

Summary of the first virtual information exchange on the implementation of weapons reviews, 16–17 September 2020

1. As provided in Article 36 of Additional Protocol I to the 1949 Geneva Conventions, States have a responsibility to determine whether the use of new weapons, means or methods of warfare they study, develop, acquire or adopt would be prohibited under international law, in some or all circumstances. Conducting such reviews is a practical measure that all States can take to ensure they comply with international law.
2. In [Action 25](#) of the Secretary-General’s Agenda for Disarmament, the United Nations Office for Disarmament Affairs (UNODA) committed to organizing with relevant partners “an informal process with a view to facilitating the exchange of information and experiences between States on the reviews of new weapons”. The first meeting was held virtually on 16–17 September 2020. The programme is attached.

Day One – 16 September

3. The exchange was opened by **Michael Spies, Coordinator of the UNODA Science, Technology and International Security Unit**. He noted that we are seeing, at an accelerating pace, the design and acquisition of new weapon technologies with unclear or not well understood implications, including for the maintenance of international peace and security, ensuring respect for international humanitarian law (IHL) and international human rights law (IHRL) and the protection of civilians and civilian infrastructure.
4. A vital tool to understand and mitigate harmful or undesirable implications is the exercise by States of legal weapons reviews. Despite the many benefits of these reviews, few States make information about them public. Increased transparency on the conduct and outcome of weapons reviews could build confidence in how States fulfil this responsibility. It could facilitate predictability with respect to the introduction of potentially destabilizing new technologies. It could promote common understanding regarding the application of international law, particularly IHL, including in its application to new technologies as well as ordinary conventional arms. It may also assist other States to strengthen their own practices and facilitate the identification of good practices that could form the basis for possible future common standards.
5. The exchange then heard a presentation introducing the legal basis and conduct of legal reviews of new weapons, means and methods of warfare from **Wen Zhou, Legal Adviser, International Committee of the Red Cross**. She explained that the obligation to conduct legal weapons reviews flows from the general obligation to ensure respect for IHL, and is codified in article 36 of Additional Protocol I to the Geneva Conventions. Although article 36 does not specify how a State should conduct a review of the legality of new weapons, means or methods of warfare that it studies, develops, acquires or adopts, this obligation implies that there should be a standing national procedure, and it is up to each individual State to set up its own review mechanism. The legal review applies to weapons in the widest sense as well as the ways in which they are used, bearing in mind that a means of warfare cannot be assessed in isolation from its expected method of

use. The legal framework of the review is the international law applicable to the State, including IHL. In particular, this consists of the treaty and customary prohibitions and restrictions on specific weapons, as well as the general IHL rules applicable to all weapons, means and methods of warfare. The assessment of a weapon requires an examination of all relevant empirical information pertaining to the weapon, and this is the rationale for involving multidisciplinary expertise, including not only legal, but also medical, technical and other areas. The ICRC is currently updating its 2006 Guide for the Legal Review of New Weapons, Means and Methods of Warfare.

6. **Vincent Boulanin, Senior Researcher, Stockholm International Peace Research Institute**, provided an overview of his organization's 2017 survey of State practice in the conduct of legal weapons reviews, which received nine responses. In analysing the responses, there were several interesting commonalities and differences. In many cases, Ministries of Defence were responsible for conducting reviews, but some States instead had an independent mechanism, either a multidisciplinary committee of an individual legal expert reviewer. It was found that reviews can lead to a change in how a weapon is designed or used. Some States exclude some types of weapons from the process – examples include the United Kingdom excluding nuclear weapons and Germany excluding cyber. Some countries take IHRL into account. There is no one size fits all process for reviews. For example, testing can take place through computer simulation or involve live exercises. Some countries outsource elements of their reviews. Best practices that emerged from the survey included: performing reviews as early as possible; conducting independent testing (i.e. not relying only on testing by private companies); involving technical experts; and ensuring sufficient knowledge on technical issues through training.

7. **Pauline Warnotte, Researcher, United Nations Institute for Disarmament Research**, Pauline Warnotte, Researcher, United Nations Institute for Disarmament Research, provided some thoughts on the particular challenges posed to weapons reviews by new technologies. New technologies add complexity to the legal weapon review process. For instance, the upgrade of a weapon should generally trigger a new review, but this can be unclear in certain cases, such as when only a single component is upgraded. There can also be grey areas when it comes to dual use technologies, such as cyber and artificial intelligence technologies, and when they would qualify as a weapon and, therefore, require review. There is a possible gap when it comes to proportionality, which is context dependent and generally absent from traditional legal reviews, but could be relevant in the case of some new technologies. It is also interesting to consider whether the risk of misuse or hacking of a weapon should be taken into account in a review. The first challenge for reviewers is to understand the technology and its intended use, and to have access to reliable and complete information to this end. They should not rely solely on the manufacturer for this information. There should be a focus on the aftermath of a review's outcome. Transparency, even if redacted, is useful for educational purposes and to foster compliance with international law. Permanent dialogue and mutual exchange between governments, industry, developers and scientists in the design and testing phase of new weapons is also important.

8. Following the presentations, there was an interactive discussion. In response to a question about concerns that these reviews could normalize contested new technologies or the extension of armed conflict to new domains, the speakers noted that the sharing of information, both on convergences and divergences, helps to build trust. An audience member asked if there had been any information exchange between NATO members and also whether the Security Council had engaged on this topic. The speakers did not know of any Security Council engagement, and it was felt that the General Assembly could be a more fruitful avenue at some point down the line, should there be interest from States. On NATO, it was noted that the concept of interoperability necessitated a degree of information sharing on weapons reviews.

Day Two – 17 September

9. On the second day of the exchange, three government representatives delivered presentations on their national legal weapons review processes. The purpose of the presentations was to (i) directly facilitate the sharing of information, (ii) identify useful elements about the processes that should be shared were this to happen in a more systematic manner and (iii) discuss elements of good practice.

10. **Sarah-Jane White, Deputy Director, Operations and International Law, Australian Department of Defence**, explained that Australia established a mechanism for weapons reviews following its ratification of Additional Protocol I to the Geneva Conventions. While documentation regulating the conduct of Article 36 reviews is not publicly available, Australia has shared information publicly about the process in a working paper to the group of governmental experts on emerging technologies in the area of lethal autonomous weapons systems at the Convention on Certain Conventional Weapons. The standard Article 36 weapon review process involves a small team of legal officers conducting the legal review, informed by comprehensive testing and evaluation. The review of complex weapon systems may necessitate the convening of a ‘Multi-disciplinary Review Committee’, which draws upon the knowledge and experience of a broad range of experts, such as pilots and engineers. The use of Multi-disciplinary Review Committees can be considered both a best practice, due to the thoroughness of such Committees, and also a challenge due to the difficulty in identifying appropriate subject matter experts. Article 36 reviews conducted by Australia include an assessment of whether use of a weapon system could be contrary to the public interest, the principles of humanity or the dictates of public conscience. Environmental impact is also assessed as part of reviews. While reviews conducted by other States are taken into account, a fully independent review is conducted regardless. The review process means that legal advice is provided at different phases, from the concept stage to acquisition.

11. **J.F.R. (Hans) Boddens Hosang, Deputy Director of Legal Affairs, Netherlands Ministry of Defence**, discussed his country’s two-tiered approach, consisting of a multidisciplinary commission and working group, which take decisions by consensus, and a final decision phase, which rests with the Minister of Defence. Sources of information taken into account in the review include manufacturer information and test data. The review provides advice on the use of the weapons, ammunition or weapon systems in all circumstances. Methods of warfare are distinguished from doctrine. The Netherlands considers cyber a method, not a means, of warfare. Reviews also take account of environmental impacts and public relations aspects. Platforms are not reviewed separately from weapons systems. Operator health and safety is not part of the review. Challenges include: deciding when to conduct a review; building requisite networks; maintaining the mechanism’s independence; and ensuring the outcome is implemented.

12. **Mirco Anderegg, Deputy Head, Law of Armed Conflict, Swiss Federal Department of Defence**, outlined the Swiss process, which was formally introduced in 2007 and reviewed and strengthened in 2018. Internally, it had been argued that reviews would assist with the procurement process. The Swiss do not review tactics and doctrine in a separate process, but either in connection with a weapons system or through a consultation process. The relevant definition of weapons includes ammunition and platforms. The review team is in dialogue with the procurement team throughout the process and advises on the legality of the weapon at three stages. In addition to taking into account applicable international law, the review considers ongoing debates in disarmament bodies. As well as internal testing and expert opinions, the review may take manufacturer information into account. It is useful also to consider reviews of the system conducted by others, particularly for more complex systems. Cost may be a limiting factor as the cost of testing in some cases can surpass the cost of the weapon itself.

13. Following the presentations on national practice, **Netta Goussac, Associate Senior Research, SIPRI**, facilitated a discussion on how the sharing information could be facilitated and structured on a broader scale, as well as whether it is desirable or even already possible to identify some good practices. At the outset of the discussion, she observed that legal weapons reviews are not just a legal obligation but also a practical measure relevant to all States, not just those party to Additional Protocol I. It is clear from the presentations that there is no one size fits all process, but that there are different aspects suitable for different countries. Benefits of sharing information like this include that it may help States strengthen their process and could help the international community as a whole to meet the challenges posed by the speed of technological developments.

Conclusions

14. Key points that arose from the discussion over the two days were as follows:

- As a first step to facilitate information exchange between States, a list of national focal points should be compiled and maintained.
- The conduct of weapons reviews should be broadly promoted, included through dedicated outreach and through regular engagement.
- Some States have already made a considerable amount of information available in the public domain on their national review processes. The establishment of a resource hub to consolidate all this information in one place could be useful, including on the basis of information solicited via a questionnaire.
- The value of State-to-State dialogue on the process of weapons reviews as well as the sharing of information on outcomes was recognized.
- There is interest among States in seeking to compile best practices on the process of reviews.
- There is interest among States in pursuing thematic workshops to exchange information approaches to addressing specific aspects. The topics of new technologies and proportionality were proposed.
- Consideration is being given by at least one State as to how to make public the outcomes of review processes, taking into account security and proprietary matters.