

**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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Explosive remnants of war
Working Group on Explosive Remnants of War**

**REPLIES TO DOCUMENT CCW/GGE/X/WG.1/WP.2, ENTITLED
“INTERNATIONAL HUMANITARIAN LAW AND ERW”,
DATED 8 MARCH 2005**

Reply from the Argentine Republic

I. APPLICABILITY OF RELEVANT 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 submunitions, that may become ERW?

1. International humanitarian law (IHL) is composed of a set of norms basically designed to protect persons who are not participating, or have ceased to participate, in hostilities, as well as to restrict the methods and means used to make war. IHL is also governed by principles which, far from constituting mere declarations of intent, have been considered to form the basic fabric of this branch of international law by the International Committee of the Red Cross.

2. These principles include:

- (i) The principle of distinction and the immunity of non-participants; the principle of non-reciprocity; the principle that the legal status of the parties will not be affected; the principle of equality; the principle of proportionality; military necessity;
- (ii) Precautions before and during an attack; superfluous injury/unnecessary suffering; protection of the environment.

3. In this context, doctrine holds that the international rules applying to armed conflicts evolve as means of war develop, since their purpose is to regulate these conflicts in a manner which corresponds to their growing complexity. It follows from the above that, if armed conflicts use ever more sophisticated means of combat, the legal framework of IHL must necessarily become more complex so as to contain and avert the most harmful effects of modern warfare. In this way the role of IHL is not only to limit, control and set levels for the production, storage and transfer of arms used in war situations, but also to destroy them.

4. A priori, the following principles would appear to be applicable to Protocol V:

- (i) The principle of non-reciprocity: because the obligations arising from the instrument cannot be ignored on the grounds that the other contracting parties or parties to a conflict are violating the established rules (article 3);
- (ii) The principle of equality: all the rules relating to explosive remnants of war have been adopted in order to benefit the entire population, regardless of sex, language, belief, race, religion, age, social status or any other characteristic;
- (iii) The need to avoid superfluous injury/unnecessary suffering: Protocol V itself refers to this principle in the second preambular paragraph and in other provisions such as article 11, paragraph 2;
- (iv) Protection of the environment: inferred from the nature of the instrument and its objectives (removal and destruction of ERW, clearance, etc.).

II. IMPLEMENTATION OF RELEVANT IHL PRINCIPLES

What measures have been taken by your State to implement those existing principles of IHL that are considered by your State as relevant to the use of munitions, including submunitions that may become ERW?

5. It is clear that CIDA's opinion covers not only measures planned for use but also measures applicable to the design of such munitions/submunitions. These views are reproduced below as being of interest.

- (i) Argentina respects the principles of IHL and the Martens Clause, which covers cases not referred to in the CCW. This means that, as far as the Argentine armed forces are concerned, the civilian population and combatants are at all times under the protection of the principles of humanity and the dictates of the public conscience;
- (ii) The principles of IHL which are applicable to armed conflicts are reflected in the military doctrine and the manuals of procedures used in the Forces. They form part of the curricula and syllabuses of all the staff training institutes. Consequently, respect for the rules of IHL is incorporated in the planning and conduct of all practical exercises at the specific, joint or combined level. Also, the inspections which are carried out regularly in all the units of the Forces by the bodies responsible for such functions include checks of the level of training of the personnel in this area in line with their rank and functions;

- (iii) The Doctrine reflects the principles of IHL applicable to armed conflicts, in which it is understood that military necessity is limited to the right to use the method or degree of force required to achieve a military objective, without causing unnecessary suffering, that is, attacks on civilian and non-combatant targets, as well as the use of specific combat weapons which may cause suffering that is unnecessary and never justified;
- (iv) The Forces have a corps of legal advisers who analyse, study and cooperate in imparting these principles within the staff training institutes, so that their members are properly trained to meet the requirements of the tasks and functions they must accomplish. During armed conflict, they are an integral part of the general staff, essentially providing advice on respect for, consideration of and compliance with the principles of IHL, at all stages of military planning;
- (v) Air-launched cluster bombs must be used against a military target. A combat pilot who has doubts as to whether the target is military or civilian must not launch the weapon. In the case of urgent military necessity, if there is a possibility of causing collateral damage to civilian life or property, it must be proportionally minimal in relation to the actual military advantage expected. For ground-based launches, the same criterion is applied. In the event of collateral damage to civilian life or property, it must be minimal in relation to the actual military advantage expected;
- (vi) There is an obligation to provide effective advance notice of any area containing mines, booby traps and other objects which may affect the civilian population;
- (vii) In all projects for and designs of new weapons, the Argentine Republic has carried out the checks called for under article 36 of the Additional Protocol of 1977, and has thus complied with the emerging rules relating to the updated principle of limitation based on article 35;
- (viii) Starting in the 1980s, the development of improved conventional munitions and their entry into use were stepped up. The Armed Forces Institute of Scientific and Technical Research has laid down the guiding principle that systems of submunitions must have a self-destruction or self-deactivation mechanism. This guiding principle takes account of troop safety considerations and humanitarian issues. CITEFA has developed a weapon with multiple ejectable charges equipped with a pyrotechnic system which ensures self-destruction 20 seconds after expulsion. The likelihood of self-destruction is 98 per cent.
