

Subsidiary Legislation made under s.58(3).

International Criminal Court (Reservations and Declaration Certificates) Regulations 2009

LN.2009/066

Commencement **12.11.2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Certification of relevant reservations and declarations made by the United Kingdom.

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In exercise of the powers conferred on him by section 58(3) of the International Criminal Court Act 2007, the Minister has made the following Regulations:

Title and commencement.

1. These Regulations may be cited as the International Criminal Court (Reservations and Declaration Certificates) Regulations 2009 and come into operation on the day of publication.

Certification of relevant reservations and declarations made by the United Kingdom.

2.(1) It is hereby certified that when depositing the instrument of ratification of the First Protocol additional to the Geneva Conventions of 12th August 1949, that is to say the Protocol relating to the Protection of Victims of International Armed Conflicts (Protocol I) adopted on 10th June 1977, the reservations and declarations set out in Schedule 1 to this Certificate were made.

(2) It is hereby certified that when depositing the instrument of ratification of 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 and its Protocols I, II and III, adopted on 10th October 1980, the reservations and declarations set out in Schedule 2 to this Certificate were made.

(3) It is hereby certified that when depositing the instrument of ratification of Protocol IV 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, adopted on 13th October 1995, the declaration set out in Schedule 3 to this Certificate was made.

(4) It is hereby certified that when depositing the instrument of ratification of amended Protocol II 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, adopted on 3rd May 1996, the reservations and declarations set out in Schedule 4 to this Certificate were made.

(5) It is hereby certified that when depositing the instrument of ratification of the Convention on the Prohibition of The Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, adopted on 18th September 1997, the declaration set out in Schedule 5 to this Certificate was made.

SCHEDULE 1

Regulation 2(1)

1977 First Protocol additional to the Geneva Conventions of 12th August 1949

(a) It continues to be the understanding of the United Kingdom that the rules introduced by the Protocol apply exclusively to conventional weapons without prejudice to any other rules of international law applicable to other types of weapons. In particular, the rules so introduced do not have any effect on and do not regulate or prohibit the use of nuclear weapons.

(b) The United Kingdom understands the term “feasible” as used in the Protocol to mean that which is practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.

(c) 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 reasonably available to them at the relevant time.

(d) *ARTICLE 1, paragraph 4 and ARTICLE 96, paragraph 3*

(i) It is the understanding of the United Kingdom that the term “armed conflict” of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes including acts of terrorism whether concerted or in isolation.

(ii) The United Kingdom will not, in relation to any situation in which it is itself involved, consider itself bound in consequence of any declaration purporting to be made under paragraph 3 of Article 96 unless the United Kingdom shall have expressly recognised that it has been made by a body which is genuinely an authority representing a people engaged in an armed conflict of the type to which Article 1, paragraph 4, applies.

(e) *ARTICLE 28, paragraph 2*

Given the practical need to make use of non-dedicated aircraft for medical evacuation purposes, the United Kingdom does not interpret this paragraph as precluding the presence on board of communications equipment and encryption materials or the use thereof solely to facilitate navigation, identification or communication in support of medical transportation as defined in Article 8(f).

(f) *ARTICLE 35, paragraph 3 and ARTICLE 55*

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The United Kingdom understands both of these provisions to cover the employment of methods and means of warfare and that the risk of environmental damage falling within the scope of these provisions arising from such methods and means of warfare is to be assessed objectively on the basis of the information available at the time.

(g) ARTICLE 44, paragraph 3

It is the understanding of the United Kingdom that–

- (i) the situation in the second sentence of paragraph 3 can only exist in occupied territory or in armed conflicts covered by paragraph 4 of Article 1;
- (ii) “deployment” in paragraph 3(b) means any movement towards a place from which an attack is to be launched.

(h) ARTICLE 50

In the view of the United Kingdom the rule in the second sentence of paragraph 1 applies only in cases of substantial doubt still remaining after the assessment referred to at paragraph (c) above has been made, and not as overriding a commander’s duty to protect the safety of troops under his command or to preserve his military situation, in conformity with other provisions of the Protocol.

(i) ARTICLE 51 and ARTICLE 57

In the view of the United Kingdom, 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.

(j) ARTICLE 52

It is the understanding of the United Kingdom that–

- (i) a specific area of land may be a military objective if, because of its location or other reasons specified in this Article, its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers definite military advantage;
- (ii) the first sentence of paragraph 2 prohibits only such attacks as may be directed against non-military objectives; it does not deal with the question of collateral damage resulting from attacks directed against military objectives.

(k) ARTICLE 53

The United Kingdom declares that if the objects protected by this Article are unlawfully used for military purposes they will thereby lose protection from attacks directed against such unlawful military uses.

(l) ARTICLE 54, paragraph 2

The United Kingdom understands that paragraph 2 has no application to attacks that are carried out for a specific purpose other than denying sustenance to the civilian population or the adverse party.

(m) ARTICLES 51-55

The obligations of Articles 51 and 55 are accepted on the basis that any adverse party against which the United Kingdom might be engaged will itself scrupulously observe those obligations. If an adverse party makes serious and deliberate attacks, in violation of Article 51 or Article 52 against the civilian population or civilians or against civilian objects, or, in violation of Articles 53, 54 and 55, on objects or items protected by those Articles, the United Kingdom will regard itself as entitled to take measures otherwise prohibited by the Articles in question to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations under those Articles, but only after formal warning to the adverse party requiring cessation of the violations has been disregarded and then only after a decision taken at the highest level of government. Any measures thus taken by the United Kingdom will not be disproportionate to the violations giving rise thereto and will not involve any action prohibited by the Geneva Conventions of 1949 nor will such measures be continued after the violations have ceased. The United Kingdom will notify the Protecting Powers of any such formal warning given to an adverse party, and if that warning has been disregarded, of any measures taken as a result.

(n) *ARTICLES 56 and 85, paragraph 3c*

The United Kingdom cannot undertake to grant absolute protection to installations which may contribute to the opposing Party's war effort, or to the defenders of such installations, but will take all due precautions in military operations at or near the installations referred to in paragraph 1 of Article 56 in the light of the known facts, including any special marking which the installation may carry, to avoid severe collateral losses among the civilian populations; direct attacks on such installations will be launched only on authorisation at a high level of command.

(o) *ARTICLE 57, paragraph 2*

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The United Kingdom understands that the obligation to comply with paragraph 2(b) only extends to those who have the authority and practical possibility to cancel or suspend the attack.

(p) ARTICLE 70

It is the understanding of the United Kingdom that this Article does not affect the existing rules of naval warfare regarding naval blockade, submarine warfare or mine warfare.

SCHEDULE 2

Regulation 2(2)

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 its Protocols I, II and III

(a) Generally–

- (i) The term “armed conflict” of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes, including acts of terrorism, whether concerted or in isolation.
- (ii) The United Kingdom will not, in relation to any situation in which it is involved, consider itself bound in consequence of any declaration purporting to be made for the purposes of Article 7(4), unless the United Kingdom shall have expressly recognised that it has been made by a body which is genuinely an authority representing a people engaged in an armed conflict of the type to which that paragraph applies.
- (iii) The terms “civilian” and “civilian population” have the same meaning as in Article 50 of the 1st Additional Protocol of 1977 to the 1949 Geneva Conventions. Civilians shall enjoy the protection afforded by this Convention unless and for such time as they take a direct part in hostilities.
- (iv) 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 reasonably available to them at the relevant time.

(b) *Re: Protocol II, Article 2; and Protocol III, Article 1*

A specific area of land may be a military objective if, because of its location or other reasons specified in this Article, its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage.

(c) *Re: Protocol II, Article 3*

In the view of the United Kingdom, 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.

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(d) Re: Protocol III, Article 2

The United Kingdom accepts the provisions of Article 2(2) and (3) on the understanding that the terms of those paragraphs of that Article do not imply that the air-delivery of incendiary weapons, or of any other weapons, projectiles or munitions, is less accurate or less capable of being carried out discriminately than all or any other means of delivery.

SCHEDULE 3

Regulation 2(3)

1995 Protocol IV to 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.

In relation to Protocol IV, the United Kingdom declare that their application of its provisions will not be limited to the situations set out in Article 1 of the 1981 Convention.

SCHEDULE 4

Regulation 2(4)

1996 Amended Protocol II to 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–

- (a) the 1995 declaration, in so far as it applies to Protocol II to the 1981 Convention, continues to apply to Protocol II as amended;
- (b) the 1998 declaration, in so far as it is relevant, also applies to the provisions of Protocol II as amended;
- (c) nothing in the present declaration or in Protocol II as amended shall be taken as limiting the obligations of the United Kingdom under the Ottawa Convention nor its rights in relation to other Parties to that Convention;
- (d) Article 2(14) is interpreted to have the same meaning as Article 2(3) of the Ottawa Convention;
- (e) the references in Article 12(2) to “force” and “mission” are interpreted as including forces and missions authorised by the United Nations Security Council under Chapter VII or Chapter VIII of the Charter of the United Nations which are deployed by a regional arrangement or agency. This applies to all such forces or missions, whether or not they include contingents contributed by non-member States of the regional arrangement or agency.

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SCHEDULE 5

Regulation 2(5)

1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

It is the understanding of the United Kingdom that the mere participation in the planning or execution of operations, exercises or other military activity by the United Kingdom's Armed Forces, or individual United Kingdom nationals, conducted in combination with the armed forces of States not party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and of their Destruction, opened for signature at Ottawa on 3 December 1997, which engage in activity prohibited under that Convention, is not, by itself, assistance, encouragement or inducement for the purposes of Article 1, paragraph 1(c) of the Convention.