INTERNATIONAL HUMANITARIAN LAW . . . WITH RESERVATIONS? *

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In view of the growing body of scholarly writing on International Humanitarian Law, much of it from the pens of participants in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts which was held in Switzerland from 1974 to 1977, it has been decided to restrict the present paper to a consideration of a matter of some concern to the International Committee of the Red Cross, namely why so few States to date have ratified the two additional Protocols to the Geneva Conventions of 1949. In particular, the paper will focus on the possibility of ratification with reservations, a course of action which would allow at least the main thrust of the two Protocols of 1977 to enter International Law.

It can be said with some confidence that the four Geneva Conventions of 1949 have now acquired almost universal acceptance. On recent figures there are now some 167 independent countries in the world, and of these no fewer than 152 have signified acceptance of the 1949 Conventions. The remainder are arguably bound by their provisions also, since such wide acceptance can probably be said to have caused the Conventions to pass into customary International Law. By contrast, only 27 and 24 countries have ratified Protocols I and II respectively. Yet there has never been a more urgent need for a revision of International Humanitarian Law to gain wide acceptance than there is today. It is not disputed by the author, however, that some parts of the 1977 Protocols are contentious or ambiguous. It is the aim of this paper, therefore, to examine some of these provisions and to suggest which of them, if any, could be made subject to reservations under the Vienna Convention on the Law of Treaties 1969, thereby enabling more States to accept and ratify the greater part of the two Protocols in line with the pressing need felt and expressed by the ICRC.

I BACKGROUND

Since the end of the Second World War and the inception of the United Nations in 1945 much of the World's experience of warfare has been in wars of national liberation. With the possible exception of Common Article 3 of the Geneva Conventions 1949, the old Law of War had no application in this area. Indeed, an attempt was made by the *Front de libération nationale* in the Algerian War of Independence to argue Article 3. They also claimed that "they were fighting a just war to recover the independent national status of which French imperial aggression had unjustly deprived them. Their government existed, was a lawful belligerent, and ought to be received and heard as such. Theirs was an international war, and they were willing

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to observe the international law of war accordingly, provided the French would do the same".[1] This double-barrelled approach, claiming on the one hand, the protection of common Article 3, which governs conflicts of a non-international character, and on the other hand, full international status for the conflict, was juridically innovative and was adopted by a number of countries from the early sixties onwards. This new stance obviously involved political considerations beyond strictly legal questions.[2] Added to this politicisation of the law of war was a mounting concern about the character of modern warfare, buttressed largely by reports of events in Vietnam. A major element of this was the growing devastation of civilians in war. Where civilians accounted for only five percent of the casualties in World War One, in Vietnam the figure was over sixty percent, and it has been placed as high as ninety percent in some internal armed conflicts since 1945.

Concern was such that in 1965 the Twentieth International Red Cross Conference passed a resolution declaring that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited; it is prohibited to launch attacks against the civilian population as such; distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible; the general principles of war apply to nuclear and similar weapons. The resolution also urged the ICRC to seek "a rapid and practical solution of this problem".[3]

The ICRC had found that, in the new type of warfare of the sixties, it was usually impossible to obtain an admission that the conflict was an international one. Yet this was the necessary precondition for full application of the 1949 Conventions and automatic intervention by the ICRC. The most it could usually achieve was an expression by the parties of readiness to observe common Article 3.

It also appeared to many in the United Nations that the 1949 Conventions were no longer adequate to bring some measure of restraint to bear upon contemporary armed conflicts. As Best put it, "by the close of the sixties, the two main drives towards updating the law were converging: the older slower, would-be a-political ICRC drive, which quite independently of the UN had been gathering momentum from 1965, and this new, impatient, rather political drive from the United Nations".[4]

The ICRC's response to this was to enlarge the scope of the deliberations it had already undertaken. It now recognised the need for a revision not only of the Geneva law as it stood, but also of parts of the earlier Hague Law, in order to include the humanitarian concerns of the emerging doctrine of international human rights. The eventual outcome of these deliberations was the Diplomatic Conference which produced, in 1977, the two Protocols additional to the Geneva Conventions of 1949. Protocol I relates to the Protection of Victims of International Armed Conflicts. Protocol II relates to the Protection of Victims of Non-International Armed Conflicts. Except where the Protocols expressly amend or replace anything in the earlier Conventions, the latter remain in force.

[1] Geoffrey Best, *Humanity in Warfare*, 1980, pp. 311-312.

[2] See Best, *op.cit.* pp. 312-315.

[3] See Schindler and Toman, *The Law of Armed Conflicts*, 1973, pp. 187-8.

[4] Best, *op.cit.* pp. 318-319.

II The Protocols of 1977

It is not intended here to embark on a detailed examination of the two Protocols of 1977 but it may be useful to comment on certain of their features thereby elucidating their main innovations and indicating possible problem areas for States contemplating ratification.

The 1949 Conventions, in common Article 2, suggest an easy identification of the conflicts to which they apply. Protocol I extends this by expressly including in Article 1(4)

> . . . armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination . . .

It should be noted that this reference to "racist regimes" is given more concrete expression in Article 85 (4) (c), which provides that

> practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination

shall be regarded as grave breaches of the Protocol when committed wilfully and in violation of the Conventions or the Protocol. This has the effect of making such breaches war crimes, but it has been pointed out[5] that it would be extremely difficult to decide what exactly constitutes "practices of apartheid" and "inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination". It may safely be assumed that these provisions reflect the Third World Campaign against apartheid which occupied so much of the General Assembly's time during the early seventies. Accordingly hardened political positions are likely to be triggered by the wording adopted.

Best has remarked that "a strong doctrine of sovereignty stalks through these Protocols like a riot squad".[6] Earlier law in this area, as in so much of International Law, rested on the presumption of inviolable State sovereignty, and this insistence on sovereign rights reared its head again in the Protocols. Protocol II, Article 3 reads as follows:

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.

Forsythe comments that "this article reinforces the abstract notion of national sovereignty more than it answers specific questions arising from internal conflict. The wording may conflict with the traditional idea of the legitimacy of humanitarian intervention in an internal war, because of the presence of the words 'for any reason whatever'. But the overriding problem is one of differentiating intervention from other forms of involvement".[7] He adds: "While Article 3 does not resolve certain persistent legal difficulties, at least it does not add important new ones".[8] But this

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[5] See Green, (1977) 15 Can YBIL 3, at 19-20.

[6] Best, *op.cit.* p. 322.

[7] Forsythe, (1978) 72 AJIL 272, at 288.

[8] *Ibid.*, at 289.

assertion may be questioned. It is at least possible that a ratifying State might enter an automatic reservation of the kind associated with Article 36 of the Statute of the International Court of Justice which would leave it to the State itself to decide unilaterally when one or a number of the elements of Article 3 were satisfied. Another manifestation of sovereignty which is not unrelated to this question is to be found in the weakness of the provision for inspection and enforcement in Protocol I. The earlier device of the Protecting Power has, in the main, been perpetuated. This was criticised even before the advent of the 1977 Protocols:

> This system rests on a tripartite basis. One of the belligerents must ask another State for its services as a Protecting Power; this State must consent to act; and the opposing belligerent must agree to allow it to carry out its functions as a Protecting Power. Not surprisingly, there is only a remote chance of the system working at all. This is an area where assertion of the Sovereignty of States can, and often does, exclude the Protecting Power system.[9]

The language of the 1977 Protocols is a little more imperative than that of the 1949 provisions,[10] but the consent of the parties is still dominant in the final analysis.

A major aspect of the 1977 Protocols is the extended protection they afford to civilians, a concern reflecting the greater perils of modern warfare as regards the citizenry at large. The definitions relating to civilians are wide in scope. Protocol I, Article 50 (1) states:

> In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

Article 50 (3) reinforces this:

> The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Neither the civilian population nor individual civilians are to be attacked,[11] nor are acts designed to spread terror among the civilian population permitted.[12] Indiscriminate attacks are defined[13] and prohibited.[14] Attacks must be limited to military objectives,[15] but the use of civilians to shield legitimate military targets is not permitted and, in particular, parties to a conflict may not move civilians into an area for this purpose.[16] In addition, attacks on objects indispensable to the survival of the civilian population are prohibited,[17] except where "the vital requirements of any Party to the conflict in the defence of its national territory against invasion" make a scorched-earth policy absolutely necessary.[18] These provisions are bolstered

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[9] Draper, "Implementation of International Law in Armed Conflicts" *International Affairs* Vol. 48, 1972, 46 at 46-47.

[10] See, e.g. Article 90, Protocol I.

[11] Article 51(2).

[12] *Ibid.* In this connection, see Blix (1978) 49 BYBIL 31, at 40 ff.

[13] Article 51(4) and (5).

[14] Article 51(6).

[15] Article 52(2).

[16] Article 51(7).

[17] Article 54(2).

[18] Article 54(5).

by a definition of military objectives which is quite comprehensive,[19] and elaborate precautionary measures aimed at sparing civilians and civilian objects are set out.[20] Further, fundamental principles of humane treatment are laid down in Protocol I.[21]

Best comments on the overall effect of these provisions that

> . . . this amplitude of civilian protection can be read as no more than proportionate to the need and demand that historically has developed. It comes as a cloud-burst after a long drought. It is catching up on seventy years of inaction and inadequacy. Our surprise at it — if we are surprised — should be understood not as a comment on its military unrealism but as a measure of the extent to which we have become accustomed to excesses and horrors.[22]

The humane approach of the Protocols seems, on the face of it, both desirable and reasonable, but it is not without potential difficulties. Many modern wars involve national liberation movements, and it is a characteristic of their fighters that they seek to blend in with the population among whom they operate. Some countries have shown a desire to make interpretative comments on Articles distinguishing combatants and civilians.[23] It is quite possible that such interpretative comments might translate into formal reservations in the event of ratification.

In addition, it is quite possible that Article 51, which protects the civilian population from indiscriminate attacks, could be interpreted as a complete ban on aerial attack other than on troops in the battlefield.[24] Such an interpretation would make the Article a clear candidate for some form of reservation.

Yet another contentious area concerns the methods and means of warfare. Article 35 of Protocol I lays down the basic rules:

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

This Article, paragraphs 1 and 2 of which go back to the nineteenth century and reflect customary law, would seem clearly to outlaw at least strategic nuclear weapons and some aspects of biological and chemical warfare. However the nuclear powers made it clear that their participation in the Geneva Conference was contingent on the understanding that the new rules adopted in the Protocols were not intended to have any effect on, or to regulate or prohibit the use of nuclear weapons. While this may be a politically realistic stance, it seems to strike at the very heart of a number of Articles in Protocol I. It would almost certainly be the subject of reservations by some of the nuclear powers.

In New Zealand certain Articles in the Protocols have been singled out

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[19] Article 52(2).

[20] Articles 57 and 58.

[21] See esp. Article 75.

[22] Best, *op.cit.* 325.

[23] See, e.g.. Articles 43 and 44, Protocol I.

[24] See Green, (1977) 15 Can YBIL 3, at 29 and Blix (1978) 49 BYBIL 31.

for comment by the Ministry of Defence.[25] The Ministry emphasises that it has no argument with "ninety-nine percent" of the contents of the Protocols. Further, in response to a question in the House of Representatives,[26] the Minister of Foreign Affairs indicated that the New Zealand Government regards the two Protocols as "a valuable advance in humanitarian law applicable in armed conflicts". There appears, therefore, to be a willingness on the part of the New Zealand authorities to consider the Protocols favourably, subject to consultations with major allies. The Director of Defence Legal Services has, however, indicated certain Articles which are regarded as creating difficulties.[27] Article 1(4) of Protocol I, as adverted to previously in this paper, contains references to "colonial domination" and "racist regimes". The Ministry of Defence expresses a fear that these terms might be applied to action taken in New Zealand against possible incidents involving firearms in demonstrations by minority groups in New Zealand. This fear, however, seems groundless, since Protocol I applies only to international armed conflicts. Protocol II contains no equivalent to Article 1(4), and Article 1(2) of the second Protocol would almost certainly exclude the kind of incident referred to.

The problem raised by guerrilla fighters has been mentioned above. It seems a reasonable objection by the military that the provisions of Article 44(3) are too uncertain to offer any security to regular uniformed, and hence readily identifiable, combatants. This is therefore an Article to which a meaningful reservation might validly be entered.

Article 47, which was introduced as a Nigerian initiative after the Angolan War, declares that "a mercenary shall not have the right to be a combatant or a prisoner of war". This places mercenaries in the position of illegal belligerents who may be tried for unlawfully taking up arms. An inconsistency appears to have been perceived between this and Article 75, which provides that those "who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances . . .". This inconsistency is probably more illusory than real, since Article 75 only purports to lay down minimum standards of treatment for persons not entitled to more privileged treatment under other Articles. This should probably not be seen as softening the disapproval of the activities of mercenaries, but simply as a guarantee of basic rights. In any event, on a strictly political level, it is possible to avoid

[25] See press statement by Captain Eric Deane, *The Evening Post,* Friday, 29 April 1983, section 1, p.7.

[26] The Minister's full answer was:
Mr Braybrooke (Napier) to the Minister of Foreign Affairs: Is it the Government's intention to ratify the 1977 Geneva Convention Agreement?
Hon. W.E. Cooper (Minister of Foreign Affairs) replied: New Zealand has been a party to all 4 of the 1949 Geneva Conventions since 1959. New Zealand has signed, but not ratified, the two 1977 protocols additional to those conventions. The Government considers that, viewed as a whole, the two protocols mark a valuable advance in humanitarian law applicable in armed conflicts. However, as agreements with far reaching implications for the conduct and operations of our armed forces, they require careful scrutiny. We need to ensure that on this issue our forces' approach is in close harmony with that of our allies, and to this end we have embarked on a programme of exercises and consultations with them. The Government is conscious of the need to complete this programme as quickly as possible so that a decision about ratification of the 1977 protocols can be taken.
House of Representatives, 26 April, 1983.

[27] *The Evening Post, loc. cit.,* supra.

being described as a mercenary by being a member of the armed forces of one of the parties.

Articles 50 to 58 lay down quite detailed protections for civilians and civilian objects. It is objected that some of these are not practicable in modern warfare. This will be discussed further when reservations are considered.

Article 85, as previously mentioned, includes "practices of *apartheid*" among grave breaches. The Ministry of Defence has suggested that "as well as lacking in definition, this provision seem[s] to apply only to soldiers and not politicians".[28] This objection, however, may be met by Article 85(5), which declares that

> Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

This, in combination with the precedents set at Nuremberg, seems to be wide enough to include politicians.

A valid objection levelled by the Ministry of Defence is that Article 86(2) established a principle of vicarious liability which is wider than that of New Zealand municipal law. Developed under U.S. influence as a result of experiences in Vietnam, it provides that a superior can be held liable for the actions of a subordinate on the basis of constructive knowledge of a breach. While this does not seem to exceed the jurisdiction exercised at Nuremberg, it is certainly broader than New Zealand criminal law. The Ministry of Defence comments that "in war, Commanders [are] flooded with signals and there is no way they [can] address all of them".[29] It may, therefore, be a matter of military necessity that a reservation be entered to this Article.

Article 88 provides for mutual assistance in criminal matters. In particular, paragraph 2 says that

> Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

This has been interpreted as meaning that New Zealand could be required "to hand over its military commanders to the enemy in a situation which could result in the administration of the death penalty".[30] However the use of the words "when circumstances permit" and "give due consideration" in paragraph 2 appear to limit the scope of the Article considerably. As well, paragraph 3 provides:

> The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

This would have the effect of ensuring the operation of the New Zealand Extradition Act 1965, which states in s.5(7):

> In every extradition treaty made between New Zealand and a foreign country after the commencement of this Act provision shall be made either to the effect that no New Zealand

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[28] *Ibid.*

[29] *Ibid.*

[30] *Ibid.*

citizen shall be surrendered or to the effect that the Minister may in his discretion refuse to surrender an offender who is a New Zealand citizen.

This deals effectively with the perceived problem in all cases except those where the commander in question is not a New Zealand citizen. This situation could be simply dealt with either by amending the Extradition Act, or by entering a reservation to Article 88 to that effect.

III Reservations

The previous section of this paper has examined, not exhaustively, some problem areas in the Protocols and has suggested that reservations could be entered in appropriate cases. It therefore remains to consider briefly the law relating to reservations to international conventions.

For all relevant purposes, the law to be applied to treaties not yet ratified is found in the Vienna Convention on the Law of Treaties 1969. Green has written that "[i]t was generally accepted at the Conference that the traditional law concerning reservations to treaties would apply, namely, that a ratifying party could add such reservations as it pleased, subject, perhaps, to the interpretation adopted by the World Court in its opinion on *Reservations to the Genocide Convention*, as modified by Article 19(c) of the Vienna Convention on Treaties, that is to say as long as the reservation is not incompatible with the purpose of the treaty".[31]

The main test, therefore, to be applied to any reservations to the Protocols is whether those reservations go to the substance of the Protocols to the extent that they would be "incompatible with the object and purpose of the treaty".[32] The objects of the Protocols are the promotion of humanitarian law and the protection of those falling into the hands of an enemy, with particular protection for civilians. Thus any reservations incompatible with these objects would be illegal.

With regard to the problem areas noted above, the most obvious difficulty arises in relation to Article 1 of Protocol I. As has been stated, the references in paragraph 4 of that Article are likely to lead to hardened political positions. The Article, dealing as it does with general principles and the scope of the Protocol, is arguably fundamental. However the difficulty of deciding when a conflict falls within the ambit of paragraph 4 could be seen as weakening the whole Article. No State which has signed the Protocol or ratified it has attempted to enter a reservation to Article 1(4), although the term "armed conflict" in this paragraph was the subject of comment by the United Kingdom in its Declaration on signing the Protocol.[33] Likewise, no State to date has commented in its Declaration or entered a reservation concerning Article 85(4)(c). The Republic of Korea, however, has declared in its instrument of ratification that it will interpret the word "situation" in the second sentence of paragraph 3 of Article 44 of Protocol I in the light of Article 1(4), an approach which implies acceptance of the spirit of this paragraph. Korea adopts a similar approach in relation to Article 96(3), when it states:

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[31] Green, *loc. cit.*, supra at 25. For a useful summary of the Vienna Convention regime on reservations, see I.M. Sinclair, *The Vienna Convention on the Law of Treaties* (1973) pp. 40-43.

[32] Vienna Convention, Article 19(c).

[33] The texts of all the following reservations and declarations were made available to the author by the New Zealand Ministry of Foreign Affairs.

> . . . only a declaration made by an authority which genuinely fulfills the criteria of paragraph 4 of Article 1 can have the effects stated in paragraph 3 of Article 96, and it is also necessary that the authority concerned be recognised as such by the appropriate regional intergovernmental organization.

The United Kingdom makes a similar comment in its Declaration. None of this, however, appears significantly to reduce the potential for conflict over the exact scope of Article 1(4). Indeed, the United Kingdom may tacitly have recognised this when it made an express exception of Southern Rhodesia in its Declaration.

It has already been noted that Article 35 could potentially render the use of strategic nuclear weapons illegal. To the time of writing no formal reservations have been entered in this regard, but the United States has declared:

> It is the understanding of the United States of America that the rules established by this Protocol were not intended to have any effect on and do not regulate or prohibit the use of nuclear weapons.

The United Kingdom made a Declaration in almost identical words.

With regard to Articles 41, 57 and 58 the United Kingdom has also made an interpretative comment concerning the word "feasible":

> . . . that which is practicable or practically possible, taking into account all circumstances at the time including those relevant to the success of military operations.

Switzerland has made an express reservation concerning the same word in Article 58, stating that sub-paragraphs (a) and (b) will be applied subject to requirements for the defence of its national territory. Austria has made the same reservation.

The Republic of Korea has entered a reservation, and the United States and United Kingdom have declared that the word "deployment" in Article 44(3)(b) will be interpreted as meaning "any movement towards a place from which an attack is to be launched".

The United Kingdom has made a general declaration that, for the purposes of Articles 51 to 58 inclusive

> . . . 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.

In addition, it has modified the effects of Articles 51, 52, 53 and 57 in relation to military advantage involved in attacks affecting the civilian population and civilian objects. It is likely that these comments will become a model for States intending to enter reservations concerning the military realism of this section of the Protocol. New Zealand has already indicated that this is a problem area.

Switzerland and Austria have also entered reservations concerning Article 57 similar to the United Kingdom's Declaration. However, Switzerland has gone further by limiting the effect of the Article to battalion or group commanders and higher ranks.

Denmark, Austria and Finland have notified reservations to Article 75, an Article which may probably be regarded as fundamental to Protocol 1. The Danish and Austrian reservations, however, serve merely to clarify the relationship of Article 75 to the Municipal laws of both countries. This clarification is arguably authorised by Article 88(3), and in any event seems unobjectionable. Finland's reservation is similar in purpose. However, Finland also declared

> . . . that under Article 72, the field of application of Article 75 shall be interpreted to include also the nationals of the Contracting Party applying the provisions of that Article, as well as the nationals of neutral or other States not Parties to the conflict . . .

and has added that Finnish limitation periods shall be observed before a judgment is regarded as final. This is also unlikely to be regarded as objectionable, but in any event is not a formal reservation, so would not be caught by Article 19(c) of the Vienna Convention.

Korea has sought to modify the effect of Article 85(4)(b) by declaring that

> . . . a party detaining prisoners of war may not repatriate its prisoners agreeably to their openly and freely expressed will, which shall not be regarded as unjustifiable delay in the repatriation of prisoners of war constituting a grave breach of this Protocol.

This Declaration is also probably not subject to the Vienna Convention.

Austria has entered a reservation regarding Articles 85 and 86 to the effect that, in judging any decision taken by a military commander, the Articles will be applied in so far as military necessity, the reasonable possibility of taking them into account and information available at the moment of decision permit. This reservation seems to reflect an approach of military realism. The problems it seeks to meet were adverted to, at least in part, by the New Zealand Ministry of Defence, and it is likely that similar reservations will be entered by countries yet to ratify the Protocol.

Finland has declared that

> . . . the provisions of Article 85 shall be interpreted to apply to nationals of neutral or other States not Parties to the conflict as they apply to those mentioned in paragraph 2 of that Article.

This declaration is similar to that made by Finland regarding Article 75, and the same comments apply.

Norway, Switzerland, Denmark, Austria and Finland have all signified their acceptance of the International Fact-Finding Commission established by Article 90, such recognition being on a reciprocal basis.

Korea has sought to extend the compensation provisions of Article 91 to liability by Parties to the conflict in regard to damaged Parties which are not legal parties to the conflict. This declaration seems to amount to no more than an interpretative comment and is not framed as a formal reservation.

IV Conclusion

The foregoing comments have dealt with reservations and declarations which have been made to date. There appears at present to be nothing in any of these which would be excluded by Article 19 of the Vienna Convention on the Law of Treaties. Several other countries have declared that they are reserving their decisions on reservations.

So far no objection to any of the reservations mentioned above has come to the notice of the writer. As further reservations are entered, some objections or comments may occur, and it would be idle to speculate further on what these might be. For the moment, it is probably sufficient to say that State practice to date shows that it is possible to ratify the Protocols subject to reservations, and the comment may be added that the desirability of wide-spread ratification, even at the cost of a slight weakening of some of the Protocols' provisions, seems obvious.