

LEGAL REVIEW PROCESS FOR NON-LETHAL WEAPONS

**National Defense Industrial Association
Non-Lethal Defense V Symposium
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WEAPONS REVIEW Requirement

- ◆ **Department of Defense Instruction 5000.2**
 - **Ensures compliance with U.S. legal obligations**
 - **Before award of a system development and demonstration contract, and before award of initial production contract**
 - **Encourages early legal review of new, advanced, or emerging technologies**

WEAPONS REVIEW Requirement

- ◆ **DoD Directive 3000.3, of 9 Jul 96, “Policy for Non-Lethal Weapons”**
 - **Requires legal review of all non-lethal weapons**
 - **Ensure compliance with all applicable treaties, with customary international law, and LOW**

WEAPONS REVIEW

Scope

- ◆ **Whether the weapon causes unnecessary suffering**
- ◆ **Whether the weapon is capable of being controlled in a discriminatory manner**
- ◆ **Whether there is a specific rule of law prohibiting its use**

WEAPONS REVIEW

Unnecessary Suffering

◆ Unnecessary Suffering

- May not inflict suffering, injury or destruction not actually necessary to accomplish legitimate military purposes**

WEAPONS REVIEW

Discrimination

◆ Discrimination

- A fundamental principle of the law of war is that combatants must be distinguished from civilians**

WEAPONS REVIEW

Treaty Considerations

◆ Treaty Considerations

- Whether there is a specific rule of law prohibiting its use or restricting its employment**

WEAPONS REVIEW

Treaty Considerations

- ◆ **United Nations 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 of 10 October 1980**

WEAPONS REVIEW

Treaty Considerations

- ◆ **Protocol II – Landmines and booby traps**
 - Amended to include internal conflicts
 - APL: “a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.”



WEAPONS REVIEW

Treaty Considerations

- ◆ **Biological Weapons**
 - **Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925**

WEAPONS REVIEW

Treaty Considerations

- ◆ **Biological Weapons**
 - **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972**

WEAPONS REVIEW

Treaty Considerations

- ◆ **Biological Weapons**
 - **The Biological Weapons Anti-Terrorism Act of 1989 (18 U.S.C. § 175, *et seq.*)**
 - ◆ **No anti-materiel uses**
 - ◆ **Prophylactic, protective, peaceful purposes Ok**

WEAPONS REVIEW

Treaty Considerations

- ◆ **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993**

WEAPONS REVIEW

Treaty Considerations

- ◆ **Riot Control Agents**
 - “Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”

WEAPONS REVIEW

Treaty Considerations

- ◆ **Executive Order 11850**
 - **No first use in armed conflict**
 - **Can use defensively**
 - ◆ **Rioting POWs**
 - ◆ **Human Shields**
 - ◆ **CSAR Missions**
 - ◆ **Rear Area Security**