

**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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**Application and implementation of existing
international humanitarian law to specific munitions
that may cause explosive remnants of war,
with particular focus on cluster munitions,
including the factors affecting their reliability
and their technical and design characteristics,
with a view to minimizing the humanitarian
impact of the use of these munitions**

**LEGAL ASPECTS OF CLUSTER MUNITIONS - A POSSIBLE
FRAMEWORK FOR IHL IMPLEMENTATION – DRAFT PROPOSALS**

Submitted by the United Kingdom of Great Britain and Northern Ireland

1. The application of military force is governed by IHL. The law is well established, but there may be a case to consider how to strengthen compliance when applying military force, including the use of cluster munitions.
2. A possible way forward might evolve around a framework which contributes to strengthening the implementation of IHL. With regard to cluster munitions, note that there is no law that specifically governs their use; existing law governs the use of all weapons including cluster munitions.
3. How might a framework assist the military to implement the law more consistently? There is a direct link between the law, as expressed in the principles of IHL, and the application of force. There are a number of linking stages between the law itself and the point of its application in conflict. The stages below cover the issues that will assist compliance. In most cases they are both self explanatory and already implemented, but it is worth reiterating them. If they were adopted, the application of force in respect of any weapon system, including cluster munitions, might be more considered and consistent.

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A Possible Framework

4. The stages in a [draft] framework might include:
 - (i) To identify the applicable principles of IHL pertaining to the application of military force and of the particular weapon in use.
 - (ii) To determine the lawfulness of the weapon under consideration by way of a legal review.
 - (iii) To ensure that military doctrine reflects the relevant law.
 - (iv) To have adopted a manual of IHL (otherwise known as the Law Of Armed Conflict (LOAC)), for use by the military.
 - (v) To ensure that military planners take into consideration the relevant law.
 - (vi) To have a targeting procedure conducted by trained personnel that leads to a targeting directive, which is cleared by appropriate political and legal authorities.
 - (vii) To ensure that appropriate Rules of Engagement are in place, which are cleared by appropriate political and legal authorities.
 - (viii) To train all military personnel in IHL and ROE to ensure they understand and comply with humanitarian and legal obligations.
 - (ix) To ensure the availability of legal advice at every appropriate step above, including for training and operations.
 - (x) To have in place within domestic law an enforcement mechanism properly to investigate and deal with breaches of IHL.

A Proposed Way Ahead

5. The stages above should contribute to addressing an important element of the humanitarian concern and, were they to be applied universally, would deliver tangible benefits to people in conflict areas. They would assist military personnel to understand their humanitarian obligations and help them apply the law consistently in combat situations. It should not underestimate the importance of sound, comprehensive and relevant training in IHL as young soldiers in frightening, stressful combat situations rely on the comprehensiveness of that training to behave and operate in accordance with the law. This also applies to commanders who are responsible for ordering the application of force.

6. A suggested way ahead is to promote a universally acceptable framework to assist States and their armed forces to apply the law. Such a framework could form the basis of a generic 'best practice' guide along the lines of these ten stages to assist in the training and conduct of operations.
