

ICRC Expert Meeting on Legal Reviews of Weapons and the SirUS Project

Jongny sur Vevey, 29-31 January 2001

The ICRC held an Expert Meeting on Legal Reviews of Weapons and the SirUS Project¹ on 29-31 January 2001. The meeting was organized in response to the Plan of Action adopted at the 27th International Conference of the Red Cross and Red Crescent (Geneva, 1999), which called for a process of consultation between States and the ICRC on legal reviews of weapons and how the findings of the SirUS Project could be taken into account in such reviews.

The objective of the meeting was twofold: first, to promote the establishment of national mechanisms to determine the conformity of weapons with international humanitarian law and other rules of international law, as required by Article 36 of 1977 Additional Protocol I, and second, to consider how the nature of injuries caused by weapons and other relevant factors may be taken into account in such determinations. The meeting was attended by over 60 experts, including lawyers, medical experts, members of military circles and government officials from 20 countries.²

In light of the rapid development of new weapons technologies, implementation of Article 36 of 1977 Additional Protocol I is of particular importance today. This provision requires that States party to Additional Protocol I review the legality of new weapons, means or methods of warfare to ensure their conformity with international humanitarian law and other applicable rules of international law and consequently to adopt

¹ The SirUS Project takes its name from the term “Superfluous Injury or Unnecessary Suffering” and originated after a symposium on “The medical profession and the effects of weapons” organized by the ICRC (Montreux, March 1996). It aims to give objectivity to the notion of “superfluous injury or unnecessary suffering” in Article 35 of 1977 Additional Protocol I by identifying the foreseeable design-dependant effects of weapons on health. See R. M. Coupland and P. Herby, “Review of the legality of weapons: A new approach — The SirUS Project”, *IRRC*, No. 835, September 1999, p. 583.

² Participating States included Australia, Austria, Belgium, Canada, China, Denmark, Finland, France, Germany, Ireland, Israel, the Netherlands, Norway, the Russian Federation, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States. Participants also included representatives from the National Red Cross Societies of Australia, Denmark and Norway, as well as the ICRC.

national mechanisms or procedures to that effect.³ The meeting was thus a welcome initiative, as it allowed experts and the ICRC to share information for the first time on legal reviews of weapons and compare State practice in this area.

The meeting canvassed the various measures adopted to implement Article 36 of Additional Protocol I at the national level, ranging from the establishment of a committee responsible for reviewing the legality of new weapons to the adoption of review procedures.⁴

In Sweden, for example, an independent decision-making committee was established as early as 1974 to review the legality of weapons used in that country. The *Delegation for International Humanitarian Law Monitoring of Arms Projects*, constituted under the authority of the Ministry of Defence, is composed of legal, military, medical and technical experts from relevant government departments. It meets whenever deemed necessary, but at least three or four times a year.

The United States, although not yet a party to 1977 Additional Protocol I, has undertaken legal reviews of weapons since 1974 as part of its overall law of war programme to implement, disseminate and enforce international humanitarian law at the national level. The responsibility for conducting such reviews lies with the Judge Advocate General of each military department, i.e. the Army, Navy or Air Force, intending to acquire a weapon. All weapons and weapons systems, whether anti-personnel or anti-material, must be reviewed prior to the award of the engineering or manufacturing contract and, in any case, before the initial production contract is granted. Imported weapons must also be reviewed prior to acquisition and early review of new technologies is encouraged.

In Norway, an advisory commission established in 1998 draws up opinions for the Chief of Defence on the legal aspects of weapons. The Commission is chaired by the Legal Services Office of the Defence Command and meets

³ Article 36 states: "In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party."

⁴ According to information available at the ICRC, Australia, Germany, Norway, Sweden and the United States are among the few countries with national mechanisms or procedures to review the legality of weapons.

four times a year. It includes members of the Army Material Command, the Logistics Resources Management Division, the Defence Staff College and the Norwegian Defence Research Establishment. The Commission has established guidelines on legal reviews of weapons in relation to the acquisition of new weapons and the development of military doctrine.

Representatives from Germany and Australia also informed participants of the measures adopted by their respective government to review the legality of weapons. In both countries, the assessment of the legality of weapons is under the responsibility of the Ministry of Defence and consideration is given to a number of factors, including legal and military aspects as well as medical information.

Although the measures adopted to undertake legal reviews of weapons varied in each country, general discussion on this theme revealed certain common features. It was noted that, in most cases, the responsibility for carrying out the review rests with the Ministry of Defence. Experts also identified elements which must be considered in the conduct of weapons reviews, especially (i) fundamental rules of 1977 Additional Protocol I that relate to the prohibition of certain weapons or methods of warfare;⁵ (ii) applicable rules of international law, including those which impose absolute prohibitions on certain weapons under various treaties; and (iii) the principle of military necessity. Finally, it is interesting that in both Sweden and the United States, weapons reviews are subject to freedom of information legislation and requests may be submitted to obtain the results of such reviews.

Information on the effects of weapons on health which could be taken into account in the conduct of weapons reviews was also examined. Experts stressed that such information could be useful but would always need to be weighed against the principle of military necessity.

Although the ICRC's proposals were not broadly accepted in the form presented in the SIRUS Project,⁶ experts acknowledged the need for particularly rigorous and multidisciplinary weapons reviews, especially when weapons injure by means other than explosives, projectile force or burns and have

⁵ For example, Article 35(2) prohibits the use of "weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering", while Article 35(3) prohibits the use of "methods or means of warfare which are intended, or may be expected,

to cause widespread, long-term and severe damage to the natural environment".

⁶ Participants based their discussions on an ICRC document entitled "The SIRUS Project and Reviewing the Legality of New Weapons" (January 2000).

unfamiliar effects. This finding is extremely important, given the potential injury mechanisms of future weapons.

Other policy issues were discussed during the meeting, including international measures to increase the transparency of existing national review bodies or procedures; the importance of considering relevant military, medical, technical and environmental factors in the conduct of reviews; the need to conduct these reviews at the earliest possible stage; and proposals to further promote implementation of Article 36 of 1977 Additional Protocol I.

The experts did not adopt conclusions or recommendations, but a summary report of the meeting was compiled by the ICRC.

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