

Legal Services

Review of Legality of Weapons Under International Law

Headquarters
Department of the Army
Washington, DC
1 January 1979

Unclassified

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SUMMARY of CHANGE

AR 27-53

Review of Legality of Weapons Under International Law

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Legal Services

Review of Legality of Weapons Under International Law

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Brigadier General, United States Army
The Adjutant General

History. This UPDATE issue is a reprint of the original form of this regulation that was published on 1 January 1979. Since that time,

no changes have been issued to amend the original.

Summary. Applicability. See paragraph 2.
Proponent and exception authority.
Not applicable

Army management control process. Supplementation. Local limited supplementation of this regulation is permitted, but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to HQDA(DAJA-IA) WASH DC 20310; other commands will furnish one copy of each to the next higher headquarters.

Interim changes. Users of this regulation will not implement interim changes unless the change document has been authenticated by The Adjutant General. (Interim changes

expire 1 year after the publication date.) If a formal printed change is not received by the time the interim change expires, users will destroy the interim change.

Suggested Improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA-IA), WASH DC 20310.

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Contents (Listed by paragraph and page number)

Purpose • 1, page 1
Scope • 2, page 1
Explanation of terms • 3, page 1
Policy • 4, page 1
Responsibilities • 5, page 1
Procedures • 6, page 1
Determination of legal review • 7, page 2

RESERVED

1. Purpose

This regulation—

- a. Implements DOD Instruction 5500.15 as it applies to the review of legality of weapons under international law.
- b. Prescribes procedures and assigns responsibilities for submission of weapons or weapon systems to The Judge Advocate General (TJAG) for legal review under international law.

2. Scope

This regulation applies to—

- a. The development or procurement of all weapons or weapon systems which are intended to be used in combat, including major and nonmajor systems.
- b. The Active Army and all components and commands world wide. This regulation does not apply to the Army National Guard and Army Reserve.

3. Explanation of terms

As used in this regulation, the following explanation of terms applies.

- a. *Weapons.* Chemical weapons and all conventional arms, munitions, materiel, instruments, mechanisms, or devices which have an intended effect of injuring, destroying, or disabling enemy personnel, materiel, or property.
- b. *Weapons systems.* The weapon itself and those components required for its operation, but is limited to those components having a direct injuring or damaging effect on individuals or property (including all munitions such as projectiles, small arms, mines, explosives, and all other devices that are physically destructive or injury producing).

4. Policy

- a. All actions of the Department of the Army with respect to the development and procurement of weapons and their intended use in armed conflict shall be consistent with the obligations assumed by the United States Government under all applicable treaties, with customary international law, and, in particular, with—

(1) Hague Convention No. IV Respecting the Laws and Customs of War on Land of 1907 (36 Stat. 2277, T.S. No. 539).

(2) The Geneva Protocol on the Prohibition of the Use in War of Asphyxiating, Poisonous, or other Gases, and of Bacteriological Methods of Warfare of 1925 (T.I.A.S. No. 8061).

(3) The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972 (T.I.A.S. No. 8062).

- b. All weapons or weapon systems subject to this regulation will be reviewed by TJAG.

c. An initial review of each developmental weapon or weapon system will be made after the original submission of the item under the procedures in paragraph 6, and before full-scale development. A final review must be made prior to the award of the initial contract for production to determine whether the weapon or weapon system or its intended use in combat is consistent with international law.

d. Nondevelopmental items, including foreign weapons, subject to this regulation will be reviewed for legality under international law prior to their acquisition.

e. Weapons or weapon systems subject to Army Systems Acquisition Review Council (ASARC) determinations will be reviewed prior to the ASARC II and ASARC III reviews (app B and C, AR 15-14).

5. Responsibilities

a. *Deputy Chief of Staff for Operations and Plans (DCSOPS).* DCSOPS initiates the legal review process by submitting data to TJAG on those weapons or weapon systems for which the Required Operational Capabilities (ROC) document was approved after 16 October 1974.

b. *The Materiel Developer.* The materiel developer—

- (1) Requests TJAG to initiate a legal review of weapons or weapon systems developed or acquired under a Letter Requirement.

(2) Coordinates with TJAG early in the development cycle, and before initiating full-scale engineering development, to ensure that any weapon or weapon system being developed or acquired has been reviewed for compliance with international law.

(3) As requested by TJAG, provides specific additional information pertaining to each weapon or weapons system.

(4) Documents the initiation of the legal review process in Section III of the Development Plan (AR 70-27).

(5) When requested by TJAG, conducts experiments, including wound ballistics studies, on weapons or weapon systems subject to review and provides analysis and assessments of the effects of the weapons or weapon systems.

c. *Deputy Chief of Staff for Research, Development and Acquisition (DCSRDA).* DCSRDA—

(1) As requested by TJAG, provides additional information needed to complete the legal review on the development, characteristics, and mission of weapons or weapon systems.

(2) Notifies TJAG of the final choice of the specific weapon or weapon system to be developed or acquired according to a requirements document submitted by DCSOPS (a above and para 6a) and requests TJAG to complete the legal review of the weapon or weapon system.

d. *The Surgeon General.* Upon the request of TJAG, TSG provides the medical consultation needed to complete the legal review of weapons or weapon systems.

e. *The Judge Advocate General.* TJAG—

(1) Reviews weapons or weapon systems in accordance with DOD Instruction 5500.15 to determine whether the weapons or weapon systems or their intended use in combat are consistent with the obligations assumed by the United States Government under all applicable treaties and with customary international law.

(2) Maintains a permanent file of the opinions rendered in implementation of DOD Instruction 5500.15 and of this regulation.

(3) Monitors the development of weapons or weapon systems submitted according to a requirements document (a above and para 6a) to ensure that they receive a proper legal review at the correlative developmental phase.

6. Procedures

a. DCSOPS submits to TJAG—

(1) The requirements document for each weapon or weapon system during the Department of the Army staffing process for Department of the Army approval.

(2) An information copy of each Letter Requirement document for weapons or weapon systems that is submitted to the Department of the Army.

(3) Proposed changes to the ROC document whenever the modification would modify the injury or damage producing mechanisms of the weapon or weapon system or their intended use in armed conflict.

b. DCSRDA will request TJAG to complete the legal review of weapons or weapon systems submitted by DCSOPS (a above) in accordance with paragraph 5c(2).

c. The Materiel Developer will—

(1) Request TJAG to review for legality under international law each weapon or weapon system being developed pursuant to a ROC approved prior to 16 October 1974 and each weapon or weapon system developed pursuant to a Letter Requirement. The request will be submitted prior to the initiation of full-scale engineering development. Any other weapon or weapon system under development by a materiel developer that is not subject to being submitted by DCSOPS in accordance with a above will be submitted for a review by the materiel developer prior to the initiation of full-scale engineering development.

(2) Provide to TJAG a general description of the weapon or weapon system submitted for a legal review. This will include a description of the mission and the desired terminal ballistic effects of the weapon or weapon system. Tests and laboratory studies are acceptable.

(3) Coordinate with the International Affairs Division, TJAG, early in the development cycle, and prior to full-scale engineering

development, to ensure that any weapon or weapon system being developed or acquired conforms to international law.

d. TJAG will request any pertinent additional information needed for a legal review from the Materiel Developer, DCSRDA, The Surgeon General, and any other component or agency of the Department of Defense.

e. TJAG will complete an initial review of each developmental weapon or weapon system submitted prior to full-scale engineering development. A final review of each weapon or weapon system will be completed prior to the award of the initial contract for production. Nondevelopmental items will be reviewed before acquisition. The legal review of major systems must be completed prior to the ASARC II and III reviews.

f. Information for legal reviews will be submitted to TJAG 45 days prior to the program review (ASARC II/III or VAL/DEVA IPR) and TJAG will complete the legal review prior to the date of the program review.

g. TJAG may require a further legal review of any weapon or weapon system at subsequent stages in acquisition or development if determined to be appropriate.

7. Determination of legal review

No weapon or weapon system which requires a legal review under the provisions of this regulation will be developed or acquired without the requisite legal review. To determine whether a legal review has been completed, contact the International Affairs Division, Office of The Judge Advocate General (HQDA(DAJA-IA), WASH DC 20310).

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