

**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/XII/WG.1/WP.1  
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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 Brazil

**Part 1. 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 submunitions, that may become ERW? (i.e. military necessity, distinction, discrimination, proportionality, precautions taken before and during an attack, superfluous injury/unnecessary suffering, environmental protection, any others?)**

1. Among the many principles of International Humanitarian Law (IHL) considered to be pertinent to the issue of Explosive Remnants of War (ERW) are those of limitation, proportionality, distinction and precaution in the attack.
2. The entire legal framework dedicated to regulating the use of certain weapons in armed conflicts stems from the general principle of limitation, according to which belligerents do not have unlimited right of choice among means and methods of combat. Such principle is included in article 22 of the 1907 Hague Convention on the Laws and Customs of War on Land:
3. Article 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.
4. The principle of limitation is also included in article 35 of the Additional Protocol I of the Geneva Conventions of 1949, which states that the right of Parties to armed conflicts to choose

methods and means of warfare is not unlimited. It is prohibited to use weapons, projectiles or material which cause superfluous or unnecessary suffering, especially munitions that remain active after the termination of armed conflict.

5. By the same token, it prohibits the use of methods or means of warfare which are intended to cause, or may be expected, to cause widespread, long-term and severe damage the natural environment.

6. Such principle dates back to the very first formal document that expressly prohibits the use of certain kinds of weapons in warfare: the Declaration of Saint Petersburg, of November 29th, 1868. Its preamble states:

“... ”

(2) that the only legitimate object which States should endeavour to accomplish during war is to weaken military forces of the enemy;

(3) that for this purpose it is sufficient to disable the greatest possible number of men;

(4) that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

(5) That the employment of such arms would, therefore, be contrary to the laws of humanity.”

7. From the principle of proportionality, present in article 23 of the 1907 Hague Convention on the Laws and Customs of War on Land (“[it is prohibited] to employ arms, projectiles, or material of a nature to cause superfluous injury”), follows the rule contained in article 57 of the Additional Protocol I of the 1949 Geneva Conventions, according to which parties to a conflict are obligated to refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

8. From this principle also stems the obligation to take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. Brazil believes that this principle clearly applies to the issue of explosive remains generated by the use of some types of munitions, once such remains may continue to kill and maim civilians long after the cessation of hostilities. Depending on the conditions of their use, the post-conflict effects of these kinds of munitions may impact negatively on the short-term balance between their military utility and harm they are likely to cause to the civilian population.

9. From the principle of distinction derives the obligation of Parties to a conflict to cautiously select their objectives and targets, with a view to avoid harm to civilian individuals or civilian objects. In order to uphold that principle, Parties to a conflict should utilize their weapons in a manner adequate to their legitimate military purpose. For example, cluster bombs or submunition dispensers should not be released or launched from high altitudes, once bomblets are likely to disperse, hence not serving their primary purpose (disable or disorganize troop concentrations) and generating greater risk of unnecessary harm to civilians.

10. The principle of protection implies the need to take necessary precautions before and during the attack, in order to minimize humanitarian risks. In this regard, articles 25, 26 and 27 of the 1907 Hague Convention on the Laws and Customs of War on Land establish that:

“Art. 25. The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited.

Article 26. The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Article 27. In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.”

11. According to that principle, the Parties to a conflict shall be cautious in the choice of the means and methods of attack, with a view to avoid incidental loss of civilian life and damage to their property.

12. Regular armies usually train their personnel in damage control techniques. Those directly involved in combat operations with the use of cluster bombs and submunitions are expected to apply that knowledge, taking into consideration weather conditions and terrain characteristics, with a view to avoiding inadequate dispersion of munitions, thus achieving greater military efficiency and minimizing collateral damage.

13. Regular armies are also expected to possess units specialized in the task of searching, collecting and destroying unexploded ordnance. The mission of those specialists is to avoid fatal accidents, not only among civilians, but also among military personnel engaged in logistics and combat support activities behind the lines of combat.

## **“Part 2 – 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, including submunitions, that may become ERW?”**

14. A clear demonstration of the commitment of Brazil with the implementation of International Humanitarian Law is the recent approval of a constitutional amendment, according to which Treaties and Conventions on Human Rights that come to be ratified by the Country shall have the status of Constitutional Law (note: Provided they fulfill the same legislative requirements for constitutional amendments, i. e. a majority of three-thirds in two voting rounds in both Houses of the National Congress [Federal Constitution, Article 5, paragraph 3]).

15. Furthermore, the same constitutional amendment states the submission of Brazil to the jurisdiction of the International Criminal Court, which is responsible for judging violations of jus in bellum.

16. In terms of concrete implementation, the main measure recently undertaken by Brazil was the creation of an Interministerial Commission for the Implementation and Diffusion of International Humanitarian Law, in November 2003. The Ministry of Defence, which is part of the Commission, has conducted courses for instructors of the military academies of the three Armed Forces, with the goal of spreading knowledge on the issue and to enable them to provide adequate instruction for future officers.

17. In addition, Brazil has signed and ratified nearly all Conventions and Treaties related to the prohibition or restriction of use of weapons with excessive or indiscriminate effects, such as the Convention on Certain Conventional Weapons (CCW), its three basic Protocols (all ratified by Brazil at August 20th, 1998), Amended Protocol II and Protocol IV (both ratified by Brazil at April 25th, 2000), as well as the Anti-Personnel Mine-Ban Treaty (ratified by Brazil at August 5th, 1998). Brazil is also initiated the ratification process for CCW Protocol V, on Explosive Remnants of War (ERW).

18. In relation to the Antipersonnel Mine-Ban Treaty, the Brazilian Armed Forces have taken all necessary measures for its full implementation, including the destruction of their stockpiles of antipersonnel landmines ahead of the deadline established by the Convention. Brazil has also been an active contributor to mine-clearance missions under the aegis of the Organization of American States in Central America and in the border between Ecuador and Peru, and is keen to employ the recognized expertise and technical knowledge of its demining personnel to the aid of other mine-affected countries.

19. Ever since the ratification of the abovementioned Conventions and respective Protocols, field manuals and doctrines of the Brazilian Armed Forces have undergone adaptation in order to reflect their principles, prohibitions and restrictions. Brazilian military instruction doctrines already include norms on terrain clearance after live-firing exercises.

**“In answering this question, States are encouraged to address, among other issues, the following specific questions:**

**(i) Are the principles reflected in the military doctrine and military manuals?”**

20. The Brazilian Army, in its Military Instruction Program for 2005 (Decision nº 003 of the Land Operations Command, November 8th, 2004) has many express dispositions on the observance of humanitarian norms. Among them are the following excerpts:

“3.7 – Issues that require special attention:

...

c. mines and booby-traps

1) the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and Their Destruction establishes serious restrictions to the use of mines and traps. Brazil, as a State-Party, is committed:

- not to use antipersonnel (AP) landmines, except to develop techniques on landmine detection, removal and destruction; and
- observe other prescriptions about the use of anti-vehicle mines and traps.

2) The Army Command Field Manual C5-37 (MINES AND TRAPS), was adapted in accordance with relevant international Treaties and Protocols and the new means of launching, detention, removal and destruction of mines.

.....

#### p. International Humanitarian Law

1) Brazil is signatory of all Conventions of Geneva of 1949, of its additional protocols and of the Rome Statute, which determines the inclusion of this subject in military instruction programs.

2) Military personnel must possess knowledge on relevant aspects of the pertinent legislation on International Humanitarian Law and the Law of War, so that, in case of participation in armed conflict, their actions and decisions would observe in full the prohibitions, restrictions and regulations in force.

In addition, the Armed Forces should endeavour to build conscience on the importance of IHL and Law of War norms throughout the Brazilian society.”

21. By the same token, the Brazilian Navy already has adopted a Manual of International Law applied to the Naval Operations (EMA-135). The Brazilian Air Force is in the process of modifying its military doctrine manuals.

22. It is thus clear that the knowledge of International Humanitarian Law principles is part of the planning of military instruction, in all levels. It is important to mention that the Armed Forces are not only concerned with compliance with humanitarian Law, but also to act as an instrument to spread knowledge on this area of the International Law.

#### **“(ii) Are the principles reflected in the rules of engagement (RoE)?”**

23. The Rules of Engagement (RoE) for military forces of the United Nations Stabilization Mission in Haiti (MINUSTAH), operating under the command of the Brazilian Army, clearly include the application of the principles of International Humanitarian Law:

“Execution of RoE:

7. General Principle: the conduction of peace-keeping operations are guided by the purposes of the charter of the United Nations and by the principles of International Law.”

24. This general rule implies that all dispositions throughout the text of MINUSTAH’s RoE are oriented by Humanitarian Law (i.e., as regards the use of force, types of weapons, and actions during a crisis situation).

25. The Navy and Air Force are currently implementing those principles and rules of engagement.

**“(iii) Are the principles of International Humanitarian Law (IHL) taken in account**

**a) in the planning of a military operation?”**

26. Progressively, as a result of the many courses on the subject already implemented for personnel of the Armed Forces (such as the workshops on IHL organized by the Ministry of Defence, in cooperation with the International Committee of the Red Cross) there is growing emphasis on humanitarian principles in the planning of military operations by the Brazilian Armed Forces.

27. In the instruction and training activities of Armed Forces Staff Colleges, consideration of the IHL principles is permanent and obligatory.

**“b) in the formal targeting procedures?”**

28. 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 existent principles of IHL?”

Yes. Brazil has constituted in 2003 an Interministerial Commission on the implementation and Spread of the International Humanitarian with the goal of proposing to relevant authorities the adoption of measures needed to allow full implementation of IHL in Brazil.

29. On the operational level, in each Force the respective Military Doctrine Sections have the responsibility of regulating war procedures and military doctrine, in accordance with rules of IHL rules.

**“(iv) Are the Military Forces Members trained within those principles?”**

30. Yes. The principles of IHL were introduced as a part of the Armed Forces Staff Colleges' courses. In addition, the Ministry of Defense and each Armed Force have been carrying out workshops and courses on the matter, with a view to achieve continuous and comprehensive instruction and training of its personnel.

**“(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?)”**

31. In each Force there is a sectors responsible for the continuous review of military doctrines, which includes the need to assess the legality of new methods and means of warfare.

**“(vi) What other additional measures are being taken to assure the implementation of these principles?”**

32. Among the other measures that have been taken to assure the implementation of the IHL principles is the training of military personnel in mine and UXO clearance activities.”

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