politicize that law by making its applicability hinge on non-legal standards couched in highly charged rhetoric: "[Protocol I covers] 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 . . . ." The Protocol furthermore would afford legal protections to terrorists and "national liberation movements" at the expense of non-combatants by granting combatant/POW status to irregular fighters who do not wear uniforms and otherwise fail to distinguish themselves from non-combatants.

Also unacceptable is Protocol I's erasure of the traditional line between international and non-international conflicts. By categorizing as international those "national liberation wars" involving only one sovereign state, Protocol I would grant legal blessing for the internal subversion of "colonial, alien, or racist" regimes, removing such acts (when conducted according to the Protocol's requirements) from punishment as crimes.

Other, significant defects of Protocol I, include: (1) its lack of effective enforcement measures; (2) unacceptable restrictions on attacks against facilities and locations that qualify as legitimate military objectives under international law; and (3) the injection of "political criteria" into the rules of warfare in provisions on mercenaries and racial discrimination.

The shortcomings of Protocol I are fundamental in nature and cannot be remedied through reservations and understandings.

All agencies therefore agree that the USG should not ratify Protocol I, and should work in a low-key business-like manner to persuade our allies to follow our lead. We also propose to raise with our allies a possible common declaration of principles incorporating the positive aspects of Protocol I, which will assist in their recognition as customary international law.

On the other hand, most of the provisions of Protocol II, which applies to non-international armed conflicts, promote basic human rights in line with U.S. policy and practice. We therefore recommend that the Administration support ratification of Protocol II with minor reservations and understandings, the exact wording of which should be worked out among the Departments and then with our allies.

We have provided a proposed plan to implement these decisions in a separate Platt-Poindexter memo.

cc: The Attorney General  
The Secretary of Defense