

**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/XIV/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 Republic of Hungary

1. International Humanitarian Law /IHL/ is a special branch of international (public) law. It is governing situations arising during armed conflict with the aim of mitigating the negative affects of war by regulating the methods of conducting military operations and protecting war victims.
2. The Constitution of the Republic of Hungary stipulates that Hungary renounces war as a means of solving disputes between nations and shall refrain from the use of force and the threat thereof against the independence or territorial integrity of other states. The legal system of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international law.
3. International treaties ratified by or adhered to by Hungary are adequately promulgated hence formally incorporated into Hungarian law. Thus the competent authorities, legal entities and natural persons concerned, including the Hungarian armed forces and members thereof are obliged to comply with or/and implement these norms.

4. Hungary is a State Party to all relevant international humanitarian law instruments including:
- (i) The First, Second, Third and Fourth Geneva Convention and the first two Additional Protocols (promulgated by Law Decree No. 32 of 1954, Law Decree No. 20 of 1989);
 - (ii) The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocols (promulgated by Law Decree 14 of 1957 and Act XXIX of 2006);
 - (iii) 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 and its Protocols I-IV /the procedure for the Governmental approval of Protocol V on ERW has not yet been completed/;
 - (iv) Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction /promulgated by Act X of 1998/;
 - (v) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxine Weapons and on their Destruction /BTWC, promulgated by Law-Decree No. 11/1975/;
 - (vi) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction /CWC, promulgated by Act IV of 1997/.

5. The generally accepted principles of international law founded in customary international law relating to IHL also form an integral part of the Hungarian legal system. Their formal incorporation into domestic law is not necessary. IHL related domestic law regulations are to be interpreted so as to ensure the effective implementation of these (international humanitarian law) non-treaty IHL obligations. The relevant IHL principles are recognised by Hungarian law. The list of international humanitarian law principles (not exhaustive) is the following:

- (i) military necessity (the use of military force for legitimate military purposes);
- (ii) humanity (forbidding the infliction of suffering and damage not necessary for the accomplishment of legitimate military objectives);
- (iii) distinction (military operations to be conducted only against valid military objectives);
- (iv) discrimination (modes of attack should be capable of being directed against valid military objectives);
- (v) proportionality (minimising collateral damage to civilians and civilian objects);

- (vi) superfluous injury or unnecessary suffering (prohibition of the use of weapons which might cause superfluous injury and unnecessary suffering);
- (vii) precautions taken before and during an attack (appropriate precautions should be taken to avoid or minimise incidental loss of civilian life, injury to civilians and damage to civilian objects);
- (viii) reciprocity (established principle of international law).

6. In view of the above, the competent Hungarian authorities have a legal obligation to honour IHL principles based on international treaty provisions and/or the ones derived from customary international law.

7. The Hungarian penal law regulations cover certain aspects of violations and abuse of international humanitarian law. The Penal Code (Act IV of 1978) strictly penalises and thereby forbids:

- (i) crimes against humanity such as violence against the civilian population: any person applying violence in a theatre of war or occupied area against civilian persons or POW, displaying inhuman treatment or otherwise gravely abusing his power is guilty of felony (Section 158 of the Penal Code);
- (ii) commission of war crimes: military commander, in violation of the rules of the international law of warfare, engages in the conduct of any war operation causing serious damage in the life, health or property of the civilian population, in internationally protected cultural goods is guilty of felony (Section 160 of the Penal Code).

8. The military doctrine of the Hungarian defence forces stipulates that ensuring the legitimacy and authenticity of military operations constitute underlying principles of the law of armed conflict. Thus such operations are to be conducted in compliance with the rules of national and international law, including the written and non-codified forms thereof. The doctrine asserts that the above cited body of law forms a framework for the execution of military operations hence as such, lays down the rules of implementation. The (international) law of armed conflict prevails during the course of military conflicts. It should be noted, however, that different types of regulations may also be applied in such situations. The doctrine concludes that legitimate and authentic military operations enhance the authenticity of the use of force and contribute to sustaining the support of local population living in and outside of conflict affected areas.

9. The comprehensive military doctrine for land, naval and air forces foresees in the context of crisis management operations that the legal implications of the use of force should be constantly examined. The deployment of troops is to be in accordance with relevant international norms and related political decisions. The use of force should be limited to the absolutely necessary level.

10. The professional education and training of military staff guarantees the effective implementation of the norms of international humanitarian law.

11. Members of Hungarian defence forces – as part of their preparation programme for foreign missions – receive training in the use of explosive ordnance that might become explosive remnants of war. Future participants of UN led missions are trained regularly in international law, with emphasis on the procedural aspects of locating, clearing, removing explosive remnants of war.

12. Hungarian defence forces strictly control the use, recording and stockpiling of all items falling under the scope of Protocol V 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 (CCW). In this connection, with the aim of avoiding ERW related accidents, a special internal military instruction was issued detailing the tasks pertaining to explosive ordnance that might become explosive remnants of war.

13. Legal advice through well-established legal advisers is available at all appropriate levels of the military hierarchy. These advisers are obliged to share their expertise in international humanitarian law. Issues requiring deep knowledge of a certain area (such as legal background as to explosive remnants of war) are dealt with and co-ordinated by the legal department of the Ministry of Defence.

14. All relevant provisions of Protocol V 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 (CCW) are to be incorporated into the curriculum of the relevant Hungarian institutions of higher education (military academies).
