

**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/XI/WG.1/WP.1
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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 United Kingdom of Great Britain and Northern Ireland

1. The United Kingdom recognises that all explosive munitions are capable of becoming Explosive Remnants of War. This is because all explosive ordnance is capable of failing to explode as intended. The United Kingdom therefore considers that the question relates to the use of all explosive munitions, including cluster munitions, during an armed conflict. When planning or executing attacks using explosive ordnance during an armed conflict the United Kingdom applies the following principles:

- (i) military necessity – this principle permits a state engaged in an armed conflict to use only that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources.
- (ii) distinction – since military operations are only to be conducted against the enemy's armed forces and military objectives, there must be a clear distinction between the armed forces and civilians and between objects that might be legitimately attacked and those that are protected from attack.
- (iii) discrimination – this principle prohibits attacks which, whether because they are not or cannot be directed at a specific military objective or because their effects cannot be limited as the law requires, are of a nature to strike military objectives and civilians or civilian objects without distinction.
- (iv) humanity – humanity forbids the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military objectives.

- (v) proportionality – the principle of proportionality requires that the collateral civilian losses resulting from a military action should not be excessive in relation to the expected military advantage.
- (vi) superfluous injury or unnecessary suffering – This principle prohibits the employment of weapons, projectiles or material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. The application of this principle is achieved somewhat before the actual use of the equipment concerned through the legal review of new weapons referred to in paragraph 2.v below.
- (vii) that in any armed conflict the right of the parties to the conflict to choose methods or means of warfare is not unlimited.

2. All of these principles are considered by the United Kingdom to be customary and thus to be binding on all states.

3. Additionally, the United Kingdom applies the following further principles when using explosive munitions during an armed conflict.

- (i) Environmental protection – This principle prohibits the employment of methods or means of warfare which are intended or may be expected to cause widespread long-term and severe damage to the natural environment. The legal basis for this principle is article 35(3) of the First Protocol additional to the Geneva Conventions of 1949 (AP1) as clarified in the statement deposited by the UK on ratification of that Treaty.
- (ii) The United Kingdom also applies the targeting principles contained in articles 48 to 60 of AP1 as clarified by the relevant statements deposited by the United Kingdom when it ratified that treaty.

4. In determining which weapons shall be used in an armed conflict and the circumstances of any such use, the United Kingdom applies the principles contained in relevant treaties to which the UK is party, and other weapon specific principles of international law. Such treaties may have the effect of prohibiting certain weapons, for example anti-personnel land mines, or may restrict the circumstances when they may be used, as is the case with incendiary weapons. These factors are also considered, as part of the weapons review process, when new weapons are being procured.

Implementation of relevant IHL principles

Provision of legal advice

5. Before a military deployment is undertaken, briefings at appropriate levels of command will include legal instruction on the legal principles to be applied during the operation, including the principles noted earlier. At the planning stage, legal advice is made available and is routinely considered as plans are developed. Formalised arrangements ensure that such advice is available at the strategic (including governmental), operational and tactical levels.

Rules of Engagement

6. Rules of Engagement are subjected to legal scrutiny before they are issued to UK forces. The purpose of that scrutiny is to ensure that the above stated principles as well as other applicable law are adequately and accurately reflected in the rules of engagement. Lawyers are also deployed to the staffs of commanders at appropriate levels of command in order to advise on the applicable legal principles and on the correct interpretation of Rules of Engagement.

LOAC Manual and the legal input to doctrine

7. In July 2004 the UK issued its Manual of the Law of Armed Conflict which reflects and explains in detail all of these principles. This publication replaced the UK Manual of Military Law, Volume III, which was published in 1958 and stated the contemporary law on the subject. The 2004 Manual will be periodically revised to incorporate changes in the law and in its interpretation. A summary of these principles is also contained in a short aide memoire which is issued to all personnel who deploy on military operations. The United Kingdom has established a joint service legal team at its Joint Doctrine and Concepts Centre at Shrivenham in Wiltshire. By this means the United Kingdom ensures that the listed principles are reflected in all joint military doctrine and future military concepts. Legal advice is also made available to single service doctrine centres such as the Air Warfare Centre at Waddington where a service lawyer is on the staff.

Legal advice on targeting

8. Legal advice is also made available to commanders in relation to targeting decisions. Under existing formal arrangements, such advice is given at the strategic, operational and tactical levels, and takes into account all of the legal principles that were listed earlier, any additional legal provisions which are relevant to the particular operation being undertaken and the rules of engagement that have been issued. Targeting decisions are made drawing together all available information on each individual target. That information is presented to a board of subject-matter experts to inform the Chairman's decision on a target. The board includes military officers, legal and policy representatives. The way in which the information is presented aims to ensure Distinction, Discrimination, Proportionality and Necessity are properly considered along with Collateral Damage Estimation and the Military Advantage. The relevant documentation is completed by a qualified targeteer who seeks advice from experts when his own experience does not provide the answer e.g considering the number and type of weapons to be used or additional analysis of complicated targets. The targeteer takes his guidance from the same Targeting Directive as is issued to all of the Component Commanders. This Directive can limit the use of force by specifying weapon types prohibited from use or may limit the Collateral Damage that is acceptable before higher authority is required. It also constrains operations to specified areas. This procedure is followed in every circumstance but can be accelerated in the case of time sensitive targets; despite the accelerated process the chairman is not absolved from the responsibility of making his decision from the best information available to him at the time.

Training in the law of armed conflict.

9. The United Kingdom has traditionally trained in LOAC under single service arrangements. We are now in the process of introducing a comprehensive and integrated 'Armed Forces LOAC Training Policy.' This provides all 3 Services with a standardised structure for LOAC training which complies with the UK's obligations under international law.

10. All members of the armed forces are required to achieve, and to maintain, a common baseline of training in LOAC. This is delivered during initial 'recruit' training and is regularly updated. All LOAC training encompasses the fundamental principles of IHL referred to in paragraph 1 above. Additional LOAC training will be provided to supplement that baseline (e.g. prior to a deployment or at key stages of an individual's military career) and will be tailored accordingly. LOAC training is firmly integrated into command, staff, management and leadership courses at the United Kingdom Defence Academy and elsewhere. The level of sophistication and the duration of this additional LOAC training will increase as military personnel progress in terms of rank and responsibility, the purpose being to ensure that individuals are equipped with the requisite level and depth of understanding of LOAC principles appropriate to the appointments and duties which they will undertake.

Article 36 AP1 Weapons Reviews

11. Following its ratification of AP1 in January 1998, the United Kingdom routinely reviews the legality of new weapons, means and methods of warfare in accordance with article 36 of that treaty. The joint service legal team at the Joint Doctrine and Concepts Centre (mentioned at paragraph 1 above) conducts these reviews. Legal advice is given throughout the development and procurement processes from the development of a weapon concept through to the procurement of new weaponry. Formalised advice is given at particular stages of procurement identified in internal instructions. In reviewing new weapons, means and methods of warfare the UK considers the following criteria:

- (i) whether the weapon etc is of a nature to cause superfluous injury or unnecessary suffering
- (ii) whether the weapon etc is intended, or whether it may be expected, to cause widespread, long-term and severe damage to the natural environment,
- (iii) whether the weapon is discriminating, that is whether it can be directed at a specific military objective,
- (iv) whether there are specific international law provisions which either prohibit the employment of the weapon or which limit the circumstances when it may lawfully be used.

12. In assessing the legality of new weapons, the UK considers a technical description of the weapon and a statement of the circumstances when it is intended to use it. Test and other data as to munition failure rates are considered and attention is drawn to the requirements of Protocol V to CCW where these seem relevant.

13. The United Kingdom takes an active part in the negotiation of treaties in the IHL field. When a new instrument is adopted, we consider whether ratification is appropriate, and whether implementing legislation would be required. The objective is to ensure that proper domestic law

arrangements are in place to enable us to discharge international law obligations from the moment of ratification.

Enforcement of IHL

14. The United Kingdom believes that an important element in the implementation of international humanitarian law is its enforcement. The UK enforces the law in relation to all of its military personnel through three service Acts of Parliament which provide for the discipline of all UK service people at home or abroad. All ordinary crimes under UK domestic law are also crimes under these service discipline Acts. All war crimes, crimes against humanity and genocide are crimes under United Kingdom criminal law and can thus be enforced by prosecution against UK service personnel anywhere in the world. UK policy is to ensure that allegations of breaches of the Law of Armed Conflict by UK personnel are promptly and properly investigated and that where the available evidence warrants it, legal action is taken.
