

**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.6
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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 Portugal

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. We consider that the principles of IHL applicable to the use of force during an armed conflict are: the principle of necessity; the principle of humanity; the principle of distinction; the principle of proportionality; the principle that the right of parties in an armed conflict to choose the methods or means of warfare is not unlimited; the principle that prohibits the employment in armed conflicts the use of weapons, projectiles and materials and methods of warfare that may cause unnecessary damage; the principle that prohibits the use of methods or means of warfare which are intended or may be expected, to cause widespread, long-term and severe damage to the environment (article 3 of the Geneva Conventions, 1949, articles 35, 48, 51, 52 and 57 of the First Additional Protocol of the Geneva Conventions, 1977, and preamble 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).

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 military manuals?

2. Capstone IHL principles regulate all military doctrine, operational and tactical employment as well as planning of operations.

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

3. Yes. Every military operation includes a set of ROEs, which evolve as the operation evolves. The implemented ROEs take into consideration the proportional use of force and applicable IHL.

(iii) Are IHL principles taken into account:

a) in the planning of a military operation?

4. Yes. Operations orders have a legal annex including IHL principles.

b) in the formal targeting procedures?

5. Yes.

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?

6. Yes. The Component Commanders for each operation have a permanent staff in which legal advisors are included.

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

7. The training of military personnel takes into account IHL principles, in accordance with the Geneva Conventions, 1949. Exercises include IHL issues.

(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 for those systems?)

8. Yes. The applicable international instruments adopted by Portugal are taken into consideration in armament acquisition programs. The legal instruments are the national decrees transposing those instruments into the Portuguese law system.

(vi) What other measures are taken to ensure the implementation of these principles?

9. Technical directives and specifications, military regulations and manuals.
