

**GROUP OF GOVERNMENTAL EXPERTS OF
THE STATES PARTIES 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**

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Item 7 of the Agenda
Explosive Remnants of War**

Working Group on Explosive Remnants of War

**RESPONSES TO DOCUMENT CCW/GGE/X/WG.1/WP.2,
ENTITLED IHL AND ERW, DATED 8 MARCH 2005**

Response from Italy

Applicability of relevant IHL principles to explosive remnants of war.

1. The principle of legality is one of the pivots of the peace missions carried out by Italian military contingents. The evolutive interpretation and the full compliance with international humanitarian law are two precise methodological standards shaping the activities performed by the Italian Armed Forces in the out-of-area operational theatres. As a matter of fact, Italy has always played an active role in the development, refining and implementation of humanitarian law instruments. The attachment of a legally binding value to those set of rules, as an imperative alternative to the less efficacious recommended practices, is a further indispensable step to the reinforcement of the principle of certainty of law. In particular, the emphasis is laid on the State's right to make a reasonable use of those munitions, sub-munitions and mines in compliance with the commitments made. The attention paid to the enforceability of the UN Security Council and of other international instruments that may introduce more stringent constraints without prejudice to this set of recommendations is also important. The development and reinforcement of the system of legal protections applicable to domestic and international armed conflicts is a clear objective pursued by Italy in all international fora and institutions.

2. As for the principles themselves we submit the following remarks:

Military necessity - This principle justifies the resort to violence in armed conflicts, within the constraints deriving from the general principle that a degree and type of force shall be used no

greater than that absolutely indispensable to attain a specific result. In a narrow sense, it indicates a necessity as recognised by the rules of International Law, applicable within the framework of such legislation and in derogation there from, as specifically provided by such legislation. In other words, military necessity only applies if positive law expressly allows this principle in specific cases.

Distinction - Positive International Law prescribes that in international armed conflicts all possible measures must be taken to distinguish between the civilian population and military objectives and that the civilian population shall not be the object of an attack.

Discrimination - This fundamental principle prohibits attacks that are not or cannot be directed against a specific military objective, or the effects of which cannot be limited to or circumscribed to these objectives as envisaged by Humanitarian Law, and that affect civilian objects and the civilian population.

Proportionality - This principle aims at limiting damage caused by military operations by requiring that the means and methods of warfare used must not be disproportionate to the military advantage sought. This fundamental principle, which prohibits superfluous injury or unnecessary suffering, is a key to interpreting the whole humanitarian rights system. In essence this principle, in this specific case, prohibits attacks that might cause loss of civilian life and damage to civilian object, which would be excessive in relation to the concrete and direct military advantage anticipated.

Superfluous injury or unnecessary suffering - The only legitimate purpose of war is to weaken the military forces of an opponent, hence it is sufficient to disable the greatest possible number of enemy combatants. It is therefore prohibited to employ methods and means of combat that cause superfluous injury or unnecessary suffering.

3. Italy is actively preparing a full response to the questionnaire of last March that will be circulated it as soon as possible.

Implementation of the relevant IHL principles

4. The Italian military forces, at different levels, are continuously briefed on the fundamental principles and on the entire humanitarian law system. In particular, specific lessons and briefings for all command levels are intensified before the deployment of the military contingents for out-of-area missions. That way all the units and all the levels of command receive legal instruction. In the planning phase, legal advice is requested to ensure that the actions to be undertaken are fully compliant with the international law. Planners take account of the limitations to the use of mines and sub-munitions and the obligation to use any device to defuse the explosive ordnance laid by other armed forces or formation. The Italian military doctrine is based on the compliance with the rules of international law and of the alliances Italy is a member of.

5. International customary and treaty law is the legal basis for the rules of engagement (ROE) issued to the Italian Armed Forces. Besides, Italy has developed some caveats and derogations from

the ROE issued by multinational coalitions or military alliances it is a member of, to ensure that the principles and legal standards contained in the agreements and treaties made with other international organizations or specific States are respected.

6. Any operational activity, at the tactical and strategic level, is conceived and planned in compliance with the IHL principles and rules reflected in the Italian legislation.

7. The law prescribes that military and civilian personnel at any command and functional level are taught the basics of humanitarian law during their normal training programmes and before their employment in operations. The purpose of such an educational activity is to ensure that the personnel to be deployed has a deep understanding of and comply with the rules for the safeguard and protection of all the parties involved in armed conflicts. Such a measure derives from international law provisions, ratified by Italy, aimed at ensuring that legal principles, that may be difficult to interpret even to those dealing with the matter on a regular basis, are fully understood and applied. The development of a common employment doctrine is essential to ensure rapid and incisive action. In compliance with the provisions of the 1977 1st Additional Protocol to the 1949 Geneva Conventions, a certain number of positions of legal advisor were established within the Armed Forces. Therefore the officers appointed by the Armed Forces have acquired the information and skills necessary to advise the military Commanders on the compliance with IHL in the context of military operations. Those advisors brief personnel on those matters before, during and after operations.

8. The Italian Armed Forces' equipment and combat procedures are fully compliant with international customary and treaty law. Special care and attention are paid to continuously and immediately adjust such equipment and combat procedures to any change in the applicable international law.

9. The Italian Armed Forces take any possible measure and make any possible effort to guarantee the protective measures provided for by IHL.
