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To: Members of the Political Committee

From: Acting Chairman

ALLIED INTERPRETATIONS OF ADDITIONAL PROTOCOLS I AND II TO THE
1949 GENEVA CONVENTION ON HUMANITARIAN LAW IN ARMED CONFLICTS

Attached is a compendium of Allied interpretations of Additional Protocols I and II to the 1949 Geneva Convention on Humanitarian Law in Armed Conflicts. It was prepared at the request of the Committee and compiles the positions of the Governments of Belgium, Canada, Italy, Norway, the United Kingdom and the United States, as expressed in papers they have submitted to the Committee. It contains four sections dealing with (i) the nuclear weapons question, (ii) articles within the scope of the Military Committee study, (iii) reprisals, and (iv) articles outside the scope of the Military Committee study.

2. The compendium is intended to assist the experts of the Political-Legal Working Group in their discussions on 28th-30th June.

(Signed) L. HEICHLER

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ALLIED INTERPRETATIONS OF ADDITIONAL PROTOCOLS I AND II TO THE
1949 GENEVA CONVENTION ON HUMANITARIAN LAW IN ARMED CONFLICTS

I. NUCLEAR WEAPONS QUESTION

In the course of the opening plenary session of the Diplomatic Conference, several delegations confirmed that the Additional Protocols to the 1949 Geneva Convention on Humanitarian Law in Armed Conflicts did not cover the nuclear questions which are dealt with in other fora. During the closing plenary sessions of the Conference, France, the UK and US emphasised once more that the rules established by the Protocols did not apply to the use of nuclear weapons. Equally, the interventions made during the debates of the Conference concerning methods and means of combat and the protection of the civilian population did not modify this reiterated principle.

In their document MCM-76-77 dated 31st October, 1977, the Military Committee analysed the military implications of paras 33 through 60 of Additional Protocol I to the 1949 Convention. The Military Committee considered that it was necessary for all Allies to be fully seised of the essentiality of nuclear weapons to Allied defence and security and to underwrite these recorded understandings.

UK Position

The UK signed the Protocols on 12th December, 1977, on the basis of an understanding similar to the statement made by the Head of the British Delegation in the plenary at the final session of the Diplomatic Conference. Therefore, the UK considers that the negotiating history of the Conference gives ample support to the conclusions that the Protocols were never intended to apply to the use of nuclear weapons. In addition, the statements made by the UK and the US on signature remain, so far, uncontroverted. However, the UK Authorities feel that it may be necessary to enter some clarification upon ratification in order to ensure that their understanding of the nuclear question, together with that of all other members of the Alliance, is legally effective. In their view, a reservation seems, prima facie, to be inappropriate because it implies that the effect of the Protocol is such that its

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provisions apply to the use of nuclear weapons. The UK recommends that if it were to be considered that the safeguard of a reservation is nevertheless necessary, the text should be carefully worded so as to avoid this implication.

Belgian Position

The Belgian Delegation shared the opinion that an interpretative declaration would be useful owing to the fact that the text of the Protocols is not explicit in this regard. They believe that although the preparatory work might confirm that no account has been taken during the elaboration of the Protocols of the use of nuclear weapons, it would be judicious to reaffirm these theses in the form of an interpretative declaration. Such a declaration would be in conformity with the preparatory work and would not be in contradiction to the rights of the treaties and establish a general principle according to which any reservations or interpretative declarations are not incompatible with the scope and the aim of the Treaty to which it relates. Finally, the Belgian Delegation wonders whether such a declaration should address nuclear weapons or also embrace chemical and bacteriological weapons.

Canadian Position

The Canadian Authorities hold the view that the statements made by the US and the UK at the time of the signing of Protocol I in respect to its applicability to the use of nuclear weapons may lead to certain difficulties if critically analysed. They are continuing their efforts aimed at developing the text of a possible official declaratory statement for use at the time of ratification. Such a text would, of course, have to be acceptable to all Allies and for that reason they would carry out full consultations should they decide to proceed.

Norwegian Position

The Norwegian Authorities subscribe to the comments in paragraph 8 of the Military Committee report and therefore are of the view that it will be necessary for the Alliance that declarations similar to those made by some NATO member countries at the Diplomatic Conference be tabled again at the time of ratification. Whether Norway will make a declaration on nuclear weapons will be a political decision.

US Position

The US is considering making the following statement at the time of ratification - "It is the understanding of the United States of America that rules established by this Protocol were not intended to have any effect on and did not regulate and prohibit the use of nuclear weapons."

II. INTERPRETATION OF INDIVIDUAL ARTICLES OF THE PROTOCOLS
WITHIN THE SCOPE OF THE MC STUDY

Article 35 (previously Article 33) - Basic Rules

According to the MC assessment, Article 35 would not inhibit Allied military operations and would be acceptable militarily subject to acceptance by member states of the Alliance that the Protocol is not applicable to the use of nuclear weapons and to arrangements being made by these states to make that position legally effective.

UK Position

The arguments outlined by the UK Authorities on the nuclear weapons question, as set out in pages 1 and 2, apply also to Article 35. The UK does not envisage that any action on this Article will be necessary at the time of ratification.

Norwegian Position

The Norwegian Authorities may state: "The prohibition contained in paragraph 3 relates to widespread and long-term effects of warfare."

Article 37 (previously Article 35) - Prohibition of Perfidy

Canadian Position

The Canadian Authorities feel that in order to preclude any misunderstandings which might arise from the comparison of the French and English texts of this Article, an interpretative statement should be made to the effect that it is not the acts included in sub-paragraphs (a) to (d) that are prohibited but rather the killing or injury of an adversary through resorting to these perfidious acts.

Article 41 - Safeguard of an Enemy Hors-de-Combat

The MC study indicates that Article 41 is militarily acceptable, subject to the interpretation of "feasible" given under Article 57 being established, namely, that which is practicable or practically possible, taking into account all the circumstances ruling at the time, including those relevant to the success of military operations.

UK Position

The UK agrees with the MC finding. The interpretation of the word "feasible" had already been placed on the record of the Diplomatic Conference by the UK Delegation in their explanation of vote in the plenary at the Final Session and by several other states, and was not contradicted.

The UK decided that this point was of importance for several articles, e.g., 41, 57 and 58 and entered an interpretative declaration on signature. They envisaged that some form of declaration on ratification may be required so as to give further assurance that the interpretation of "feasible" is legally established.

Italian Position

With respect to Articles 41, 57 and 58 the Italian Authorities would intend to clarify that the adjective "feasible" is to be understood as practicable or practically impossible, taking into account all the circumstances ruling at the time, including those relevant to the success of military operations.

Norwegian Position

In the Norwegian ratification proposition mention might be made that paragraph 3 contains rules concerning POWs under certain circumstances. Possible precautions in such circumstances should be taken to ensure protection of the released prisoners.

Article 43 - Basic Rule

Canadian Position

The Canadian Authorities are concerned that some states may attempt to use this article to restrict the scope of Article 4 of the Third Convention in order to justify the denial of POW status to members of the armed forces who are in their power and who are alleged to be war criminals. The individual's status as a member of the armed forces of a state, in itself, establishes his right to POW status if captured. It would be helpful to clarify the phrase "enforced compliance", e.g. is the existence of a system for this purpose sufficient to indicate adherence.

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Article 44 - Combatants and Prisoners of War

The MC study found Article 44 militarily acceptable subject to the following interpretations being established and made legally effective:

- (a) the situation described in the second sentence of paragraph 3 of the Article can only exist in occupied territory in the NATO context;
- (b) the word "deployment" in paragraph 3(b) of the Article means "any movement towards a place from which an attack is to be launched";
- (c) failure to meet the requirements of the second sentence of paragraph 3 of the Article results in forfeiture of combatant status and the loss of entitlement to be a prisoner of war.

UK Position

The UK Authorities agree with the findings of the MC study. Besides the clarification made in the context of the final session of the Diplomatic Conference, and reiterated in its explanation of vote in the plenary of the final session, the UK entered the following understanding on signature to cover points (a) and (b) above:

"In relation to Article 44 that the situation described in the second sentence of paragraph 3 of the Article can exist only in occupied territory or in armed conflicts covered by paragraph 4 of Article 1, and that the Government of the United Kingdom will interpret the word "deployment" in paragraph 3(b) of the Article as meaning 'any movement towards a place from which an attack is to be launched'".

The UK decided that point (c) above was clear both from the text and the negotiating history of the Conference and that no further action was necessary.

The UK Authorities feel that it may be necessary that point (a) be confirmed on ratification. However, point (b) represents a more difficult situation insofar as a number of states disagreed with the UK statement and similar statements made by other delegations. Accordingly, they believed that there may be a case for the making of a reservation on ratification which would establish the NATO interpretation.

Italian Position

The Italian Authorities would intend to make an interpretative declaration in which it would be made clear that:

- (i) the situation described in the second sentence of paragraph 3 can exist only in occupied territory;
- (ii) the word "deployment" in paragraph 3(b) means any movement towards a place from which an attack is to be launched.

Norwegian Position

The Norwegian Authorities intend to point out that the negotiating history showed that the rule in the second sentence of para 3 referred primarily to situations of resistance against the domination of a territory by alien forces. According to the Norwegian view such situations would arise most typically in occupied territory.

On the question of "deployment" the Norwegian authorities note that many considered it a vague term. Norway would consider that a reasonable understanding of the term would be "any movement towards a place from which an attack is to be launched".

The Norwegian Authorities would also note that the rule contained in the second sentence of paragraph 3 is a minimum requirement also as regards distinction between combatants and civilians and clarifies that members of the armed forces failing to comply with these minimum requirements will ~~forfeit~~ their status as combatants if taken prisoner in flagrante delicto.

US Position

The US Authorities expect to make a statement that the second sentence of para 3 describes situations which are exceptional and can only exist in occupied territory or in armed conflicts described in Article 1, para 4. The US would also note that the term "military deployment" means "any movement towards a place from which an attack is to be launched".

Article 50 - Definition of Civilians and Civilian Population

The MC study indicates that Article 50 is militarily acceptable subject to the following understanding: "Military commanders and others responsible for planning, deciding upon or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time."

UK Position

The UK had already endorsed this finding in their explanation of vote on Article 51 in the Plenary of the Final Session of the Diplomatic Conference. However, they did not consider that a statement of understanding on Article 50 alone would be necessary at the time of signature nor does there seem any pressing legal need for any separate action on ratification.

Norwegian Position

Comments on Articles 51 and 57 have bearing on Article 50.

Article 51 - Protection of Civilian Population

UK Position

The UK Delegation to the Final Session of the Diplomatic Conference had already made a statement in Plenary along the lines of the interpretations given by the MC study. Similar statements were also made by the US, FRG, Netherlands and Italy. No delegation made a statement to the contrary. In view of the important implications for military strategy and tactics of this Article, the UK Authorities believe that some form of action on ratification may also be necessary.

Canadian Position

Canada proposed making an interpretative statement to the effect that built-up areas in the combat zone which are defended or occupied by enemy forces can in themselves be considered as military objectives, except that particular objects within built-up areas retain their "civilian object" characteristic when they can be identified as such.

Italian Position

With regard to paragraph 5(b) of this Article and paragraph 2(a)(iii), the Italian Authorities envisage to clarify that the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack.

They also plan to specify that:

- the definition of indiscriminate acts contained in paragraph 4 of the Article does not mean that there are no means of combat or specific weapons, the use of which would constitute an indiscriminate act in all circumstances;
- the prohibition at paragraph 7 to utilise the presence and the movements of the civilian population for the purpose of protecting military objectives in thickly populated areas is to be intended within the same limits of practicability of the interpretation given to the adjective "feasible" at Articles 41, 57 and 58, which gives to the military commander responsibility of the decisions on the basis of circumstances at the moment.

Norwegian Position

The Norwegian Authorities expect that their ratification proposition would point out that para 4 contains the most important provision of the Article, namely that indiscriminate attacks are prohibited. According to the Norwegian Authorities the rules on indiscriminate attacks seen in conjunction with Article 52 do not exclude the shelling of a limited area (e.g. hill, junction). Nor do these rules have any bearing on the use of mines.

The Norwegian Authorities would point out that para 5 prohibits such extensive bombing of large urban areas as took place during World War II but not attacks against specific military objectives within populated areas. They point out that sub-para (b) of para 5 introduced the principle of proportionality which means that an attack should not be carried out if the harmful effects thereof are excessive in relation to the concrete and direct military advantages anticipated from it. The assessment will have to be based on information available at the relevant time and in cases where an attack consists of several operations it must be possible to base the assessment on the military advantages of the attack considered as a whole.

US Position

The US Authorities intend to state at the time of ratification the understanding of the US Government that the references in Articles 51 and 57 to military advantage are intended to refer to the advantage anticipated from the attack considered as a whole, not from isolated or particular parts of that attack.

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Article 52 - General Protection of Civilian Objects

The MC finds this Article militarily acceptable subject to two interpretations given on pages 47 and 48 (para 7) of their document being established.

UK Position

The UK Delegation at the Diplomatic Conference had already made a statement in Plenary at the Final Session on the same lines of interpretation suggested by the MC. Other NATO members made similar statements and no delegation controverted. With respect to the first interpretation, it decided that it should, on signature of the Protocols, declare its understanding that a specific area of land may be a "military objective" and entered on signature a statement of understanding which repeated its interpretation. The UK also considered a second interpretation to be important, however it was already firmly established and not controverted in the negotiating history.

Italian Position

The Italian Authorities intend to make clear that:

- a specific area of land may be a "military objective" if, because of its location or other reasons specific in Article 52, its total or partial destruction, capture or neutralisation in the circumstances ruling at the time, offers military advantage;
- the first sentence of paragraph 2 of Article 52 prohibits only such attacks as may be directed against non-military objectives. It does not deal with the question of collateral damage caused by attacks directed against military objectives.

Canadian Position

The Canadian Authorities recalled that during the negotiations the Representatives of UK, US, FRG, Netherlands and Canada stated in a Plenary session that:

- (a) a specific area of land could be a military objective;
- (b) Article 52 did not apply to incidental or collateral damage.

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The Canadian Authorities feel that an appropriate interpretative statement should be so worded that it specifies that the object of the attack must be strictly limited but not the results of the attack. (The question of incidental damage is governed by the rule of proportionality.)

Norwegian Position

The Norwegian Authorities point out that in the definition of military objectives in this Article no mention was made of that fact that a limited area itself can constitute a legitimate military target. Such an area could be used by alien forces as an assembly area or forming up place for observation purposes, etc.

US Position

The US believes that it should be made clear that a specific area of land may be a military objective if because of its location for other reasons specified in the Article its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers definite military advantage. The US Authorities would also wish to make it clear that para 2 prohibits only such attacks as may be directed against non-military objectives and does not deal with questions of collateral damage except by attacks directed against military objectives.

Article 53 - Protection of Cultural Objects and Places of Worship

Canadian Position

This Article could be interpreted to mean that an object cannot be attacked which is of recognised importance to culture or spiritual heritage of people even though an enemy may be using the same object to support his military effort. An interpretative statement establishing the right to attack this object in these circumstances is required.

UK Position

The UK Delegation at the Final Session of the Diplomatic Conference stated in its explanation of vote in Plenary on Article 53 -

firstly that "the expression 'spiritual heritage' which qualifies the reference of places of worship makes it obvious that the protection given by this Article extends only to those place of worship which do constitute such spiritual heritage", and that the Article is not intended to apply to all places of worship without exception; and

secondly that if the objects protected by the Article were unlawfully used for military purposes they would thereby lose effective protection as a result of the attacks directed against such unlawful military purposes.

Other NATO members made similar points and were not contradicted.

The MC study considered the acceptability of this Article depended on the establishment of the interpretation of the second point. In view of the military importance of this point, the UK decided that its statement in Plenary at the Final Session should be confirmed on signature by a statement of understanding. The military importance of this Article suggests that further action on ratification will be necessary.

Italian Position

The Italian Authorities intend to clarify that if the objectives protected in the Article are unlawfully used for military purposes, they will thereby lose protection.

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Norwegian Position

The Norwegian Authorities will explain that this provision must be seen in conjunction with the corresponding provision contained in regulations concerning laws and customs of land warfare, Article 27, according to which protection for the relevant buildings and places is conditioned on their not at the same time being used for military purposes. The assumption is that Article 53 is in accordance with and does not alter the said existing rules.

US Position

The US plans to make a statement to the effect that Article 53 establishes a special protection for a limited class of objects which because of their recognised importance constitute a part of the cultural and spiritual heritage of peoples and that such objectives will lose the special protection of that article if they are used in support of the military effort.

Article 57 - Precautions in Attack

The Military Committee Study examined this article in detail and found that it was acceptable subject to three interpretations being established. The first is that the word "feasible" in paragraph 2 of this article (and throughout Part IV of the Protocol) means "that which is practicable or practically possible taking into account all the circumstances ruling at the time, including those relevant to the success of military operations". The other two interpretations repeat the point already made in Article 51 concerning the meaning of "military advantage" and concerning the information available to commanders at the time.

Canadian Position

The Canadian Authorities believe that there are no major difficulties from a legal point of view with this Article although the interpretation of the word "feasible" and the scope of obligation of the term "military advantage anticipated" from an attack in regard to the duties of commanders should be clarified. Canada and some other NATO states took the position during the negotiations that "feasible" means "that which is practicable or practically possible taking into account all the circumstances existing at the relevant time including those circumstances relevant to the success of military operations".

The Canadian Authorities believe that the position taken during the negotiations should be supported by an interpretative statement.

UK Position

The UK position in respect to the first interpretation is covered under Article 31 above. As to the two other interpretations, see Article 51.

Norwegian Position

The Norwegian Government would point out that the precautions are to be taken to the extent this is compatible with the carrying out of the military operations. The obligation is to take such precautions as are possible under the circumstances obtaining at the time. Commanders should assure themselves that the object of an attack is in fact a military objective and the

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attack should be planned to avoid or minimise harmful effects to the civilian population. An attack should be avoided if it implies a violation of the principle of proportionality (cf Article 51). The Norwegian comments state that as in reference to Article 51, the assessment must be based on information available to commanders at the time. If it becomes apparent after the launching of an attack that the objective is not a military one or that the harmful effects on the civilian population exceed what is permitted, the attack should be stopped.

US Position

See statement on Article 51.

Article 58 - Precautions Against the Effects of Attack

Norwegian Position

The Norwegian draft ratification proposition would point out that Article 58 supplements Article 57 by making it incumbent on all parties to a conflict to take measures to prevent harmful effects should they be subject to attack. This means that all endeavours should be made to remove the civilian population from the immediate vicinity of military objectives, that military objectives should not be located in densely populated areas and that other protective measures should be taken.

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III. REPRISALS

The MC study did not consider the issue of reprisals, holding that this was a matter for national rather than Alliance decisions.

This was a difficult issue faced by the Diplomatic Conference in Geneva. Due in part to a misunderstanding of the concept of reprisals and due also in part to the belief held by the Third World countries that only powerful states were in a position to initiate reprisal action, every conceivable form of reprisal involving civilians was included in the Protocols including reprisals against civilian objects and the civilian population as a whole, although reprisals against military objectives are not prohibited.

Canadian Position

To the extent that reprisal action is one of the few sanctions available to governments to respond to continued disregard of the laws of war by an opponent, e.g. indiscriminate bombing of cities, it is, in the Canadian view, regrettable that the Conference adopted such far-reaching measures without, at the same time, providing an alternative means of ensuring compliance with the laws of war. As yet, no Canadian governmental position has been determined. At the working level, there is some support for the need to make an appropriate reservation and Canada would be interested in the views of other Allied Delegations as to possible difficulties which could arise from a military, operational or policy point of view and whether these difficulties are such as to warrant statements of interpretation or reservations.

UK Position

The UK has not yet reached firm conclusions on the reprisals question. They would be most interested to hear the views of other members of the Alliance, as well as other

countries outside the Alliance and shall take these into consideration when action may be required on ratification so as to safeguard NATO interests.

Belgian Position

Subject to possible change in their position as a result of Allied consultation, the Belgian Authorities do not envisage at present making any reservation with respect to the reprisals issue.

Norwegian Position

The Norwegian Authorities do not contemplate making reservations or declarations concerning reprisals.

IV. INTERPRETATION OF INDIVIDUAL ARTICLES OF THE PROTOCOLS
OUTSIDE THE SCOPE OF THE MC STUDY

Article 1

The term "armed conflicts" is nowhere defined in the definitions of the 1949 Conventions although its juxtaposition with the words "declared war" in common with Article 2 was clearly significant in its interpretation. Nor is this expression defined in Protocol I.

UK Position

The UK Authorities consider that the term in the context of Article 1 of the Protocol implies a certain level of intensity of fighting which must be present before the Conventions or the Protocol are to apply in any given situation. It is the UK's view that "armed conflicts" to which the First Protocol will apply cannot be less in intensity than those to which the Second Protocol will apply. Accordingly, the UK interpret the term "armed conflicts" as used in the First Protocol in that sense. A statement of understanding to this effect which the UK regards as fully consistent with the interpretation to be given to the term as used in the Convention was entered by the UK Delegation on signature. Moreover, the UK Authorities envisage that some action on ratification may also be required.

Canadian Position

The Canadian Authorities consider that the interpretative statement made by the UK on signing Protocol I to the effect that the term "armed conflicts" as used in this Article would mean a level of intensity of military operation not less than that required for the application of Protocol II is legally incorrect, in that this error would affect not only the scope of application of Protocol I but also the Geneva Conventions. "Armed conflicts" is considered to mean any use of force by the military forces of one state in pursuance of official government policy against another state and does not depend on its meaning upon any considerations of the intensity of the conflict, number of personnel involved or nations and degree of the force applied.

Belgian Position

Protocol I has recognised the qualification of international armed conflicts to national liberation wars as defined in Article 1, paragraph 4. In the view of the Belgian Authorities, this Article concerns exclusively the actual conflicts related to liberation movements recognised by the interested regional inter-governmental organisations and which represent the consequences of the decolonisation process or are in relation to foreign occupation.

Such an interpretation has been reflected in the Belgian explanation of vote in the context of adoption of Article 1 in Plenary Session. The Belgian Authorities wonder whether it would not be useful to formulate a declaration which would clarify that armed conflicts mentioned in Article 1, paragraph 4 are those in which are involved recognised national liberation movements.

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Article 8 - Definitions

Canadian Position

In the view of the Canadian Authorities, there are three definitions in Article 8 which should be clarified with appropriate interpretative statements, namely:

(a) "wounded and sick"

This definition can be interpreted to mean that once a person who is sick or wounded commits an act of hostility, he will lose his sick or wounded status for ever. The Canadians believe that an interpretative statement appears necessary to make it clearly understood that a sick and wounded person does not lose this status only because at one point in time he may have attempted to commit, or did commit, a hostile act;

(b) "medical units"

National intentions as to the appropriate identification signs that will be worn by national civil defence personnel performing medical duties should be announced in an appropriate statement;

(c) "medical transport"

The definition provided for medical transport and, more specifically, temporary medical transport, may not clearly establish the right to use vehicles for exclusive medical transportation during a portion of a single journey. This should be clarified with an interpretative statement.

US Position

The US Government is planning to make a statement that the understanding of the US is that the terms used in Part III of Protocol II which are the same as the terms defined in Article 8 of Protocol I shall so far as relevant be construed in the same sense as those definitions.

Article 12 - Protection of Medical Units

Canadian Position

The intent of paragraph 2 of this article as to the consequences for a medical unit which does not comply with its provisions is not clear. The Canadian Authorities believe that the examination of this article by the NATO Political/Legal Working Group would be useful in determining an appropriate solution.

Article 18 - Identification of Medical Units

Canadian Position

The Canadian Authorities would wish to record by way of an interpretative statement their intention to provide protected status to combatants who might be temporarily employed on medical duties such as casualty collection and transportation by providing them with an appropriate identification card and armband.

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Articles 13 and 65 - Discontinuation of Protection of Civilian
Medical Units

Canadian Position

The purpose of these Articles is to provide civilians employed in civilian medical units with the right to possess light individual weapons for their defence and the defence of their patients. The term "light individual weapons" is not defined in Article 13. But in a related Article (Article 65, paragraph 3) civil defence units who are also given the right to possess light individual weapons for self-defence are restricted to hand guns when they are operating in areas where land fighting is, or is likely to be taking place. During the negotiations the UK Delegation provided an explanation of "light individual weapons" to the effect that they did not include "fragmentation grenades or similar devices as well as weapons which cannot be fully handled or fired by a single individual and those basically intended for non-human targets". According to the Canadian Authorities an interpretative statement along these lines would be desirable.

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Article 36 - New Weapons

Norwegian Position

The Norwegian Authorities are very much interested in receiving information on procedures already established or being planned in other NATO member states.

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Article 62

Canadian Position

The Canadian Authorities point out that it is not understood what was intended in this Article by introducing the phrase "imperative military necessity" because the definition of "military necessity" has always included an imperative element. They believe a consideration of this concept by the NATO Working Group may help to clarify the meaning of the phrase. Since the second sentence of paragraph one could be construed to be a limit on the right of a state over its nationals employed in civil defence organisations, Canada declared in a plenary session that this sentence did not inhibit a government from employing its own nationals as deemed appropriate. The possibility of the need for a reservation paragraph one should be considered by the Political/Legal Working Group.

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Article 75 - Fundamental Guarantees

Norwegian Position

For technical/legal reasons Norway had to make a statement of interpretation concerning details in this Article at the Diplomatic Conference. The Ministry of Justice is considering whether to make a similar declaration at the time of ratification.

Article 85

Canadian Position

In the view of the Canadian Authorities this Article, which deals with the repression of breaches of the Protocol, has an important provision which is causing them concern. This provision in effect makes certain acts or disregard of the Protocol "grave breaches" or, to put it in another way, "war crimes". One of the difficulties with respect to this provision will be in its translation of the offences as described in the Protocol, into sensible legal language in the Statutes of Canada. This is so because an attempt is being made to convert a political concept into an offence, e.g. the Protocol states that "practices of apartheid or other inhuman and degrading practices involving outrages upon personal dignity based on racial discrimination" constituted a grave breach. Canada will be interested in learning how the Allies intend to make this provision legally effective in the national law.

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Article 90 - International Fact-Finding Commission

Norwegian Position

The Ministry of Justice would not have any objections to a Norwegian declaration in accordance with para 2(a) of this Article, leaving open, however, the timing of such a declaration. Information on other NATO member countries' positions would be most welcome.

Article 96(3)

UK Position

In the UK Authorities' view, paragraph 3 of Article 96 seems to provide logical and acceptable machinery whereby once paragraph 4 of Article 1 is included in the Protocol, its provision can be accommodated: that is, a machinery enabling authorities representing people engaged in armed conflicts of the type referred to in the latter paragraph to undertake to apply the conventions and the Protocol in relation to those conflicts by means of unilateral declarations. It was the UK understanding that only declarations made by an authority which genuinely fulfils the criterion of Article 1 paragraph 4 can have the effects stated in paragraph 3 of Article 84. The UK entered a statement of understanding on these lines at the time of signature.

Some form of action at the time of ratification may also be required.

Article 102

Canadian Position

The Canadian Authorities believe that comparative studies of the texts in its six official languages will be necessary before ratification. This is a long term process and they suggest that consideration be given to the pooling of resources or other forms of co-operative efforts within the Alliance for this purpose.

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RHODESIA

UK Position

The understanding on Rhodesia which accompanied the UK's signature of both Protocols is on the lines of that previously used in respect of other treaties. Action on ratification will clearly depend to a large extent on developments concerning Rhodesia, and is purely a domestic matter for the UK.