

Army Regulation 27–53

Legal Services

**Legal
Review of
Weapons
and Weapon
Systems**

**Headquarters
Department of the Army
Washington, DC
23 September 2019**

UNCLASSIFIED

SUMMARY of CHANGE

AR 27-53

Legal Review of Weapons and Weapon Systems

This major revision, dated 23 September 2019—

- o Changes the title of the regulation from Review of Legality of Weapons Under International Law to Legal Review of Weapons and Weapon Systems (cover).
- o Updates the regulation to reflect developments in the acquisition system and international law (throughout).

Legal Services

Legal Review of Weapons and Weapon Systems

By Order of the Secretary of the Army:

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Official:


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law. This revision also reflects developments to the acquisition process in changes in international law.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms is prohibited without prior approval from The Judge Advocate General (DAJA–NSL), 2200 Army Pentagon, Washington, DC 20310–2200.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Judge Advocate General (DAJA–NSL), 2200 Army Pentagon, Washington, DC 20310–2200.

Distribution. This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

History. This publication is a major revision.

Summary. This regulation sets forth the requirements and responsibilities for the submission of legal reviews of weapons and weapon systems, including cyber weapons and cyber weapon systems, to The Judge Advocate General's designee for review of compliance with applicable international

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Glossary

*This publication supersedes AR 27–53, dated 1 January 1979.

1. Purpose

This regulation implements DODD 3000.03E, DODD 5000.01, and the Department of Defense (DOD) Law of War Manual, as they apply to the review of any intended development, procurement (to include “off-the-shelf” or “rapid fielding initiative” procurement), and fielding of weapons and weapon systems, including non-lethal weapons, cyber weapons and cyber weapon systems, including a cyber capability that constitute a cyber weapon and cyber weapon system, to ensure they are consistent with the international legal obligations of the United States, including law of war treaties and arms control agreements to which the United States is a party, customary international law, and other applicable U.S. domestic law and policy. This regulation further prescribes the procedures for the submission of weapons and weapon systems, including cyber weapons and cyber weapon systems, to the National Security Law Division, Office of The Judge Advocate General, or other office(s) as appropriate, designated by The Judge Advocate General (TJAG) for the review of any intended procurement or acquisition of such weapons and weapon systems.

2. References and forms

See appendix A.

3. Explanation of abbreviations and terms

See the glossary.

4. Responsibilities

a. Assistant Secretary of the Army for Acquisition, Logistics and Technology. On behalf of ASA (ALT), the Army Acquisition Executive will—

(1) Request TJAG’s designee to complete the legal review of weapons and weapon systems submitted by DCS, G–3/5/7 (see para 4b).

(2) Provide, upon request of TJAG’s designee, additional information needed to complete the legal review on the development, characteristics, and mission of weapons and weapon systems.

b. Deputy Chief of Staff, G–3/5/7. The DCS, G–3/5/7 will, upon request, provide copies of materiel objectives, critical operational issues and criteria, capabilities documents, or operational needs statements, to TJAG’s designee on those weapons and weapon systems, which are being developed or acquired for Army use. Also, upon request, provide to TJAG’s designee copies of the training materials and doctrine manuals (when developed), which describe the intended use of a new weapon system, including limitations on its use or proposed rules of engagement for its use in armed conflict.

c. Deputy Chief of Staff, G–8. The DCS, G–8 will initiate the legal review process by submitting data to TJAG’s designee on a proposed weapon, weapon system, cyber weapon, or cyber weapon system addressed in capabilities documents, the capstone requirements document, initial capability document, and capabilities development documents. This includes the requirements document for each weapon or weapon system identified during the Department of the Army (DA) staffing process to secure Army Requirements Oversight Council approval.

d. The Surgeon General. TSG and any DA element subject to the operational control of the TSG will, upon the request of TJAG’s designee, provide the medical consultation needed to complete the legal review of weapons and weapon systems.

e. The Judge Advocate General. TJAG will—

(1) Designate an office within the Office of The Judge Advocate General, or other office(s) as appropriate as TJAG’s designee, to conduct legal reviews of weapons and weapon systems under this regulation and maintain records of such reviews.

(2) Periodically update the policies and procedures set forth in this regulation.

f. The Judge Advocate General’s designee. TJAG’s designee will—

(1) Review weapons and weapon systems, including cyber weapons and cyber weapon systems, in accordance with this regulation to determine whether the weapons, weapon systems, cyber weapons, and cyber weapon systems and their intended use in combat are consistent with the international legal standards considered binding by the United States Government, whether derived from international agreements, customary international law, or a combination thereof.

(2) Prepare written opinions concerning the matters stated in paragraph 6.

(3) Maintain a permanent file of the opinions rendered by TJAG’s designee in implementation of this regulation.

(4) Work with DA elements with respect to the development or procurement of weapons, weapon systems, cyber weapons, and cyber weapon systems to ensure that they receive a proper legal review at the appropriate developmental or procurement phase.

g. Program Executive Office/Program Managers. PEO/PMs will—

(1) Request TJAG's designee to initiate a legal review of each weapon or weapon system under development. The request will be submitted prior to the initiation of full-scale engineering development. PEO/PM shall also request a legal review prior to Full Material Release; this review shall be a requirement in addition to those referenced in AR 700–142.

(2) In its request, provide to TJAG's designee a general description of the weapon or weapon system submitted for legal review as set forth in paragraph 6a. This request will include a description of the weapon or weapon system, including cyber weapons and cyber weapon systems, its intended use, and its effects. Tests, computer modeling, laboratory studies, and other technical analysis results are acceptable.

(3) As requested by TJAG's designee, promptly provide specific additional information pertaining to each weapon and weapon system under review.

(4) Document the legal review results in the decision review process.

(5) When requested by TJAG's designee, conduct experiments, including wound ballistics studies when relevant, on weapons, weapon systems, cyber weapons, or cyber weapon systems subject to review and provide analysis and assessments of the effects of the weapon or weapon system.

h.. The Procuring Agency or Command. The procuring agency or command will (to the extent that a PEO/PM has not already secured the necessary legal review under this regulation or if there is no PEO/PM because the weapon or weapon system is being procured for the first time off-the-shelf, from another Service or from another country with which the U.S. government has negotiated an agreement applicable to such procurements) submit a written request to TJAG's designee to conduct a legal review of the weapon or weapon system sought to be developed or acquired in accordance with paragraph 4. The procuring agency or command—

(1) Upon request of TJAG's designee, provides specific additional information pertaining to each weapon or weapon system to be procured.

(2) Appropriately documents the initiation and developments until conclusion of the legal review process in the applicable procurement files.

(3) Requests legal review prior to full materiel release; this review shall be a requirement in addition to those referenced in AR 700–142. Upon request of TJAG's designee, conducts experiments, including wound ballistics studies (when relevant), on the weapon or weapon system subject to review and provides analysis and assessments of the effects of the weapon or weapon system.

5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule-Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

6. Policy

a. Prior to fielding or deploying any weapons and weapon systems, including non-lethal weapons, cyber weapons and cyber weapon systems, including cyber capabilities that constitute cyber weapons and cyber weapon systems, under development by the DA or that any DA element intends to procure (including off-the-shelf items), such weapons and weapon systems shall be reviewed in accordance with the provisions of this regulation to ensure compliance with all international legal obligations of the United States, including law of war treaties and arms control agreements to which the United States is a party, customary international law, and other applicable U.S. domestic law and policy, in particular, with the following:

(1) Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907 (36 Stat. 2277, T.S. No. 539).

(2) Protocol on the Prohibition of the Use in War of Asphyxiating, Poisonous, or other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925 (94 LNTS 65, T.I.A.S. No.8061).

(3) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Apr. 10, 1972 (1015 UNTS 163).

(4) 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, Oct. 10, 1980, as amended on Dec. 21, 2001, and its Protocols (1342 UNTS 137).

(5) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993 (1974 UNTS 317).

b. In addition, such activities shall also be consistent with U.S. government policies applicable to the use of weapons and weapon systems, such as the current U.S. Anti-Personnel Landmine Policy (23 September 2014), and the DOD Policy on Cluster Munitions (30 November 2017).

c. All weapons and weapon systems, including cyber weapons and cyber weapon systems, subject to this regulation will be reviewed by TJAG's designee prior to procurement, acquisition, fielding, or employment in armed conflict or other contingency operation. The procedures for submission of the request can be found in paragraph 7.

d. Exclusion, for the purpose of determining compliance with this regulation, weapons and weapon systems do not include:

(1) A piece of equipment or any other capability, to include computer software and computer applications, that does not cause, directly or indirectly, death or inflict injury of any kind to enemy or civilian personnel, nor destroy, damage, or temporarily or permanently disable enemy or civilian facilities, equipment, property, or materiel or enhance the ability of another piece of equipment or capability to cause death, inflict injury or destroy or damage facilities, equipment, property, or materiel. For example, a cyber capability would not require a legal review if does not include a device or software that—

(a) Is not intended to create a cyber-effect (for example, a capability intended to engage in cyberspace surveillance and reconnaissance (C-S&R) or cyberspace intelligence, surveillance, and reconnaissance (C-ISR) collection);

(b) Is solely to provide access to an adversarial computer system for data exploitation, or;

(c) Is developed solely for vulnerability testing, evaluation and training purposes.

(2) Launch or delivery platforms, such as ships, armored vehicles, or aircraft.

(3) Instruments, including arms, munitions, materiel, mechanisms, devices, and components that are designed and intended to be used domestically within the U.S. or its territories, such as training rounds or weapons for domestic police.

(4) Instruments designed to limit access to areas without causing injury.

(5) Nuclear weapons.

e. An initial review of each developmental weapon or weapon system (beginning at the earliest possible stage, such as operational needs statement, and continuously at follow-on stages, such as capability requirements document, and up to Milestone B or the equivalent) may be made after the original submission of the item under the procedures in paragraph 4, and before full-scale development. A final review must be made prior to the award of the initial contract for production (generally Milestone C or the equivalent) (see AR 70-1 and DODI 5000.02) to determine whether the weapon, weapon system, cyber weapon, or cyber weapon system and/or its intended use is consistent with all applicable U.S. domestic law and international legal obligations of the United States, including arms control obligations and Law of Armed Conflict (LOAC).

f. If the weapon or weapon system is changed once it has been fielded such that it is no longer the same system or capability described in the legal review request, including a substantial change to the intended use or anticipated effects, then the legal review is no longer valid and a new legal review from the TJAG designee must be obtained in order to verify that the weapon or weapon system continues to comply with all applicable U.S. domestic law, international legal obligations of the United States, and LOAC.

g. Pre-acquisition category technology projects, including advanced technology demonstrations, joint warfighting experiments, advanced concept technology demonstrations, rapid fielding initiatives, and general technology development and maturation projects that are funded by the Army and intended to be used (even in an Extended User Evaluation or Advanced Concept Technology Demonstration) in military operations of any kind will receive a preliminary legal review to ensure compliance with international law, prior to their employment. Non-developmental items, including foreign weapons, subject to this regulation will be reviewed for legality under international law prior to their acquisition and/or fielding. Weapons that are already in use by the U.S. Army in combat or contingency operations, such as the M-4 rifle, may be assumed to meet the requirements of this regulation, but any substantial enhancements or modifications to such weapons, including substantial changes in the effects achieved or accuracy of the weapon, as well as ammunition for such weapon, must be considered under the provisions of this regulation before such enhancements or modifications are implemented, procured, or fielded.

h. Weapons and weapon systems subject to Army Systems Acquisition Review Council (ASARC) determinations will be reviewed prior to the ASARC Milestone B and C reviews (see AR 70-1). If a weapon or weapon system is being sought through a rapid acquisition process (for example, urgent operational need, including directed requirements), a legal review will be conducted during pre-development before a course of action is determined (see DODI 5000.02).

i. The amount of time or money already invested in a weapon or weapon system under development shall not be a factor in any review under this regulation. Further, while the urgency of the need for the capability offered by the weapon or weapon system will guide the speed with which a legal review is completed, it will not influence the determination of whether the weapon or weapon system meets the policy articulated in paragraph 6a.

j. The determination made by TJAG's designee pursuant to paragraph 6a will be an independent judgment reached after consideration of the applicable facts and authorities presented by the requesting agency. Accordingly, while the fact that another Service or the forces of another country has adopted the weapon or weapon system, including cyber weapons or cyber weapon systems, may be persuasive in determining its legality, such fact shall not be considered binding for purposes of any legal review conducted under this regulation.

k. TJAG's National Security Law Division (DAJA-NSL) shall serve as TJAG's designee. TJAG may appoint other offices to serve as TJAG's designee for specific weapons and weapon systems, including cyber weapons and cyber weapon systems.

7. Requesting legal review of weapons and weapon systems

a. A PEO/PM or procuring agency or command will submit a written request to TJAG's designee to conduct a legal review of the weapon or weapon system sought to be developed or acquired. All such requests will include, at a minimum—

(1) A general description of the weapon or weapon system, including cyber weapon or cyber weapon system, submitted for legal review.

(2) The intended use of the weapon or weapon system, including cyber weapon or cyber weapon system.

(3) The reasonably anticipated effects of employment of the weapon and weapon system, including cyber weapon or cyber weapon system. All tests, computer modeling, laboratory studies, and other technical analysis results that contribute to the assessment of reasonably anticipated effects should be included.

b. Upon request of TJAG's designee, the requestor will provide specific additional information pertaining to each weapon or weapon system, including cyber weapon or cyber weapon system to be procured.

c. A PEO/PM or procuring agency or command shall submit requests for legal reviews of weapons and weapon systems, including cyber weapons and cyber weapon systems to TJAG's designee at least 30 days prior to the milestone review (B or C, as appropriate), in the case of developmental items, or execution of a procurement contract, in the case of off-the-shelf or non-developmental items to be procured. TJAG's designee may agree to a more expedited review in appropriate cases.

d. TJAG's designee may require a further legal review of any weapon, weapon system, cyber weapon, or cyber weapon system at subsequent stages of development, procurement, fielding or employment if determined to be appropriate.

8. Contents of the legal review of weapons and weapon systems

a. A legal review of the acquisition or procurement of a weapon or weapon system, including cyber weapons or cyber weapon systems, conducted under this regulation will include, at a minimum—

(1) Whether the weapon's intended use is calculated to cause superfluous injury/unnecessary suffering;

(2) Whether the weapon is inherently indiscriminate; and

(3) Whether the weapon falls within a class of weapons that has been specifically prohibited.

b. If the weapon or weapon system is not prohibited, the review should also consider whether there are legal restrictions on the intended use that are specific to that type of weapon or weapon system. If any specific restrictions apply, then the intended concept of employment should be reviewed for consistency with those restrictions.

c. Where appropriate, the legal review may advise whether other measures should be taken that would assist in ensuring compliance with law of war obligations related to the type of weapon being acquired or procured. For example, it may be appropriate to advise on the need for training programs and other practical measures, such as promulgating doctrine and rules of engagement related to that type of weapon or weapon system, including cyber weapons or cyber weapon systems.

9. Determination of legal review

No weapon or weapon system, including cyber weapons and cyber weapon systems, which requires a legal review under the provisions of this regulation will be developed, procured, otherwise acquired, fielded, or employed without the requisite legal review. To determine whether a legal review has been completed or is required, the interested command or agency may submit a request, through the servicing Judge Advocate or Legal Advisor, to Headquarters Department of the Army, Office of The Judge Advocate General (DAJA-NSL), Washington, DC 20310, or other office as designated by TJAG, for determination of whether legal review is required. There is no specific format for such requests, and they may be submitted via electronic mail. However, the interested command or agency should include within the request a "characteristics summary" for the weapon, weapon system, cyber weapon, or cyber weapon system; the source of development/procurement; the target fielding date; the target employment date; and the intended use of the weapon and weapon system.

Appendix A

References

Section I

Required Publications

AR 70–1

Army Acquisition Policy (Cited in para 6*e*.)

AR 700–142

Type Classification, Material Release, Fielding, and Transfer (Cited in para 4g(1).)

Department of Defense Law of War Manual

(Cited in para 1.) (Available at <https://www.defense.gov/news/publications/>.)

DODD 3000.03E

DOD Executive Agent for Non-Lethal Weapons (NLW) and NLW Policy (Cited in para 1.) (Available at <http://www.esd.whs.mil/>.)

DODD 5000.01

The Defense Acquisition System (Cited in para 1.) (Available at <http://www.esd.whs.mil/>.)

DODI 5000.02

Operation of the Defense Acquisition System (Cited in para 6*e*.) (Available at <http://www.esd.whs.mil/>.)

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11–2

Managers' Internal Control Program

AR 25–30

Army Publishing Program

AR 25–400–2

The Army Records Information Management System (ARIMS)

AR 71–9

Warfighting Capabilities Determination

FM 3–12

Cyberspace and Electronic Warfare Operations

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

(Available at <https://www.unog.ch/ccw/>.)

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)

(Available at <https://www.state.gov/>.)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

(Available at <https://www.state.gov/>.)

Department of Defense Cluster Munitions Policy

(Available at <https://dod.defense.gov/>.)

Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land

(Available at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0631.pdf>.)

JP 3–12

Cyberspace Operations (Available at [http://www.jcs.mil/doctrine/joint-doctrine-pubs/3-0-operations-series/.](http://www.jcs.mil/doctrine/joint-doctrine-pubs/3-0-operations-series/))

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol)

(Available at <https://www.state.gov>.)

United States Landmine Policy–State

(Available at <https://www.state.gov>.)

Section III**Prescribed Forms**

This section contains no entries.

Section IV**Referenced Forms**

Unless otherwise indicated, DA forms are available on the APD website ([https://armypubs.army.mil/.](https://armypubs.army.mil/))

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

Appendix B

Internal Control Evaluation

B–1. Function

The function covered by this evaluation of the review of weapons and weapons systems for compliance with applicable international law.

B–2. Purpose

The purpose of this evaluation is to assist TJAG’s designee in evaluating key internal controls. It is not intended to cover all controls.

B–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, positive control). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

B–4. Test questions

- a.* Does the request submitted to TJAG’s designee provide a general description of the weapon and weapons system, including cyber weapons and cyber weapon systems?
- b.* Has the TJAG designee maintained a permanent file of opinions rendered?
- c.* Does the TJAG designee have a process in place to ensure legal opinions assess the required contents in a legal review of a weapon or weapon system, including cyber weapons and cyber weapon systems?

B–5. Supersession

This evaluation supersedes any previously published evaluations in AR 27–53 on the legal review of weapons and weapon systems.

B–6. Comments

Help make this a better tool for evaluation internal controls. Submit comments to Office of The Judge Advocate General, (DAJA–NSL), 2200 Army Pentagon, Washington, DC 20310.

Glossary

Section I

Abbreviations

AR

Army regulation

ASARC

Army Systems Acquisition Review Council

DA

Department of the Army

DOD

Department of Defense

LOAC

Law of Armed Conflict

NSLD

National Security Law Division

PEO/PM

Program Executive Office/Program Manager

TJAG

The Judge Advocate General

TSG

The Surgeon General

Section II

Terms

Cyber capability

A cyber capability subject to legal review is any device or software payload, not including command line interface techniques, intended to perform a cyberspace attack, as that term is defined in Joint Publication 3–12. This does not include a device or software that (1) is not intended to create a cyber-effect (for example, a capability intended to engage in cyberspace surveillance and reconnaissance (C–S&R) or cyberspace intelligence, surveillance, and reconnaissance (C–ISR) collection), (2) is solely to provide access to an adversarial computer system for data exploitation, or (3) is developed solely for vulnerability testing, evaluation and training purposes.

Cyber weapon or cyber weapon system

A cyber capability which, by means of cyber effects, is intended to injure or kill personnel, or physically damage or destroy property. This does not include capabilities that passively enable cyber effects, but do not directly cause or significantly impact such effects (for example, payload-agnostic servers or similar infrastructure).

Non-lethal weapon

A weapon or weapon system that is explicitly designed and primarily employed to incapacitate personnel or equipment, property, materiel or facilities, while minimizing fatalities, permanent injury to personnel or undesired damage to facilities, equipment, property, materiel or the environment. Unlike lethal weapons, non-lethal weapons employ means other than gross physical destruction to prevent the target from functioning and are intended to have reversible effects on personnel, facilities, property, equipment and materiel.

Weapon

All arms, munitions, materiel, instruments, mechanisms, or devices which have an intended effect of killing, injuring, disabling, incapacitating, or temporarily incapacitating enemy personnel or destroying, damaging, neutralizing, incapacitating, or temporarily disabling enemy facilities, equipment, property or materiel. Without limiting the foregoing, the following shall be considered weapons:

- a. Firearms, rifles, artillery, or cannon designed to kill, injure, harm, capture, disable, incapacitate, or temporarily incapacitate persons or to destroy, damage or incapacitate facilities, equipment, property or materiel through the projection of kinetic or other forms of energy;
- b. Explosives;
- c. All other kinetic projectiles; and
- d. Chemical, biological (or bacteriological) weapons, including riot control or non-lethal agents.

Weapon systems

The weapon itself, combined with those components required for its operation that permit the weapon to kill, injure, disable or incapacitate enemy personnel or to destroy, damage, or incapacitate enemy facilities, equipment, property or materiel (including all munitions such as projectiles, small arms, mines, and explosives that are needed in order for the weapon to kill, injure, disable or incapacitate enemy personnel or to destroy, damage or incapacitate enemy facilities, equipment, property or materiel.)

Section III

Special Abbreviations and Terms

This section contains no entries.

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