



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 520

Cape Town

13 October

2008

No. 31508

THE PRESIDENCY

No. 1097

13 October 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 18 of 2008: Prohibition or Restriction of Certain Conventional Weapons Act, 2008.



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Act No. 18, 2008

PROHIBITION OR RESTRICTION OF
CERTAIN CONVENTIONAL WEAPONS ACT, 2008

*(English text signed by the President.)
(Assented to 9 October 2008.)*

ACT

To enact the 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 into South African law; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Republic—

- is committed to international humanitarian law, and particularly the law on armed conflict;
- recognises the general principle of the protection of the civilian population against the effects of hostilities;
- also recognises the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited;
- further recognises the principle that prohibits or restricts the use in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering;
- acknowledges the need to prohibit the use of weapons which inflict excessive injury or suffering on combatants or renders their death inevitable;
- acceded to the 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 of 10 October 1980 and its original three Protocols on 13 September 1995, Protocol IV on 13 October 1995 and the amended Protocol II on 26 June 1998; and
- is obliged in terms of international law, and in particular international humanitarian law, to incorporate the Convention and its Protocols into South African law by means of national legislation, and to further provide for appropriate penal sanctions,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF ACT

Sections

1. Definitions

5

CHAPTER 1

OBJECTS AND APPLICATION OF ACT

2. Objects of Act
3. Extraterritorial application of Act, and jurisdiction

CHAPTER 2

PROHIBITIONS OR RESTRICTIONS, OFFENCES AND PENALTIES

- | | | |
|-----|---|---|
| 4. | Anti-personnel mines | |
| 5. | Non-detectable fragments | |
| 6. | Mines, booby-traps and other devices | 5 |
| 7. | Incendiary weapons | |
| 8. | Blinding laser weapons | |
| 9. | Offences and penalties | |
| 10. | Surrender of prohibited weapons and forfeiture to State | |

CHAPTER 3

10

REPORTING ON COMPLIANCE WITH CONVENTION

- | | | |
|-----|------------------------------|--|
| 11. | Reporting | |
| 12. | Power to require information | |

CHAPTER 4

GENERAL PROVISIONS

15

- | | | |
|-----|--|----|
| 13. | Exemptions | |
| 14. | Guidelines for training | |
| 15. | Regulations | |
| 16. | Delegation of power and assignment of duty | |
| 17. | Short title and commencement | 20 |

Definitions

1. In this Act, unless the context indicates otherwise—
- “**anti-handling device**” means an anti-handling device as defined in the Schedule to the Anti-Personnel Mines Prohibition Act, 2003 (Act No. 36 of 2003);
- “**blinding laser weapon**” means a laser weapon specifically designed, as its sole combat function or as one of its combat functions, to cause permanent blindness to the naked eye; 25
- “**booby-trap**” means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; 30
- “**civilian objects**” means all objects which are not military objectives; 30
- “**component part**” means any identifiable component designed or adapted to form an essential and integral part of any weapon prohibited by this Act;
- “**concentration of civilians**” means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads; 35
- “**Convention**” means the 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 of 10 October 1980, acceded to by the Republic on 13 September 1995, and its Protocols; 40
- “**Department of Defence**” means the Defence Secretariat, the South African National Defence Force and any auxiliary service defined in the Defence Act, 2002 (Act No. 42 of 2002);
- “**employee of the Department of Defence**” means a member of the South African National Defence Force appointed in terms of the Defence Act, 2002 (Act No. 42 of 2002), or an employee of the Department of Defence appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 45

“**export**” means to supply another person outside the Republic with prohibited weapons, whether or not that is done in exchange for currency or any other commodity or benefit;

“**import**” means to bring prohibited weapons into any part of the Republic or to cause such weapons to be so brought in, whether or not that is done in exchange for currency or any other commodity or benefit; 5

“**incendiary weapon**” means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target; 10

“**information**” means any recorded information regardless of form or medium;

“**manufacture**” includes the design, development, production and assembly of prohibited weapons;

“**military objective**” means 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 neutralisation offers a definite military advantage; 15

“**mine**” —

(a) means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle; and 20

(b) includes mines laid to interdict beaches, waterway crossings or river crossings; but

(c) excludes anti-ship mines used at sea or in inland waterways;

“**minefield**” means a defined area in which any number of mines have been placed, and includes areas which simulate minefields; 25

“**Minister**” means the Minister of Defence;

“**non-detectable fragments**” means any device or material the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;

“**other devices**” means manually emplaced munitions and devices, including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time; 30

“**permanent blindness**” means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery;

“**place**”, in relation to a mine, means to use, locate, emplace or situate a mine in a manner that would or could cause an explosion by the presence, proximity or contact of a vehicle, person or animal; 35

“**police official**” means—

(a) a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 40

(b) a person designated by the Minister of Safety and Security as a police official;

(c) a military police official appointed by the Chief of the Defence Force in terms of section 30 of the Defence Act, 2002 (Act No. 42 of 2002); or

(d) any other member of the South African National Defence Force deployed in a joint operation in cooperation with the South African Police Service; 45

“**premises**” includes any land, building or structure or any vehicle, vessel, aircraft or other means of conveyance;

“**prescribed**” means prescribed by regulation made under section 15;

“**procure**” includes the obtaining of a prohibited weapon through purchase, forfeiture, donation, cession or transfer; 50

“**prohibited weapons**” means weapons referred to in sections 5 and 8;

“**protocols**” means the Protocols to the Convention, namely the—

(a) Protocol on Non-Detectable Fragments (Protocol I), 10 October 1980;

(b) Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996); 55

(c) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 10 October 1980;

(d) Protocol on Blinding Weapons (Protocol IV to the 1980 Convention), 13 October 1995; 60