Department of Defense Instruction

SUBJECT
Review of Legality of Weapons Under International Law

Refs:  
(a) 10 U.S.C. 137  
(b) DoD Directive 5145.1, "General Counsel of the Department of Defense," January 7, 1959

I. PURPOSE

This Instruction assigns responsibilities and prescribes procedures for Department of Defense compliance with international law with respect to the acquisition and procurement of weapons.

II. POLICY

All actions of the Department of Defense with respect to the acquisition 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 the laws of war.

III. APPLICABILITY

The provisions of this Instruction apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and Defense Agencies (hereinafter referred to collectively as "DoD Components").

IV. RESPONSIBILITIES

A. The Secretary of each Military Department will ensure that a legal review by his Judge Advocate General is conducted of all weapons intended to meet a military requirement of his Department in order to ensure that their intended use in armed conflict is consistent with the obligations assumed by the United States under all applicable international laws including treaties to which the United States is a party and customary international law, in particular the laws of war.
1. The legal review will take place prior to the award of an initial contract for production. At such subsequent stages in acquisition or procurement as the Judge Advocate General concerned determines it is appropriate to do so, he may require a further legal review of any weapon.

2. Each Judge Advocate General will maintain permanent files of opinions issued by him in implementation of this Instruction.

B. Each DoD Component having primary responsibility for the engineering development, acquisition or production of a weapon will develop and issue internal plans and regulations which will assure that the Judge Advocate General concerned is requested to make the legal review provided for in this Instruction prior to the engineering development and prior to the award of an initial contract for production of that weapon. All DoD Components having data relevant to the legal review will provide such data to the Judge Advocate General concerned upon his request.

C. Nothing in this Instruction shall be construed as derogating from the functions and responsibilities vested in the General Counsel of the Department of Defense by 10 U.S.C. 137 (reference (a)) and DoD Directive 5145.1 (reference (b)). Upon request of the Secretary of Defense, the Secretary of a Military Department, the Director of Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics) or any Judge Advocate General, the General Counsel will review any opinion issued by a Judge Advocate General in implementation of this Instruction.

D. The Director of Defense Research and Engineering will, during the research, development, testing and evaluation phases of the acquisition of weapons, be responsible for monitoring compliance by DoD Components with Section IV.B. of this Instruction.

E. The Assistant Secretary of Defense (Installations and Logistics) will, during the production phase of the acquisition of weapons, be responsible for maintaining compliance by DoD Components with Section IV.B. of this Instruction.
V. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Two copies of implementing regulations shall be forwarded to the General Counsel, Office of the Secretary of Defense, within 90 days.

[Signature]

General Counsel