



DEFENSIE
LA DÉFENSE

The Belgian Commission for the Legal Review of New Weapons

CCW Informal Meeting of
Experts on LAWS



Geneva – 13 April 2016



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Thank you M. Chairman. As this is the first time my delegation takes the floor, I would like to express my appreciation to Ambassador Biontino for his hard work on this important session on LAWS and assure him of the full support and cooperation of my delegation.

I would like to thank the experts on the panel for their presentations and valuable contributions to our debate.

Like other delegations and with an aim of pursuing further transparency on this issue, Belgium wishes to share the procedure it has put in place in order to comply with the requirement of article 36 of the First Additional Protocol to the Geneva Conventions.

Allow me in this respect to turn the floor to my colleague from the department of legal affairs of the Belgian Ministry of Defense, Mrs Pauline Warnotte. She will firstly briefly describe the role and mandate as well as the composition and functioning of the Belgian Commission and subsequently depict some good practices that were developed by Belgium regarding specific weapons and elaborate on the challenges that LAWS would represent for legal review commissions. I would like to thank the secretariat for displaying the few slides that will underpin her short presentation.



The Belgian Legal Review Commission

- General Order – J/836 issued by the CHoD on 18 July 2002
- Task: In the study, development, acquisition or adoption of a new weapon, means or method of warfare, advise the CHoD on whether its employment would, in some or all circumstances, be prohibited by any rule of international law applicable to Belgium (article 36)
- Seizure of the Commission at the earlier stage and in any case before the acquisition or adoption of a new weapon, means or method of warfare
- General obligation for Defence personnel to cooperate with the Commission

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The Belgian Commission for the Legal Review of New Weapons was established by the General Order-J/836 issued by the Chief of Defence on 18th July 2002. The establishment of the Commission aimed at formalizing the respect of the obligation coming out of article 36.

The Belgian Commission is a permanent advisory body that reports to the Chief of Defence. Its task is to advise the Chief of Defence about the legality of any new weapon, means or method of warfare that is under study or which is being developed by the Armed Forces or that the Armed Forces plan to acquire.

In order to be efficient, the Commission has to be seized at the earliest stage of the process and, in any case, before any acquisition.

The General Order furthermore compels any Defence member to fully cooperate with the Commission.



Role and Mandate

Applicable to **any** new weapon, means or method of warfare

- **Weapon** = « *any type of weapon, weapons system, projectile, ammunition, powder or explosive designed to put hors de combat persons and/or material* »
- **Means and methods of warfare**: no definition in the General Order
 - **Means of warfare** = weapons
 - **Methods of Warfare** = techniques and tactics to fight the enemy

Assessment regarding **any** obligation deriving from international law (not limited to IHL) and domestic law:

- Prohibition/restriction to employ the weapon in some or all circumstances for Belgium under international/domestic law ?
 - Assessment regarding the planned/intended use ≠ any potentially wrongful use
 - 'Any or every use': possibility of conditional approval
- Recommendations (guidance, training, ...) in order to comply with international/domestic law obligations

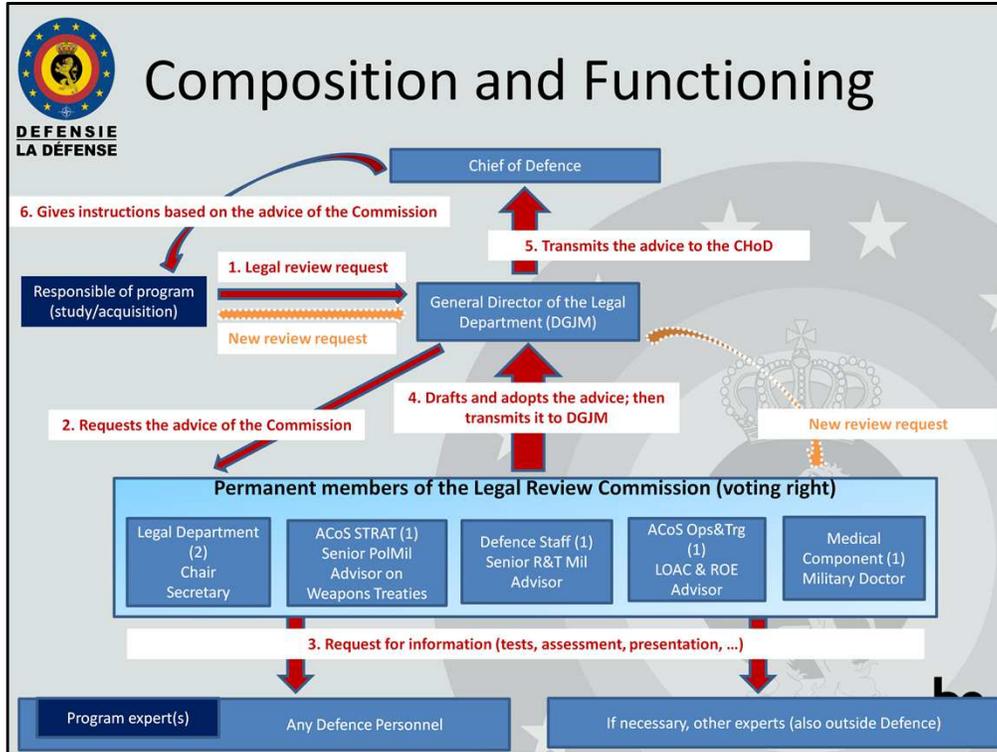
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The scope of application of the General Order is very broad and uses the language of article 36. It includes the review of any new weapon, means or method of warfare that was not already used by the Belgian Armed Forces at the date of its publication.

For its application, the term « weapon » includes any type of weapon, lethal and non-lethal, including any weapon system, projectile, ammunition, powder or explosive designed to put a person and/or material *hors de combat*. It is considered that means of warfare also fall under this definition.

The terms « method of warfare » are not directly defined in the General Order and have to be understood as the tactics and techniques designed to fight the enemy.

In assessing the new weapon, the Commission will consider any international law obligation, including but not limited to obligations deriving from IHL. The Commission will of course also consider domestic legislation which is, in many instances, less permissive than international law.



The Commission is made up of six permanent members coming from the Ministry of Defence and is chaired by a Legal Advisor appointed by the General Director of the Legal Department. The other members are a Secretary (who is also coming from the Legal Department), the Law of Armed Conflict Advisor of the Assistant Chief of Staff Operations and Training, the Senior Political Military Advisor on weapons treaties of the Assistant Chief of Staff Strategy, the Senior Military Advisor on Research and Technology of the Defence Staff and a Military Doctor appointed by the Chief of the Medical Component. In this way, the composition of the Commission allows for a multidisciplinary approach.

Aside those permanent members are the expert(s) responsible of the development or acquisition program regarding the new weapon. The Commission might also decide to consult or hear other experts, as academics.

Any person responsible of a program aiming at studying, developing or acquiring a new weapon, means or method of warfare has to notify the General Director of the Legal Department as soon as possible of its intention to do so and to provide him with all available information regarding this new weapon (1). The General Director then transmits the request to the Commission (2) unless he considers, based on an in-depth examination, that the new device does not fall under the weapon or means or method of warfare definition.

Once seized of the request, the Commission conducts the necessary steps in order to deliver a motivated advice on the legality of the new weapon. The Commission will usually

hear experts, being responsible for the program or not, and can request the support of any member of the Defence Personnel as well as of any specialist inside or outside the Defence organization (3).

Once the Commission has collected relevant information, the Secretary drafts the advice upon which the Commission will decide. Decision making usually requires unanimity. After its adoption, the advice is transmitted to the General Director of the Legal Department (4) who will then transmit it to the Chief of Defence (5). If the Commission was not able to vote unanimously in favor of one or some findings of the advice, the different opinions will be clearly mentioned. The General Director will express his view(s) on the topic too. Any advice leading to a recommendation expressing the prohibition or the restriction of the use of the weapon will have to be particularly reliable and motivated, as the aim of this given advice is to enable the Chief of Defence to take actions as requested by international law in this domain. The findings of the Commission are of an advisory nature and are not binding, but usually they will be followed.

Lastly, the Chief of Defence will give orders based on the content of the advice to the person(s) responsible of the program (6). Those instructions may request, for instance, the implementation of directives describing the manner the weapon has to be used in order to respect international law obligations.

If any new information is made available after the advice was given, the advice of the Commission will be reviewed following the same procedure. The General Director of the Legal Department may also decide on its own to re-open a case and to ask for an actualization of the review.



Challenges regarding LAWS

LAWS assessment

- Technical assessment:
 - Lack of internal resources?
 - Greater reliance on industry (accuracy of industrial facts and figures)?
- Legal review:
 - Assessment of international law principles in a new way?
 - Need for directives and guidances

Re-assessment in case of new information : consequences?

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I will now turn on the challenges that Legal Review Commissions might face, especially regarding LAWS.

One of the first main challenges would certainly be the technical assessment of those weapons.

Belgium has developed an expertise in a few technical areas through the Weapon Systems and Ballistics Department of the Royal Military Academy. Regarding Non-Lethal Weapons, in particular, this Department has developed mechanical tests, namely shooting on surrogates, and numerical models simulating impacts on the human body. These tests allow to assess the effect of kinetic energy non-lethal projectiles on the human body and are part of a greater effort at international level in order to achieve the standardization of the risk assessment of those weapons. Relying on those studies, the Belgian Commission was able to suggest ways to use those weapons that would not contravene international law, and recommended the adoption of guidelines for the users of those weapons, notably regarding security distances.

Regarding LAWS, the used technology would be so advanced and so highly complex that the members of the Commission would, first of all, have to be particularly aware of the specificities of the weapon and its functioning before being able to legally review it. In order to fulfill its duty, the Commission might be forced to rely more and more on experts. But not all the States would have the internal resources to develop such an expertise. States would therefore most probably have to rely on information emanating from the

industry, with all the legitimate questions that might arise from this situation.

The very question of the legal review itself then comes in mind. Regarding their particularities, LAWS might indeed require legal review commissions to consider with new eyes several international law principles, notably the principle of proportionality and the principle of accountability. The Martens clause, which is already taken into consideration in regard to more conventional weapons, would probably also be put in a new light.

Finally, the re-assessment of LAWS when new information that might cast doubt on their legality would be made available would also be challenging because of the ethical issues raised by such weapons.

During the General Debate on Monday, numerous States have called for the sharing of information on legal review and good practices. Belgium shares this point of view and takes part, to this end, in the initiative led by the United Kingdom through the Weapons Review Forum.

I thank you for your kind attention and I'm looking forward to our fruitful discussions on this very important issue.