## OVERVIEW OF LEGAL ISSUES AFFECTING NON-LETHAL WEAPONS

Naval Studies Board
Assessment on NLW Science and Technology
3-4 April 2001

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#### WEAPONS REVIEW Requirement

- **◆ Department of Defense Instruction 5000.2** 
  - Ensures compliance with U.S. legal obligations
  - Before award of a system development and demonstration contract, and before award of initial production contract
  - Encourages early legal review of new, advanced, or emerging technologies

#### WEAPONS REVIEW Requirement

- **◆ DoD Directive 3000.3, of 9 Jul 96, "Policy for Non-Lethal Weapons"** 
  - Requires legal review of all non-lethal weapons
  - Ensure compliance with all applicable treaties, with customary international law, and LOW

#### WEAPONS REVIEW Scope

- **◆** Whether the weapon causes unnecessary suffering
- ◆ Whether the weapon is capable of being controlled in a discriminatory manner
- ♦ Whether there is a specific rule of law prohibiting its use

### WEAPONS REVIEW Unnecessary Suffering

- ◆ Hague Convention (IV) Respecting the Laws and Customs of War on Land of 18 Oct 07
  - Article 23(e) of Annexed Regulations states

"IT IS ESPECIALLY FORBIDDEN ... TO EMPLOY ARMS, PROJECTILES OR MATERIAL CALCULATED TO CAUSE UNNECESSARY SUFFERING...."

## WEAPONS REVIEW Unnecessary Suffering

- **◆ Unnecessary Suffering** 
  - May not inflict suffering, injury or destruction not actually necessary to accomplish legitimate military purposes

#### WEAPONS REVIEW Discrimination

#### **◆** Discrimination

 A fundamental principle of the law of war is that combatants must be distinguished from civilians.

◆ United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980

- **◆** Protocol I Non-detectable fragments
  - Rubber balls
  - MOOTW?

- ◆ Protocol II Landmines and booby traps
  - Amended to include internal conflicts
  - APL: "a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons."

- ◆ Protocol III Incendiary weapons
  - Primarily designed to cause fire, or burn injuries
  - U.S. reservation to save lives

- **◆ Protocol IV Blinding laser weapons** 
  - Specifically designed to cause permanent blindness
  - Range-finders Ok
  - DoD policy more restrictive?

- **♦** Biological Weapons
  - Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925

- **♦** Biological Weapons
  - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972

- **◆ Biological Weapons** 
  - The Biological Weapons Anti-Terrorism Act of 1989 (18 U.S.C. § 175, et seq.)
    - ® No anti-material uses
    - Prophylactic, protective, peaceful purposes Ok

◆ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993

- **◆** CWC defines chemical weapon as:
  - "Toxic chemicals and their precursors, except where intended for purposes not prohibited under this convention, as long as the types and quantities are consistent with such purposes."

#### **◆ Toxic chemicals**

- "Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals."

- **◆ Purposes not prohibited** 
  - Military purposes not relying on toxic properties
  - Law enforcement including domestic riot control purposes

#### **◆ Riot Control Agents**

- "Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure."

- **◆ Riot Control Agents** 
  - Not as a "Method of Warfare"
  - U.S. view Executive Order 11850

- **◆ Executive Order 11850** 
  - No first use in armed conflict
  - Can use defensively
    - **Rioting POWs**
    - **Human Shields**
    - **CSAR Missions**
    - \* Rear Area Security

- **♦** Chemical Weapons Summary:
  - No toxic chemicals Ok
  - Toxic chemicals
    - a Anti-material Ok
    - **™** Anti-personnel, but not for toxic effect Ok
    - **™** Anti-personnel, but for law enforcement Ok
    - Anti-personnel for toxic effect No

- **♦ Riot Control Agent Summary:** 
  - "Method of warfare" No
  - Armed conflict Defense OK/NCA
  - MOOTW OK/NCA

- **♦** Can we use Calmatives?
  - Temporary incapacitation
  - -RCA
  - Discriminate

#### QUESTIONS



