

ARTICLE 12(4): GRAVE BREACHES

ISSUE: Applicability of the 1949 Geneva Conventions grave breaches provisions to violations of Protocol II.

BACKGROUND:

Paragraph 12(4) states that the provisions of the 1949 Geneva Conventions relating to the repression of breaches and grave breaches shall apply to breaches and grave breaches of the Protocol during armed conflict.

The 1949 Geneva Conventions grave breach provisions oblige States Parties to enact legislation to provide effective penal sanctions for persons committing grave breaches, search for persons alleged to have committed grave breaches, and to prosecute or extradite those persons.

A grave breach is defined as any act or omission occurring during armed conflict in violation of the Protocol if committed wilfully or wantonly and causing death or serious injury to the civilian population.

Each party to a conflict must take appropriate measures to prevent and suppress breaches, may be liable to pay compensation for violations, shall be responsible for all acts committed by members of its armed forces and shall require commanders to ensure that members of the armed forces are aware of, and comply with, the obligations under the Protocol.

The Dutch tabled a proposal which expands on this in more detail however it is not yet included in the Rolling text.

CANADIAN POSITION:

Canada supports application of the Geneva Conventions grave breach provisions to violations of the Protocol.

POSITIONS OF OTHER MAJOR PLAYERS/GROUPS ON THE ISSUE:

As with other provisions related to verification and compliance, some States will be against any efforts to strengthen the Convention in this area.

LIKELY AREAS OF COMPROMISE:

Unknown.