

**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.3
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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 Ireland

Part I: Applicability of relevant IHL Principles

Which existing principles of IHL applicable to the use of force during an armed conflict are considered relevant to the use of munitions, including sub-munitions that may become ERW (i.e. military necessity, distinction, discrimination, proportionality, precautions taken before and during an attack, superfluous injury / unnecessary suffering, environmental protection)?

1. All munitions containing explosive ordnance have the potential to become explosive remnants of war (ERW). Therefore the scope of the question posed covers the use of all weapons systems capable of delivering explosive ordnance. All of the principles and rules listed in the above question are therefore relevant to the use of explosive munitions. All International Humanitarian Law (IHL) represents a compromise between military necessity and humanity. The St Petersburg Declaration of 1868 recognised that future attempts to regulate armed conflict would have to 'conciliate the necessities of war with the laws of humanity'. Subsequent IHL treaties have sought to strike an appropriate balance between the often conflicting demands of military necessity and humanity.

2. **Military necessity.** Ireland understands that the principle of military necessity permits only the use of force, not otherwise prohibited by international law, of a nature and level necessary to achieve the legitimate purpose of the conflict. The legitimate purpose of the conflict is the

complete or partial submission of the enemy at the earliest possible moment with the minimum loss of life. Ireland considers this principle to be part of customary international law. The use of all munitions including sub-munitions must be consistent with the limitations imposed by the principle of military necessity.

3. **Humanity.** The principle of humanity forbids the infliction of suffering and damage not necessary for the accomplishment of legitimate military objectives. Ireland considers this principle to be the foundation from which IHL has evolved and underpins the other relevant principles listed below. In circumstances that are not covered by specific rules of customary and treaty law, military actions and decisions must be guided by the principle of humanity.

4. **Distinction.** Distinction is a fundamental principle of IHL. Distinction requires that military operations be conducted only against enemy military forces and valid military objectives. Military personnel and objects must be clearly distinguishable from civilian personnel and objects. This is a binding principle of customary international law and is also reflected in treaty obligations. The choice of munitions employed during a conflict must be such as to facilitate distinction between military objectives and civilians and civilian objects.

5. **Discrimination.** Discrimination requires that weapons, munitions and methods of attack be capable of being directed against a valid military objective. Attacks that cannot be so directed are considered indiscriminate and are prohibited. The principle of discrimination is customary and is fundamental to the use of all munitions. This is particularly true of sub-munitions because when employed against military targets, their wide footprint may strike civilian personnel and objects close to a military objective.

6. **Proportionality.** The principle of proportionality requires that collateral damage to civilians and civilian objects should not be excessive in relation to the anticipated military advantage. In planning the use of munitions a commander must balance the military advantage to be gained against the collateral or incidental damage, which may be inflicted.

7. **Precautions taken before and during an attack.** All feasible precautions must be taken to minimise incidental loss of civilian life, injury to civilians and damage to civilian objects that may be caused by use of munitions during military operations.

8. **Superfluous injury / unnecessary suffering.** Article 35 of Additional Protocol I to the Geneva Conventions of 1949 prohibits the use of weapons which, by their nature, cause superfluous injury and unnecessary suffering. This rule derives from the principle of humanity and is also the basis of the restrictions and prohibitions set out in the Protocols to the Convention on Certain Conventional Weapons.

9. **Reciprocity.** The use of munitions is also influenced by the principle of reciprocity, which asserts that compliance with IHL principles decreases the likelihood that enemy forces will commit breaches of IHL.

Part II: Implementation of Relevant IHL Principles

What measures have been taken by your State to implement those existing principles of international humanitarian law that are considered by your State as relevant to the use of munitions that may become ERW?

In answering this question, States are encouraged to address, among other issues, the following specific questions:

(i) Are the principles reflected in military doctrine and manuals?

10. A “Basic Guide to the Law of Armed Conflict” (2005) is available to all units of the Irish Defence Forces. This document is used on all relevant training courses for senior and junior commanders of the Irish Defence Forces.

(ii) Are the principles reflected in rules of engagement?

11. The Irish Defence Forces conduct military operations on national territory, and overseas on international Peace Support Operations. Rules of engagement (RoE) on national operations are determined in accordance with national law and will be generally more restrictive than the Law of Armed Conflict (LOAC), and will never go beyond what is permitted by LOAC. On international Peace Support Operations, RoEs will be determined by the Force in accordance with the mandate of the Force and will again be in accordance with LOAC. All RoEs are subjected to legal scrutiny by Defence Force legal advisers prior to implementation by the Irish Defence Forces.

(iii) Are IHL principles taken into account:

a) in the planning of a military operation?

12. Yes. There is a legal obligation on all commanders and staff planners of the Irish Defence Forces to take precautions to ensure full observance of LOAC, in planning and executing military operations, in particular with regard to the use of explosive ordnance.

b) in the formal targeting procedures?

13. Yes. In accordance with Additional Protocol I to the 1949 Geneva Conventions, commanders must take all feasible precautions in targeting and use of weapons to minimise incidental loss of civilian life and damage to civilian objects.

- c) in order to achieve this does your State make legal advice available at appropriate levels of command in respect of the application and operation of the relevant existing principles of IHL?**

14. Yes. There is a permanent legal adviser at all headquarters at brigade level and above. For operations deployed overseas legal advice is available on call to all commanders. Legal advisers are deployed on overseas missions when the level of forces deployed and the roles of the force so demands. At present there is a legal adviser located in Bosnia who provides legal advice to Irish units deployed in Bosnia and Kosovo.

- (iv) Are the members of the armed forces trained in these principles?**

15. Yes. All members of the Irish Defence Forces receive instruction and training in LOAC principles and their application. All officer training courses include LOAC exercises, and LOAC aspects are included in training exercises for both conventional and peace support operations.

- (v) Does your State have a mechanism to review the legality of new weapons, methods of warfare and military doctrine? (If yes, what is the legal basis of those systems?)**

16. All Defence Forces personnel engaged in weapons procurement and formulation of military doctrine have access to military legal advice.
