

**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/XIII/WG.1/WP.4
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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 South Africa

A. Applicability of Relevant International Humanitarian Law (IHL) Principles

1. The South African National Defence Force (SANDF) has embraced IHL as a concept since its inception in 1994 and has found that IHL complements its doctrine of manoeuvre warfare, which embraces the principles of offensive action, concentration, flexibility, manoeuvre, surprise, co-operation, reserve, unity of command, logistics, morale, economy of effort, security, intelligence and maintenance of the aim.

B. Use of Force

2. In terms of use of force, the aforementioned principles of manoeuvre warfare are tempered by the customary law obligations imposed on the SANDF whereby the principles of military necessity, target distinction and discrimination, proportionality, precautions taken before and during an attack, and the avoidance of superfluous injury/unnecessary suffering are observed (see paragraph 2 concerning the incorporation of the CCW and ERW principles into the Republic of South Africa legislation). The Department of Defence (DOD) is currently engaged in finalizing DOD instructions associated with the implementation of the Mine Ban Treaty necessary for updating its requirements for weapon systems acquisition, training, and doctrine in mine warfare. This process should be completed by the time the proposed CCW Bill has passed through

Parliament and the available resources will then be diverted to attend to formalizing departmental policy, instructions and doctrine related to ERW. Policy and doctrine in the form of an Environmental Implementation Plan and Environmental Management Plan in terms of Section 15(1) of the National Environmental Management Act, 1998 (Act no 107 of 1998) has also been generated by the DOD to cater for the rehabilitation of terrain after conflict.

C. Implementation of Relevant IHL Principles

3. As already stated, South Africa has incorporated the IHL principles of the CCW and ERW into legislation. Further to this the Department of Foreign Affairs is working on a Red Cross Bill, and the DOD has also recently finished a draft Geneva Conventions Bill to reinforce customary law. The SANDF has developed, and presents, extensive training programmes where the principles of IHL are being inculcated into the military culture. To date, these programmes have yielded great success.

D. Specific Questions. The following specific questions are addressed in the following manner:

i. **Are the principles reflected in military doctrine and manuals?**

4. This question is somewhat premature, as the South African Parliament has not as yet ratified legislation. In anticipation of the ratification however, the DOD has embarked on drafting relevant doctrine and instructions in compliance with the legislation (see comments above).

ii. **Are the principles reflected in the rules of engagement (ROE)?**

5. South Africa has not as yet generated a national ROE as has, for example, the United Kingdom. Thus, in terms of DOD doctrine, ROE are generated specifically for each and every planned military operation. As the Republic is not currently involved in any conventional conflict, there is no reason to develop specific ROE until such an event occurs. South Africa is, however, involved with Peace Support Operations (PSO) as a contingent contributor with the United Nations (UN) and the African Union (AU) and is subject to the ROE issued by the aforementioned bodies. It is our submission that the ROEs that the SANDF are currently operating under during PSOS are adequate for the prescribed mandate and mission.

iii. **Are the principles taken into account:**

1) in the planning of a military operation?

6. Yes. Planning takes place on the strategic level, where specialists from all disciplines work on a joint and combined level. It is on this level of planning that our military legal practitioners (MLPs), engineers, logistics personnel (including environmental officers), army, air force, naval and

military medical specialists provide advice and guidelines to the SANDF on the conduct of operations.

2) in the formal targeting procedures?

7. Yes. The DOD has as part of its doctrine and policy formal targeting procedures (called the Target Selection Board), which is run as part of the routine “battle schedule” on the operational level, should the situation warrant the requirement. This targeting process would be manned by intelligence, explosive, legal, military, Special Forces and political specialists, under the chairmanship of the Force Commander to ensure effective target discrimination. A recent military exercise in co-operation with the British Armed Forces proved the effectiveness of current target acquisition doctrine.

3) 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 existing principles of IHL?

8. Yes. The SANDF’s Military Legal Services Division staff MLPs on a full time basis on the strategic and operational levels, and provide combat ready deployable MLPs on a tactical level with SANDF units who deploy abroad.

4) Are the members of the armed forces trained in these principles?

9. Yes. Members of the SANDF are trained and retrained from the moment they begin basic training, to formative courses, officers training and staff courses. Courses are designed to suit the profile of the trainee or “learner” (ie tactical, operational and strategic) and thus a number of varied courses are presented from the rank of private/seaman to colonel/naval captain and higher. The DOD also presents a Law of Armed Conflict Course four times a year to further educate military members. MLPs are required in terms of doctrine to ensure refresher training is presented to all units being prepared for deployment at the DOD Mobilisation Centre. Further, the DOD requires every member to sign an oath, which prescribes the basic principles of IHL. This oath is reiterated at every formal meeting, parade or military gathering.

5) 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?)

10. Yes. The South African Government has promulgated the National Conventional Arms Control Act (41 of 2002) whereby the National Conventional Arms Control Committee (situated at the DOD) review legality of new weapons and their impact on the method of warfare and military doctrine. The weapon system acquisition process of the SANDF is also controlled by regulatory boards and councils at Service and Divisional, Departmental and Ministerial level. These mechanisms contain oversight components by way of representation through officeholders who scrutinize and report to the Secretary for Defence who, in terms of the Defence Act (42 of 2002), perform functions necessary or expedient to enhance executive control over the military.

6) What other measures are being taken to ensure implementation of these principles?

11. The DOD has a designated department of doctrine and policy to ensure that the methods and means of warfare are in line with international and national obligations. Finally doctrine and practices are “war gamed” and practised on a continual basis in military exercises on a joint, combined and multinational basis.
