

**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**

CCW/GGE/XIII/WG.1/WP.2
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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 the Czech Republic

1. The Czech Republic is a Party to all fundamental IHL instruments, including the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Additional Protocol, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxine Weapons and on their Destruction of 1972, the Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques of 1976, 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 1980 and its Protocols I to IV, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1993 or the Ottawa Convention of 1997 on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

2. According to article 1 of its Constitution, the Czech Republic is obliged to obey all its commitments following from the international law. This article makes no distinction between treaties and customs. Furthermore, article 10 explicitly states that the treaties that have been ratified with consent of the Parliament prevail over the laws (except the Constitutional Acts). Therefore, the Czech Republic has to respect all IHL principles, which may be derived either from the relevant treaties or the customary law. Nevertheless, as a matter of practice, when adopting various practical measures to implementing IHL on a national level, the authorities primarily refer to particular treaty obligations, rather than to the customary ones.

Part 1. Applicability of relevant IHL principles

3. As regards to the existing principles of IHL applicable to the use of force during an armed conflict, the Doctrine of the Armed Forces of the Czech Republic, adopted in 2005, explicitly encounters the principles of necessity, proportionality, humanity, legality and distinction. Nevertheless, this does not constitute an exhaustive list of principles to be followed by the armed forces. The Doctrine also generally requires to follow (all applicable) rules of national and international law. Thus, other principles and rules, if applicable, have to be followed in military operations executed by the Czech forces as well (such as precautions in attack or environmental protection).

4. As regards relevancy of the IHL principles to the use of munitions, including submunitions, that may become ERW, we deem the principles of distinction and proportionality to be the key ones. Nevertheless, under certain circumstances, the principles of necessity, humanity or environmental protection may be relevant too. When determining the relevancy of a particular rule to a particular weapon, it is highly important to differentiate between the weapon as such, method of its use and probability of its failure or malfunction. We believe that, for purposes of this questionnaire, the relevancy is to be measured with respect to the latter aspect.

5. The principle of distinction requires to distinguish always between military objectives and civilians or civilian objects. This principle, as we understand it, prohibits both deliberate targeting of civilians and civilian objects and their non-deliberate targeting via non-discriminatory attacks. Therefore, the use of munitions, which is likely to fail, might contradict this principle, as it cannot be guaranteed that such munitions will affect the military objectives only, especially if used in areas where civilians are present. Concrete rules, which may be referred to in this respect, are contained in the Additional Protocol I to the Geneva Convention, in articles 48 and 57 (para. 2 letter (a) sub-para.(ii)).

6. The principle of proportionality requires to use a minimum force necessary to neutralize the enemy and prohibits (incidental) civilian damages (casualties) excessive to anticipated military advantage. Therefore, the use of munitions, which is likely to fail, might contradict this principle, as the low reliability of such munitions could cause collateral damage exceeding the lawful level by increasing its probability and decreasing its military effectiveness. Concrete rules, which may be referred to in this respect, are contained in the Additional Protocol I to the Geneva Convention, in article 57 (para. 2 letter (a) sub-para. (ii) and (iii) and para. 3).

Part 2. Implementation of relevant IHL principles

7. Appropriate integration of the key IHL principles and rules in education and especially training of the military personnel is a significant prerequisite to ensure professional and responsible use of munitions that may become ERW and to prevent humanitarian risks. From the beginning of this year 2005, the Armed Forces of the Czech Republic are fully professional. Therefore, the

necessary transformation of all relevant military doctrines, manuals and guidelines has been commenced very recently. With this regard, appropriate implementation of IHL rules and principles is reviewed and should be secured in these documents.

8. There are several explicit references or safeguards concerning implementation of IHL in the key legal and policy documents of the Czech Republic:

- (i) the Constitution stipulates that the Czech Republic obeys its commitments following from the international law and that ratified treaties, including IHL instruments, constitute integral part of the Czech legal order and prevail over laws;
- (ii) the Military Strategy of the Czech Republic, which is a political guideline derived from the national security strategy, requires that the armed forces, during its activities, respect the international law applicable in armed conflicts;
- (iii) the Act on Professional Military enumerates among basic duties of soldiers the duty to follow the IHL. Identical obligation is contained in the Basic Order of the Czech Armed Forces;
- (iv) the Criminal Code allows to prosecute military personnel, who uses, or orders to be used, means or methods of combat that are prohibited by law, including attack on civilian population;
- (v) the Doctrine of the Armed Forces of the Czech Republic acknowledges basic IHL principles, determines limits for military operations and use of force and imposes obligations on commanders in this respect.

9. The Doctrine is a set of principles for preparing and conducting of military operations by the Czech forces. It is a joint document, applicable to all branches of forces. It constitutes a framework and basis for special and more detailed doctrines on a lower level - contents of these lower doctrines must, on one hand, respect operational capabilities of the forces, but, on the other hand, respect obligations following from both national and international law. The Doctrine also explicitly requires commanders in all kinds of operations to obey rules of national and international law and to know how to apply these rules in concrete combat situations.

10. As regards use of force, the Doctrine refers explicitly to IHL and also to rules of engagement. Although the Czech Republic has not got implemented any standing national rules of engagement for its forces, we apply the multinational ones issued in particular operation, provided that these rules contain explicit provision on applicability of IHL principles and precedence of the national and international law.

11. Indispensable condition for successful implementation of any laws, regulations, policies or doctrines is their integration into preparation of the troops. There will never be satisfactory application of all relevant IHL principles and rules without appropriate education and training. The Czech Republic is currently transforming the overall system of military preparation with regard to

the fact there are fully professional armed forces now. This system will consist of career training of an individual, regular daily training of individuals or units and ad-hoc training, be it specialised courses for individuals or pre-deployment training of particular units.

12. Such a renovation gives a good opportunity to promote also a reflection of IHL. This topic has been included in the concrete training programs that have been issued so far and will be included in the ones to be issued in the coming years. Special manual for IHL training should be issued in 2007. In result, it will be guaranteed that every individual military professional meets IHL since the very beginning of his or her career, during regular annual training, whenever he or she wants to step up in the rank chart and before any deployment to a real operation.

13. As a necessary complement to the training, there is an education of officers. It is especially important with respect to the fact that international humanitarian law imposes special obligations on commanders. In the Czech Republic, military academic education is centralised within the Defence University located in Vyškov. This institution provides appropriate education, including mandatory lectures of IHL to all future commanders and members of their staffs. There is a significant amount of these lectures both in Bachelor's curriculum and Master's curriculum.

14. Another measure to promote compliance with IHL in the military is a legal service. In the Czech Armed Forces, there are legal advisers on a brigade level and above. In some cases, there are also advisers on a battalion level. There is also a limited number of reservists, who are prepared to serve as military legal advisers. Dealing with IHL issues is an inherent responsibility of every legal adviser. Although they are not responsible for training or tactical decision-making, they have to be capable of providing necessary advice in this respect to their commanders. In our system, legal advisers also participate in a process of developing rules of engagement for particular operations.

15. Since the scale of legal knowledge that any military lawyer should possess is relatively wide, it is intended to produce in 2007 a special handbook on operational law for them. According an outline, which has been already completed, there will be also a significant portion of IHL in this handbook.

16. Unfortunately, the legal service of the Czech Armed Forces is currently not explicitly tasked to review legality of any new weapons. This is made rather on ad-hoc basis or within military and industrial testing. Therefore, this is an area, where a system improvement is desirable and planned.

17. When considering national systems of IHL implementation, we also take in account that some governmental regional arrangements, where the Czech Republic participates, are dealing with this issue as well:

- (i) the European Union adopted in December 2005 its Guidelines on IHL, which re-affirm compliance with IHL treaties (as a political requirement for the EU) and, inter alia, invites for integration of IHL into a military training;
- (ii) the Code of Conduct on Politico-Military Aspects of Security, adopted by the Organisation for Security and Co-operation in Europe in 1994, requires that the IHL

commitments are reflected in the military training programmes and that military personnel are aware that they are individually accountable for their actions under international law;

- (iii) the North Atlantic Treaty Organisation issues so called Standardisation Agreements to unify certain procedures among forces of its member states. One of these standards deals exclusively with the training in the law of armed conflicts and specifies principles of the law itself, as well as principles and objectives of the related training (the Czech Republic plans to ratify this standard till 2007);
- (iv) special area of cooperation dedicated to IHL has been also approved in 2001 within the Partnership for Peace Work Programme and there are specialised military courses organised annually under this umbrella.

18. No system of training would be efficient without sufficient control mechanism to enforce its compliance, if needed. As a very first instance, there are commanders, who are responsible for appropriate behaviour and training of the individuals under their command. They also have authority to take disciplinary measures. As a second instance, there is the Inspection of the Minister of Defence of the Czech Republic. This body is authorised to inspect, among other issues, quality and completeness of training, use of weapons and behaviour of commanders. Eventually, they submit their findings to the subordinate level of the inspected unit or individuals and make recommendations.

19. Finally, there are authorities within a criminal justice system. In the Czech Republic, the main powers are vested in a civilian police, prosecution and courts, with a limited assistance of a military police. The system of military courts and prosecution was abolished in 2004.
