

APPENDIX 2

These Conventions and Protocols must be read together with the 1980 'Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively Injurious or to have Indiscriminate Effects' and the concomitant 'Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices' (Protocol II).

Article 3 of Protocol II reads as follows:

General restrictions on the use of mines, booby traps and other devices

This Article applies to:

- (a) Mines;
- (b) Booby-traps; and
- (c) Other devices.

1. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians.
2. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:
 - (a) Which is not on, or directed at, a military objective; or
 - (b) Which employs a method or means of delivery which cannot be directed at a specific military objective; or
 - (c) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
3. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions, which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

At Article 2, paragraphs 4 and 5, 'Other devices', 'Military Objective' and 'Civilian objects' are defined in the following terms:

'Other devices' means manually emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.

'Military objective' means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

'Civilian objects' are all objects which are not military objectives as defined in paragraph 4.

Frederic de Mulinen, in his handbook published by the ICRC²⁰ makes the following statement:

43. Sparing of Civilian Persons and Objects:

Constant care shall be taken to spare the civilian population, civilian persons and civilian objects.

44. Information needed:

The Commander shall keep himself informed on concentrations of civilian persons, important civilian objects and specially protected establishments.

50. Conduct of Attack

51. Choice of Objectives;

Within tactically equivalent alternatives, the directions, objectives and targets of attack shall be chosen so as to cause the least civilian damage.

52. Verification:

The Military character of the objective or target shall be verified by reconnaissance and target identification

53. Weapons

To restrict civilian casualties and damages, the means of combatant weapons shall be adapted to the target

Thus an operative or soldier who operates outside of the scope of the Conventions is punishable in accordance with ordinary law and loses the protection of the status of a combatant.

²⁰ De Mulinen, Frederic. Handbook on the Law of War for Armed Forces. Geneva:ICRC, 1987, Part 5: Conduct of Operations.

‘Grave Breaches’ specified in Protocol I (Articles 11 and 85)

The following acts:

- Seriously endangering, by any wilful and unjustified act or omission, physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of an armed conflict, in particular physical mutilations, medical or scientific experiments, removal of tissue or organs for transplantation which is not indicated by the state of health of the person concerned or not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and in no way deprived of liberty.

The following acts, when committed wilfully and if they cause death or serious injury to body and health:

- Making the civilian populations or individual civilians the object of attack;
- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.
- Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- Making non-defended localities and demilitarised zones the object of attack;
- Making a person the object of an attack in the knowledge that he is *hors de combat*;
- The perfidious use of the distinctive emblem of the red cross and red crescent or other protective signs.

The following acts, when committed wilfully and in violation of the Conventions and the Protocol:

- The transfer by the occupying power of parts of its own population into the territory it occupies, or the deportation or transfer of all parts of the population of the occupied territory within or outside this territory;
- Unjustifiable delay in the repatriation of prisoners of war or civilians;
- Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

- Attacking clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, causing as a result extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort;
- Depriving a person protected by the Conventions or by Protocol I of the rights of fair and regular trial.

'Grave breaches' specified in the four 1949 Geneva Conventions (Articles 50, 51, 130, 147 respectively)

- Wilful killing;
- Torture or inhuman treatment;
- Biological experiments;
- Wilfully causing great suffering;
- Causing serious injury to body or health;
- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

'Grave breaches' specified in the third and fourth 1949 Geneva Conventions (Articles 130 and 147 respectively)

- Compelling a prisoner of war or a protected civilian to serve in the armed forces of the hostile Power;
- Wilfully depriving a prisoner of war or a protected person of the rights of fair and regular trial prescribed in the Conventions.

'Grave breaches' specified in the fourth 1949 Geneva Conventions (Articles 147)

- Unlawful deportation or transfer;
- Unlawful confinement of a protected person;
- Taking of hostages. (..p614)