Occasional Paper #5

THE RULES OF WAR AND FOURTH WORLD NATIONS

By
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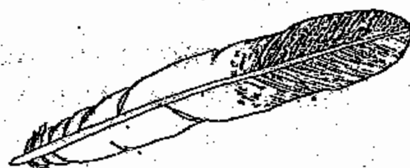

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The Rules of War and Fourth World Nations

By Rudolph C. Ryser
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Twenty-nine years after the end of World War Two the United Nations sponsored a conference of states to consider and adopt two protocol agreements which would revise and add-to the 1949 Geneva Conventions concerned with humane treatment of victims of armed conflicts. Obscurely called Protocol I and Protcol II, these supplements to the Rules of War took two years to negotiate. They were formally signed by sixty-one states in 1977, and they came into force in 1978 with the formal ratifications of Denmark, El Salvador and Ghana.

The significance of these protocols is that they give equal status to Indigenous Nations and other liberation movements engaged in armed conflict under the same rules of war that apply to states. This is a major change in international law that has considerable political importance for warfare within the boundaries of states – particularly conflicts between Indigenous Nations and states. The Center for World Indigenous Studies recently acquired copies of Protocol I and Protocol II. Background, content and implications of the protocols are examined in this paper.

When states aggressively and violently attack one another, they are generally considered to be engaged in acts of warfare. The military leaders of these states guide and direct combat actions according to rules of war (in theory, at least) that have evolved over centuries. And, by virtue of these rules, the conduct of war is made more *civilized.*

Until the end of World War Two, these rules were thought to be adequate to ensure that waring parties would fight fairly. Changes in the technology of warfare, and the horrors and attrocities committed by virtually all participants in World War Two – from the massacres of Jews, Gypsies and other nationalities by the Nazis to the death camps of Japan and the Soviet Union, and the atomic obliteration of civilians by the United States – combined to create widespread guilt and revulsion. The global response was to convene an international conference that subsequently produced the Geneva Conventions for the Protection of Victims of War (August 12, 1949).

The Conventions prescribe methods and means for warfare, rules for the treatment of wounded, sick and shipwrecked civilians, conditions for determining the status and treatment of combatants and prisoners–of–war, provisions for the protection of civilian populations against the effects of hostilities, and rules for the treatment of refugees and stateless persons. The International Red Cross and other international humanitarian organizations, and a third–party state are described as parties to oversee the implementation of the Conventions in theatres of warefare. States subscribing to the Geneva Conventions, and even those states that did not sign, are subject to the rules of war as spelled out in detail.

Though these new warfare dicta were thought to be acceptable for conflicts between *civilized states* they were not, however, applied where state military forces engaged the rising tied of decolonization movements (an unintended result of World War Two) which took place primarily within the boundaries of an existing state. Independence movements launched by Indigenous Nations or disenchanted religious or political minorities were not covered by the Geneva Conventions. Only war between states could *qualify.*

Before and immediately after 1949, wars of liberation peppered the globe. Vietnam fought against the French as did the people of Algeria. England, Holland and Spain were also being challenged by independence movements. The Nation of Naga fought against the newly independent forces of India, while the Balukistan Nation fought the military forces of Pakistan. The Karen Nation engaged the state of Burma, Turks and Armenians battled the Soviet Union's military. China was also engaged in conflict with the Nation of Tibet. Colonial powers which had been victorious after World War Two became embroiled in battles internally and externally with nations and groups eager to throw off the colonial bonds. Indeed, many of these armed conflicts continue to this day.

The superstructure of colonial empires had been cleaved and nations long confined saw their chance to be free. But, no sooner had the door to freedom been opened by the post–war preoccupations of the *great powers*, it swiftly shut. Indigenous Nations which had become surrounded by newly created states were denied the right to choose their own political future, and other political and religious minorities had become unwilling captives within new states. Nations and groups long encircled by states created during the 19th century and after the turn of the century also challenged the status quo.

Euphemisms were coined to describe the non–state combatants. *Insurgents, rebels, bandits, guerrillas, terrorists* and other such terms were invented as every–day terms to describe the forces fighting against the state. The use of these terms hide a cruel reality: Indigenous Nations or any other disenchanted group which attempts to defend itself against the violence of a state; or challenge the right of a state to excercise powers over it may have its combatant forces tortured and civilian populations massacred as a result of *police actions*. A state may commit genocide as long as it is battling *insurgents*, or *rebels*.

The modern rules of war fostered by the 1949 Geneva Conventions to safeguard the interests of vicitims (civilian and military) of warfare were beyond the reach of unwilling captives of a state. Whether located inside the boundaries of a state or inside a distant colony, police actions and civil conflicts were designated as an *internal matter of the state*.

The term *warfare* was rarely used to describe the violence between Indigenous Nations and states, or between political or religious movements and states. Brutalities between waring elements had all of the characteristics of battles among states. Yet, a state encountering resistance to its animus would be accountable only to itself. Brutalities imposed on civilian populations or prisoners–of–war would be hidden behind the shroud of state sovereignty.

REGIONAL AND LOCAL WARS ABOUND

States have been quite free to massacre civilian populations (Nigeria and the Ibo, Bangladesh and the Chakma and twelve other tribes, Indonesia and the Papuans, Timorese and Mollucans; Ethiopia and the peoples of Eritria, Tigre and Wollo), torture captive combatants, and fear no world condemnation or even a whimper of concern. Indigenous Nations and their political organizations and the scars they bore from warfare with a state could be exhibited before the United Nation Human Rights Commission. But, no effort would be made to require state accountability; to act fairly and with some degree of civility in the treatment of prisoners of war and civilian populations. State terror against Indigenous Nations and other resistance groups has continued unabated to the present date.

By 1984, no fewer than 50 wars flared on every continent save Antarctica. (See: Occasional Paper #2 "Fourth World Wars": Ryser) The state of Indonesia alone is engaged in three wars involving West Papua, East Timor and Molluca. Nicaragua, Ethiopia, Burma, Morroco, Spain, France, Colombia, Peru, Soviet Union,

Israel, Britain, South Africa, Zimbabwa, Lebanon, Kampuchea, Guatemala and Brazil are among the states involved in armed conflicts: Wars of resistance and wars of independence. Liberation movements like the POLISARIO, Southwest African Peoples Organization (SWAPO), Palestinian Liberation Organization (PLO), Kanak Liberation Front, Asla, Eritrean People's Liberation Front and the Free Papua Movement (OPM) are among the non–state politico–military resistance groups challenging state authority.

Indigenous Nations like the Karen in Burma, Naga of India, Kalinga and Bontac of the Phillipines, Chakma of Bangladesh, Pipil of El Salvador and Yanamomu of Brazil are engaged in defensive wars against states. Of the wars currently raging, some thirty–two involve Indigenous Nations as direct combatants.

None of these internal and external wars are being conducted in accord with the Geneva Conventions of 1949. Two new Protocol Agreements expanding the coverage of the Geneva Conventions to include international and internal armed conflicts, previously excluded, may change the political and military environment now hidden from world scrutiny. If invoked by non–state combatants, Protocol I and Protocol II of the 1949 Geneva Conventions may actually cause a new political dynamic to evolve between states and Indigenous Nations – one that can reduce the violence and increase the chance for peaceful settlements to evolve.

WHAT DO THE NEW AGREEMENTS SAY?

With the encouragement of the Southwest African Peoples' Organization, and the Palestinian Liberation Front many non–aligned states took steps during the early 1970s to organize a United Nations Conference to consider improvements to the 1949 Geneva Conventions on the protection of victims of armed conflicts. On June 8, 1977 the Conference adopted Protocols I and II and placed the documents open for signature by state governments in Berne, Switzerland on December 12, 1977.

Before the end of the twelve–month signing period, sixty–two states had signed Protocol I and fifty–nine states had signed Protocol II. In order for both Protocols to become accepted as binding international law, ratification or accession by two states was required. By December of 1978 El Salvador and Ghana had ratified both Protocols, and Libya had notified the Swiss Federal Council (the formal repository for the documents) that it had acceded to both Protocols on June 7, 1978. In accordance with the Protocol Agreements, they had become international law in 1979. As of June 1985, fifty–one countries had ratified or acceded to Protocol I and forty–four countries had ratified or acceded to Protocol II. (See Table 1 and Table 2 below.)

As the language of the Protocols indicate, both are concerned with the *protection of victims of armed conflict.* However, there is an important distinction between them: Protocol I applies to *the protection of victims of international armed conflicts,* while Protocl II applies to *the protection of vicitims of non–international armed conflicts.* While both Protocols are far reaching in their implications for the responsibility of belligerents in an armed conflict for the care and protection of civilian populations and prisoners–of–war, Protocol I is much more substantial. Protocol I requires international peace–keeping initiatives to become organized, and Protocol II simply imposes "rules of conduct" on the belligerent parties while leaving the responsibility for reestablishing "law and order" up to the state.

Both Protocols require hostile parties to a conflict to extend *humane treatment* to prisoners; wounded, sick or shipwrecked individuals, protect civilian populations and restrict hostile actions from affecting *cultural objects, places of worship,* and *objects indispensable to the survival of the civilian population.* But, Protocol I is much more detailed and exacting in its application. The *non– international* terminology of Protocol II acknowledges much more restricted applications.

PROTOCOL I

The fifty–one page document contains statements about definitions of parties, care and treatment of the wounded, sick and shipwrecked; methods and means of warfare and combatant and prisoner–of–war status, protection and treatment of civilian populations, measures for executing the conventions and the Protocol, conditions underwhich breaches of the conventions and the Protocol are determined, regulations concerning identification: Of medical facilities, provision of emblems, use of light, radio and electronic signals, identity cards for civil defense; and identity cards for journalists on dangerous professional missions. The parties to a conflict are responsible for establishing mechanisms within their own organization to ensure compliance with all of the provisions.

Scope

Protocol I extends to a wide range of *international* conditions of armed conflict. As is indicated in the first part, the provisions of Protocol I apply to situations of armed conflict *in which peoples are fighting against colonial domination and alien occupation and against racist rè gimes in the exercise of their right of self–determination.* (Protocol I, Part I, Article 1, Paragraph 4) No fewer than fifty wars currently characterized as *regional* or *sub–regional* would fall within the scope of this Protocol. Consequently, Protocol I and the orginal conventions drawn up in 1949 would extend to conflicts as apparently unsimilar as the wars of Indonesia with West Papua, the Republic of Molluca and East Timor; an the Soviet Union's war against the Indigenous Nations of Afghanistan. This Protocol would apply to Nicaragua's war with the Miskito, Sumo and Rama Nations and France's war with the Kanak Nation in New Caledonia. Ethiopia's wars with Eritrea, Tigre and Wolo; and Bangladesh's war with the Indigenous Nations of the Chittagong Hill Tract Region would also be applicable under Protocol I.

Article 2 under General Provisions specifies that the Geneva Conventions and the Protocol apply from the beginning of a conflict to the *general close of military operations.* But, it notes that certain provisions remain in force until the release, and repatriation of prisoners and displaced persons, and reestablishment of normalcy. None of the parties to armed conflict may denounce or *deny applicability* of the Protocol and the Geneva Conventions **after** a conflict has begun. And, though only one of the parties may be bound by virtue of ratifying the Conventions and Protocol, and the other party is not, both are bound for the duration of the conflict. (Part VI, Artlicles 96,99)

Protecting Powers and other International supervision

Significantly, Protocol I does not attempt to define the legal status of either the parties to an armed conflict or the status of the territory which may be the focus of the conflict. In this respect, the Protocol is neutral. But, it does allow for international measures which seek to ensure compliance by the belligerents with the provisions of the Protocol and the 1949 Conventions. One or more **Protecting Powers** may be secured through a process involving the International Committee of the Red Cross, or similar neutral party, to supervise the implementation of the Geneva Conventions and the Protocol. The Protecting Powers, once secured, have the responsibility for *safeguarding the interests of the Parties to the conflict.* (Part I, Article 5, Paragraph 1) Though this is a clearly rational approach to conflict resolution, this provision has not been invoked by any of the parties to conflicts presently raging in the world despite the requirement that such steps must be initiated *from the beginning of any situation* of armed conflict as defined within the scope of the Protocol.

Acting as the depository for the Protocol, the Swiss Federal Council has the duty to convene a meeting (at intervals of five years) of representatives from those states which have ratified or acceded to the Protocol for the purpose of electing a fifteen—member International Fact— Finding Commission. (Part V, Section II, Article 90) The Commission is established to inquire into *any facts alleged to be a grave breach* of the Protocol or the Geneva Conventions. It also has the obligation to *facilitate ... the restoration of an attitude of respect for the Conventions and this Protocol* by all parties to an armed conflict. The Commission's initiatives are to be carried out by *a Chamber consisting of seven members* including five individuals appointed from the Commission and two independent *ad hoc* members. And, any initiatives taken by the Chamber will be predicated on a request by one of the parties, and all parties to a conflict giving consent.

By virtue of this process, the International Fact—Finding Commission functions as a *quasi—judicial body*, which gathers evidence, discloses the evidence for review by all parties and permits each party the opportunity to challenge the evidence. After preparing a report on its findings, the Commission is then authorized to make recommendations to the conflicting parties for ensuring their compliance with the Geneva Conventions and the Protocol.

If a state or non—state party to armed conflict is found to have violated provisions of the Geneva Conventions or the Protocol, it is bound by the agreements to *pay compensation*, and retain responsibility *for all acts committed by persons forming part of its armed forces.*

By specifying a roll for international institutions and individual states in a supervisory capacity, Protocol I suggests that the international community is willing to accept a non—state combatant (i.e. Southwest African Peoples' Organization, the Nations of Miskito, Sumo and Rama; Free Papua Movement, the Nation of Chakama, or Kanak Liberation Front) as a legitimate sovereign to be treated with the same level of respect as a state. In no other, so—called, new international legislation has such an admission been made. In no other new international legislation is there a provision included which implicitly grants international recognition of sovereignty to an Indigenous Nation or other organized group resisting state power. This is a major change in international law which has long asserted the supremacy of state sovereignty and state power even at the expense of Indigenous Nations and other resistance groups.

Methods and Means of Warfare

Few individuals outside of diplomatic or military circles are aware that extensive and detailed rules have been specifically developed to guide the conduct of warfare. Despite the requirement contained in practically all pieces of international legislation that each state widely disseminate the actual documents of international agreement, few states actually to this. It should not be surprising, therefore, that little is generally known about the extent to which crimes are committed during acts of warfare.

The Geneva Conventions and Protocol I, provide a detailed and explicit description of what is permitted and what is not allowed during an armed conflict. And under Protocol I, non—state and state parties to armed conflict are obliged to follow the rules closely under the watchful eyes of Protecting Powers and the International Fact—Finding Commission.

The Rules of War restrict the use of *weapons, projectiles and material and methods of warfare*, which *cause superfluous, injury or unnecessary suffering.* And, limits are imposed on the employment of methods of warfare which are intended, *or may be expected*, to produce widespread, severe and long—term damage to the natural environment. New weapons are not allowed to be introduced into a

situation of armed conflict if they are likely to produce suffering or severe damage to the environment. These qualifications are imposed on both state and non–state parties to armed conflicts.

Under Article 37 (Part III, Section I) of Protocol I, specific emphasis is placed on the prohibition *to kill, injure or capture an adversary by resort to perfidy* where one belligerent may act in ways that invite the confidence of an adversary (using a flag of surrender or arranging negotiations) with no intention of doing anything but gaining military advantage. This taboo is supplemented by a further limitation which forbids the use of *ruses* intended to induce an adversary to act recklessly. It is specifically prohibited for a party to *order that there shall be no survivors* or conduct hostilities on this basis.

Rules also expressly forbid attack or injury to a person or persons who have surrendered, taken prisoner or who have been rendered unconscious or incapacitated by wounds or sickness. (Part III, Section I, Article 41) Protocol I specifically addresses the status of combatants and prisoners–of– war. It states in Article 43:

> *The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by agovernment or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.*
>
> *Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.*
>
> *Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.*

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> *While all combatants are compelled to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except [that] * * * In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly.*
> (Emphasis supplied)

Where a member of an armed force fails to abide by these rules and falls under the control of an adversary, the right to be classified as a prisoner–of–war is forfeited. The individual may then be treated as a civilian prisoner and may be tried and punished for any offenses committed.

The Rules of War acknowledge circumstances where an individual who has participated in hostilities and falls under the control of an adversary may claim prisoner–of–war status under the Third Geneva Convention. And where there may be some doubt, the party represented by individual may notify the *detaining Power* or the Protecting Power of the person's status. If there remains further doubt, the individual retains the prisoner–of–war status until a tribunal is established to determine the actual status.

Spies and other persons engaged in espionage are not considered to have the right to the status of prisoner–of–war. Provision is, however, made for individuals who *gather or attempt to gather information* inside the adversary's territory if they are wearing a uniform identified with his or her armed forces. In this situation, the person is considered a prisoner–of– war if captured. Individuals who participate in hostilities as mercenaries, do not have the right to prisoner–of–war status.

While engaged in actual combat, participants in armed conflict are regarded as being in compliance with the Geneva Conventions and Protocol I if they direct their military operations against military objectives and military personnel only. If, however, such military operations become directed at civilian populations or *civilian objects* the offending party is considered in violation of the agreements.

> *Article 49 – Definition of attacks and scope of application*
>
> *1. "Attacks" means acts of violence against the adversary, whether in offence or in defense.*
>
> *2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.*
>
> *3. The provisions of this section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land, but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.*

Protection of Civilian Populations

An often used tactic in warfare is the killing and destruction of civilian populations and their homes and property. In armed conflicts involving non–state and state combatants, civilian populations are frequently considered strategic targets because they represent material support to the armed forces. The Geneva Conventions and Protocol I pay significant attention to prohibitions in connection with civilian populations. The Rules of War expressly deny the legitimacy of attacks by armed forces on civilian populations either as indiscriminate acts, overt acts or as acts of reprisal. Belligerents are also prohibited from moving civilian populations in such a way as to shield military objectives from attacks or to shield military operations.

Conflicting parties are required to avoid the destruction of *cultural objects* (historic monuments, works of art, places of worship), and they are enjoined from using these objects to support the military effort.

It is considered a violation of the Geneva Conventions and Protocol I for any party to an armed conflict to engage in practices aimed at the starvation of a civilian population or destruction of *objects indispensable to the survival of the*

civilian population, such as food– stuffs, agricultural areas for the production of foot–stuffs, crops, livestock, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian populations or to the adverse Party. (Part IV, Section I, Chapter III, Article 54)

Additional provisions are made for the protection of *non–defended localities* and the demarcation of *demilitarized zones.* Civil Defence measures and Civil Defence organizations are protected under the Protocol. An occupying power is obligated to deliver relief to civilian populations, and only under extreme military circumstances may relief actions be restricted – and then only temporarily. Refugees and stateless persons who have been displaced by the armed conflict are specifically protected from *violence to the life, health, or physical or mental well– being of persons.* (PartIV, Section III, Chapter I, Article 75) Detainment or arrest of refugees and stateless persons imposes a requirement that such persons are informed, in their own langugage, of the reasons for measures being taken against them. Furthermore, specific procedures are outlined for their treatment and their institutionalization or release.

Treatment of women and children is also specifically mentioned in Protocol I. Rape, forced prostitution and other forms of *indecent assault* are strictly forbidden, and if committed they are considered a violation of the Geneva Conventions and the Protocol. Assaults on children are also banned. Provision is made for the protection of journalists who are *accredited to the armed forces* or provided identification cards by the state, non–state organization or news organization.

State and non–state parties to armed conflict are obliged to grant safe passage to the International Committee of the Red Cross or other international humanitarian organizations to ensure their ability to assist civilian populations. Indeed, all parties to a conflict are required to furnish assistance to humanitarian organizations (i.e. Red Cross, Red Crescent, Red Lion and Sun among them) as they carry out their efforts to aid civilian populations and refugees.

PROTOCOL II

Many wars between states and non–state interests are being prosecuted solley within the boundaries of an established state. These wars are thought to involve *dissident armed forces* with whom, presumably it is thought that future reconciliation with the state is possible. Protocol II extends certain provisions of the 1949 Geneva Conventions to these situations. Emphasis is placed on *humanitarian principles* and *fundamental human rights protections.* Virtually all aspects of armed conflict within the framework of warfare are absent from Protocol II, as distinct from Protocol I. But, it is clear that many of the same obligations imposed on belligerent parties by the Geneva Conventions remain in tact as they relate to the treatment of prisoners, protection of the wounded, sick and shipwrecked, and the protection of civilian populations.

The circumscribed character of Protocol II does suggest a narrowing of applications, but, it does have the potential for modifying the political and military behaviour of both state and non–state parties to armed conflict. But, because of its limited scope, it is unlikely that many contemporary or future conflicts will have this Protocol applied to them.

Furthermore, because of its narrow scope, few parties to whom the Protocol would apply would be able to invoke its provisions since their access to international institutions and the state are, by definition severly restricted. But,

suprisingly, despite these limitations Protocol II is generally considered the most controversial of the two agreements. Signatory states, and states which have ratified or acceded to Protocol I have demonstrated greater reluctance and more reservations toward Protocol II. The Philippine government willingly signed Protocol I, and with Vietnam, Greece and Cyprus failed to sign Protocol II. Vietnam and Cyprus ratified Protocol I with seventeen other states, but they were unwilling to ratify Protocol II. Similarly, thirty–two states acceded to Protocol I though only twenty–seven acceded to Protocol II. Included among the thirty–two states acceding to Protocol I are Mexico, Mozambique, Zaire, Syria, Cuba Angola and Zaire. These states were unwilling to agree to Protocol II.

Signature, Ratification and Accession provisons for Protocol II are the same as for Protocol I. The Protocol is exactly the same as Protocol I where provisions for amendments, denuciations, modifications and entry into force are concerned.

We will now take a closer look at Protocol II.

Scope

Protocol II elaborates and supplements Article 3 of the August 12, 1949 Geneva Conventions. It covers all situations not covered under Article I of Protocol I. Specifically, Protocol II applies to *all armed conflicts ... 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.* Application of Protocol does not, however, *apply to situations of internal distrubances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature,* which are not considered armed conflicts. (Protocol II, Part I, Article I)

External Non–Intervention

The Geneva Conventions express the need to maintain the rule of international law in relations between states (and with Protocol I between nations and states) in situations of armed conflict. To perfect this requirement, measures permitting intervention by *external parties* are commonly prescribed. Protocol II, however, attempts to deal with *internal armed conflicts* and, as a consequence, imposes restrictions on external involvement in these conflicts. These conditions are specified under Article 3 of the Protocol:

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.*

The responsibility for invoking Protocol II rests with the state and a "domestic" party, however, implementation is left solley to the state and its internal institutions.

Humane Treatment and Prisoners

The parties to an internal armed conflict are compelled to treat individuals who are not engaged in hostilities, or who have ceased engaging in hostilities with *respect for their person, honour and convictions and religious practices.* Organized

violence against such individuals in the form of taking hostages, acts of terrorism, slavery, pillage, and "outrages to personal dignity" such as *humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault* are *prohibited at any time and in any place whatesovever.* Measures for the protection and care of children under the age of eighteen are specifically stipulated.

Protocol II does not sustain the invocation of "prisoner–of–war status". Persons who are captured and imprisoned are treated in accordance with domestic penal laws. Both the state and the "dissident forces" are obliged to follow specified practices in the treatment of prisoners who are either interned or detained. These include the provision of clean drinking water and adequate food, and safeguarding the health and hygiene of individuals. Parties to an internal armed conflict are constrained to put places of internment and detention in localities distant from combat zones.

On the matter of prosecuting individuals who have been interned or detained, the Protocol stipulates the application of sentence procedures, procedures of conviction and death penalities for criminal offences. In all these instances, domestic law rules.

Protection of Wounded, Sick and Shipwrecked Persons

Provision is made for the protection of individuals who have been wounded, have become sick or shipwrecked in accord with the Geneva Conventions. However, it is made clear that while parties to an internal conflict are charged to follow procedures outlined, it is the state which is obligated to institute the measures through its own institutions. Protection of medical and religious personnel is sighted as an obligation of both parties to a conflict as is protection of medical units and instruments of transport for medical purposes.

Both parties are are required to use and respect emblems designating medical and religious personnel, and the facilities used for medical purposes.

Protection of Civilian Populations

The State and a *dissident group* are compelled to observe measures that do not endanger civilian populations or their means of livlihood. These include protection of objects indispensable to the survival of the civilian population, protection of works and installations containing dangerous forces like dams, dykes and nuclear electrical generating stations, and protection of cultural objects and places of worship. These measure reflect the language of Protocol I and the Geneva Conventions themselves. It is particularly noted that neither of the parties to an internal armed conflict shall initiate attacks against a civilian population or engage in threats of violence the principal purpose of which would be to spread terror among civilian populations. (ParIV, Articles 13 – 16)

Civilian populations are protected under the Protocol from forced movement as a result of initiatives by either the State of a *dissident group.* Despite a situation of armed conflict, neither of the parties compel civilians *to leave their own territory for reasons connected with the conflict.* (Part IV, Article 17, Paragraph 2). This provision is supplemented by the stipulation that neither of the parties to a conflict may order displacement of a civilian population *unless the security of the civilians involved is threatened,* or if *imperative military reasons so demand.*

Relief societies located within the domestic territory of a state are recognized as having the duty to carry out measures for the protection of civilian populations, and to offer assistance to the wounded, sick and shipwrecked. These may include Red Cross organizations (Red Crescent, Red Lion and Sun). Where civilians are suffering undo hardships and relief organizations are not present, civilians may perform these duties. And, where domestic relief organizations are not available,

external humanitarian and impartial organizations may conduct relief activities *subject to the consent of the High Contracting Party concerned.* (Part IV, Article 18, Paragraph 2)

A New International Standard for Indigenous Nations

During the fifteen year period between 1970 and 1985, international legislation has undergone major and significant changes recognizing the greater role being played by Indigenous Nations in international relations. These changes have also begun to be reflected in the organization and procedures of various international institutions. In 1971, the rights of Indigenous Nations were sufficiently prominent as an issue that the Sub–Commission on the Prevention of Racisim and Protection of Minorities under the United Nations Commission on Human Rights commissioned the **Study on the Situation of Indigenous Populations.** In 1975, the rights of Indigenous Nations within the territory of the United States of America were admitted to be of sufficient importance to become an issue of compliance under Principles VII and VIII of the Helsinki Final Act. The United States Government supplemented those commitments in 1979 by reporting extensively on its compliance to the Commission on Security and Cooperation in Europe. In 1977, the United Nations concluded its conference on Protocols I and II which have been the topic of this paper. In 1980, the United Nations Economic and Social Council authorized the establishment of a United Nations Working Group on Indigenous Populations to conduct a ten– year inquiry into international standards concerning the rights of Indigenous Nations. In 1982, the World Bank issued a policy under the title of **Tribal Peoples and Economic Development** which has become the basis for new standards for loans to states – requiring that they provide for mitigation of World Bank project impacts on Indigenous Nations. And, in 1984, the International Labor Organization announced its intention to consider new revisions to **ILO Convention 107 – Convention on the Protection of Indigenous and Other Tribal and Semi–Tribal Populations in Independent Countries (1957).** All of these reflect changes in the approach state governments have taken toward Indigenous Nations, and while not substantially altering existing international law these moves have set in motion what appears to be a growing trend toward new political openings.

Of these changes, only the changes and additions to the 1949 Geneva Conventions and the World Bank's new Indigenous Nation's policy may be said to have significance in terms of actually elevating the political status and strategic importance of Indigenous Nations. For it is in the strategic and economic arenas that Indigenous Nations have shown a presence that actually makes a difference to states and their interests. The economic and strategic security of states has become increasingly unstable, and so, when any nation takes independent initiatives which further add to the unstable climate they become a political factor withwhich states must deal.

Indigenous Nations have increasingly taken independent political, economic and strategic initiatives that have had a profound effect on internal state stability, regional state relations and, indeed global state relations. Third World states, particularly, have experienced escalating confrontations with Fourth World Indigenous nations over the competing economic interests of the state verses the political and strategic interests of nations. These confrontations have been frequently escalated into full blown wars as a result of interventions (economic and military) by the Union of Soviet Socialist Republics and the United States of America, various European states like France, Britain and the states of China, Cuba, Israel and Brazil among others.

Of the two protocols adding to and revising the 1949 Geneva Conventions, Protocol I may likely have the most profound importance in the future relations between states and nations. Because of the role of international supervision and the exacting provisions concerning the methods and means by which parties to armed conflict may conduct warfare, the strategic signficance of Indigenous Nations

will become amplified and subsequently *regularized* within international and regional state forums.

But, before such a change can become a reality, Indigenous Nations must initiate steps in accordance with the Geneva Conventions and their Protocols to invoke provisions of the agreements within the responsible forums. In addition, Indigenous Nations must take steps to formally review and ratify the accords, register their agreement with the Swiss National Council and notify the relevant international institutions. While this latter step is clearly not stipulated by the protocols specifically in terms of Indigenous Nations, there is no provision in either protocol limiting the definition of **High Contracting Party** to states. Indigenous Nations can become High Contracting Parties to the Geneva Conventions and the subsequent protocols on their own initiative.

By becoming a party to the Geneva Conventions and the Protocols, and by invoking the provisions of particularly Protocol I, Indigenous Nations can, perhaps decidedly, cause a shift in the balance of power in their current conflicts with states. By causing such a political shift to occur, Indigenous Nations can, for the first time, introduce impartial international parties (i.e. International Red Cross and Protecting Powers) as legitimate supervisors of the conflict, and potential parties to facilitating a peaceful settlement of the conflict.

"...Indigenous National initiatives in the international arena are essential to the changing of violent conditions which surround them."

Without the invocation of impartial parties, and without the benefit of enforceable international rules of conduct, Indigenous Nations are left to the currently "protected" will of state powers. With the imposition of the Geneva Conventions in current armed conflicts, both states and Indigenous Nations will have a structure and a forum through which peaceful alternatives to the conflict can be forumulated — in accordance with standards accepted by state and national peers.

Furthermore, new mechansims can be evolved through internationally sanctioned institutions which can assist in the resolution of seemingly unending and growing conflicts between Indigenous Nations and States which currently have no such forums. Political alternatives to the intractable confrontations may be possible if—and—only—if the actual reasons for armed conflict can be aired.

These potential peace—making alternatives can be substantially enhanced by the prospects that civilian populations will become protectable in accordance with internationally accepted standards. Indigenous Nations have suffered extensive deprivations at the hands of state terrorism under the guise of *police actions* or civil actions to establish law and order. Were the thirteen Indigenous Nations of the Chittagong Hill Tracts Region of Bangladesh to invoke the Geneva Conventions and Protocol I, the State of Bangladesh may have second thoughts about its transmigration program and police actions which have resulted in the destruction of hundreds of indigenous villages and the killing of in excess of 200,000 Indigenous Nationals since 1972. Similarly, Indonesia may reconsider its unfettered attacks on West Papua, the Republic Of Molucca and East Timor which have resulted in an estimated killing of 300,000 Indigenous Nationals since 1969. The State of Nicaragua may reconsider its persistant attacks on the Nations of Miskito, Sumo

and Rama; and Ethiopia, Morocco and the Soviet Union may reconsider their attacks on Indigenous Nations.

So called regional wars, may become manageable according to accepted international law if Indigenous Nations took the initiative to invoke the Rules of War now ratified by many states. Super powers and secondary powers which choose to intervene in nation and state wars to protect what they consider to be their strategic interests may be restrained if they saw that an alternative to their intervention was possible.

As has always been the case, Indigenous National initiatives in the international arena are essential to the changing of violent conditions which surround them. Perhaps, if Indigenous Nations will take the initiative to embrace the Geneva Conventions and Protocols I and II, they can not only shift the balance of power in relations between nations and states, but they can significantly alter the anarchic climate created by self–interested super powers to establish important alternatives to the resolution of conflict within states and regions of the world. It is possible that the smallness of Indigenous Nations is not a disadvantage to affecting international change, but rather the most important advantage that large states do not enjoy. The political and strategic opening which is apparent by the existence of Protocols I and II may be the first real opportunity available to Indigenous Nations since the beginning of the colonial era to once again become full members of the family of nations – joining states on an equal plain.

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Table 1
States Parties to Protocol I
1949 Geneva Conventions

Signatures *	Ratifications Deposited	Accessions Deposited
Australia (120778) [1]		Libya – June 7, 1979
Austria	August 13, 1982 [1,4]	Botswana – May 23, 1979
Belgium		Mauritania – March 14, 1979
Bulgaria (121178)		Gabon – April 8, 1980
Canada [1]		Bahamas–April 10, 1980
Chile		Bangladesh – September 8, 1980
Cyprus (071278)		Mauritius – March 22, 1982
Czechoslovokia (120678)		Tanzania – February 15, 1983
Denmark	June 17, 1982 [1,4]	United Arab Emirates –Mar 9, 1983 [1]
Ecuador	April 10, 1979	People's Rep. China – Sept 14, 1983 [4]
Eygpt		St. Vincent/Grenadines – Apr. 8, 1983
El Salvador	November 23, 1978	Namibia – October 18, 1983
Finland	August 7, 1980	People's Rep. Congo – Nov. 1, 1983
German, Fed. Rep. (122377)		Angola – September 20, 1984 [1]
German Democratic Republic		Cuba – November 24, 1983
Ghana	February 28, 1978	Bolivia – December 8, 1983
Greece (032278)		Syrian, Rep. of – Nov. 14, 1983 [4]
Guatemala		Costa Rica – December 15, 1983
Holy See		Cameroon – March 16, 1984
Honduras		Oman – March 29, 1984
Hungary		Saint Lucia – October 7, 1982
Iceland		Central African Rep. – July 17, 1984
Iran		Western Samoa – August 23, 1984
Ireland		Belize – June 29, 1984
Italy [1]		Guinea, Rep of – July 11, 1984
Ivory Coast		Seychelles – November, 1984
Jordan	May 1, 1979	Rwanda – November 19, 1984
Korea, Rep. of (120778)	January 15, 1982 [1]	Kuwait – January 17, 1985
Laos (041878)	November 18, 1980	Vanuatu – February 28, 1985
Liechtenstein		Mozambique – March 14, 1983
Luxembourg		Mexico – March 10, 1983
Madagascar (101378)		Zaire, Rep. of – June 3, 1982
Mongolia		
Morocco		
Netherlands		
New Zealand (112778)		
Niger (061678)	June 8, 1979	
Norway	December 14, 1981 [1]	
Pakistan		
Panama		
Peru		
Philippines (121277)		
Poland		
Portugal [1]		
Romania (032878)		
San Marino (062278)		
Senegal	May 7, 1985	
Spain (110778) [1]		
Sweden	August 31, 1979 [1,4]	
Switzerland [1]	February 17, 1982 [1,4]	
Togo (121277)	June 21, 1984	
Tunisia	August 9, 1979	
Ukrainian SSR		
Union of Soviet Socialist Rep		
United States of America [1,3]		
United Kingdom [1]		
Upper Volta (011178)		
Yemen (021478)		
Yugoslavia	June 11, 1979 [1]	

* December 12, 1978 unless Otherwise stated.

REMARKS:

[1] With Declarations
[2] With Statements
[3] With Understandings
[4] With Reservations

(Source: The American Society of International Law) (Current to June 24, 1985) [CWIS]

Table 2

States Parties to Protocol II
1949 Geneva Conventions

Signatures *	Ratifications Deposited	Accessions Deposited
Australia (120778) [1]		Libya — June 7, 1979
Austria	August 13, 1982 [1,4]	Botswana — May 23, 1979
Belgium		Mauritania — March 14, 1979
Bulgaria (121178)		Gabon — April 8, 1980
Canada [1]		Bahamas–April 10, 1980
Chile		Bangladesh — September 8, 1980
Czechoslovakia (120678)		Mauritius — March 22, 1982
Denmark	June 17, 1982 [1,4]	Tanzania — February 15, 1983
Ecuador	April 10, 1979	United Arab Emirates — Mar 9, 1983[1]
Eygpt		People's Rep. of China — Sept. 14, 1983
El Salvador	November 23, 1978	Saint Vincent/Grenadines —Apr 8, 1983
Finland	August 7, 1980	Namibia —October 18, 1983
German, Fed. Rep. (122377) [1]		People's Rep. Congo — Nov. 1, 1983
German Democratic Republic		France — February 24, 1984 [2]
Ghana	February 28, 1978	Bolivia — December 8, 1983
Guatemala		Costa Rica — December 15, 1983
Holy See		Cameroon — March 16, 1984
Honduras		Oman — March 29, 1984
Hungary		Saint Lucia — October 7, 1982
Iceland		Central African Rep. — July 17, 1984
Iran		Western Samoa — August 23, 1984
Ireland		Belize — June 29, 1984
Italy [1]		Guinea — July 11, 1984
Ivory Coast		Seychelles — November, 1984
Jordan	May 1, 1979	Rwanda — November 19, 1984
Korea, Rep. of (120778)	January 15, 1982	Kuwait — January 17, 1985
Laos (041878)	November 18, 1980	Vanuatu — February 28, 1985
Liechtenstein		
Luxembourg		
Madagascar (101378)		
Mongolia		
Morocco		
Netherlands		
New Zealand (112778)		
Niger (061678)	June 8, 1979	
Norway	December 14, 1981	
Pakistan		
Panama		
Peru		
Poland		
Portugal [1]		
Romania (032878)		
San Marino (062278)		
Senegal	May 7, 1985	
Spain (110778) [1]		
Sweden	August 31, 1979	
Switzerland [1]	February 17, 1982	
Togo (121277)	June 21, 1984	
Tunisia	August 9, 1979	
Ukrainian SSR		
Union of Soviet Socialist Rep		
United States of America [1,3]		
United Kingdom [1]		
Upper Volta (011178)		
Yemen (021478)		
Yugoslavia	June 11, 1979	

* December 12, 1978 unless Otherwise stated.

REMARKS:

1 With Declarations
2 With Statements
3 With Understandings
4 With Reservations

(Source: The American Society of International Law)

(Current to June 24, 1985) [CWIS]