Art. 36 Reviews in Switzerland

Virtual information exchange on implementation of weapons reviews

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Agenda

1. History and Background
2. Implementation of Art. 36 in Switzerland
3. Review structure
4. Available Resources for the Reviewer
5. Enabling Successful Reviews
History and Background

• Formal requirement in procurement process since 2007
• Reviewed and strengthened procedure since 2018

• Important feature of procurement process:
  – Efficiency
  – Feature of policy regarding future weapons systems
Implementation of Art. 36

Weapons and means of warfare:
• Departmental ordinance (DDPS) *OMat (RS 514.20)*
• Directive on Cooperation between Defence and Armasuisse (procurement agency) (*not publicly available*)

Methods of warfare:
• Consultation process of regulations: SOP, Directives...
Implementation of Art. 36 AP I in OMat

Art. 11 OMat (RS 514.20)

Para. 1: Scope – Each **Procurement, Modification** or **Repurposing** of a weapons system

Para. 2: Definition of "weapons systems": means designed to injure, kill, damage, destroy, incapacitate; to include ammunition and platforms

Para. 3: Competent office, **independence** and **access** to relevant information

Para. 4: Three examination **steps** and **binding character**
Implementation: 3 Separate Reviews

- Is it a weapon?
  - Is the project legally feasible?
  - Are there potential constraints for procurement and employment?

- Is the chosen model employable in conformity with international law?
  - Were constraints taken into account?

- Have constraints for training and employment been respected in the drafting of weapon specific regulation and concepts?

Initialization  Conceptualization  Realization  Introduction

Procurement Process
Review: Structure

• Description
  – weapon
  – Designed and intended use
• Disclaimer: review only relates to description
• Legal assessment
  – superfluous injury/unnecessary suffering?
  – indiscriminate: directable to military objective?
  – environment
  – ad hoc regulation: cluster mun., dum-dum, incendiary…
  – IHRL
• Conclusion
  – positive / negative; constraints for use
Resources for the Reviewer

- Manufacturer's documentation
- Own testing and testing by manufacturer or third parties
- Expert opinions
- Reviews by third parties?
Enabling successful reviews

• Review parallel to the ongoing procurement process to avoid delay

• Personal contact between reviewer, procurement responsibles and future users creates trust and enables interdisciplinary teamwork

• Adequate resources and degree of independence

• Use of synergies
Discussion

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