

CCW EXPERT MEETING LETHAL AUTONOMOUS WEAPON SYSTEMS

Geneva, 11 – 15 April 2016

Statement on the implementation of weapons reviews under Article 36 Additional Protocol I by Germany

Technology develops in unforeseeable ways and comes in virtually unlimited varieties of shapes and modes of action. Given this challenge, it is for good reason that the fundamental principles of international humanitarian law avoid specifying particular technologies. The general, abstract approach of international humanitarian law maintains its applicability, also to future technologies, by focusing on effects of deployment rather than on individual weapons.

In order to verify compliance with international law, a state intending to field a new weapon or weapon system must conduct a thorough legal review pursuant to Article 36 of Additional Protocol I to the Geneva Conventions. Article 36 reads:

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.

To implement the obligation pursuant to Article 36 of the 1977 Additional Protocol I to the 1949 Geneva Conventions, Germany established a permanent **Steering Group** within the Federal Ministry of Defence (MOD) entitled “**Review of New Weapons and Methods of Warfare**”.

The weapon reviews undertaken hitherto used a different, ad-hoc based format without the respective infrastructure.

The Steering Group works under the auspices of the International and Operational Law Branch of the Directorate-General for Legal Affairs. Representatives of all other competent Directorates-General of the MOD, such as the Directorates-General for Security and Defence Policy; Equipment, Information Technology and In-Service Support; Planning; Forces Policy; and Strategy and Operations, convene in the Steering Group in order to synergise the in-house knowledge of all experts, ranging from political to technical or operational expertise.

The representatives of the Directorates-General within the Steering Group are primarily points of contact for the Directorate-General for Legal Affairs through whom further specific expertise for a weapon review can be introduced.

The Steering Group is a permanent structure. The representation of all competent Directorates-General in the Steering Group aims to increase awareness within the MOD of the requirements and criteria of the legal review. The experts from the various Directorates-General may differ depending on the matter under review.

The Steering Group assesses pursuant to Article 36 of Additional Protocol I whether the employment of the weapon, means or method of warfare under review would, in some or all circumstances, be prohibited by Additional Protocol I or by any other rule of international law applicable to Germany. The Steering Group's assessment is a recommendation within the development and procurement process, not a final decision about the introduction of a weapon, means or method of warfare.

However, the final decision to introduce a new weapon, weapon system or method of warfare will, in view of the relevant requirements, be furthermore and indeed ultimately dependent upon the existence of a sufficiently broad range of meaningful operational scenarios for its use in compliance with international law.

The Steering Group is involved in every procurement process and is mandated to consider the legal conformity or lawfulness of the procurement of a new weapon.

As possible concerns or potential needs to restrict the use of a weapon emerging in the review pursuant to Article 36 may have considerable repercussions as to the appropriateness of the weapon's introduction, such reviews are to be initiated at the earliest possible stage.

Depending on the complexity of the subject, there will be several phases in the review process in accordance with respective development steps, following, for example, tests and evaluations conducted throughout the procurement process.

The Steering Group does not merely rely on information provided by the project manager of the armed forces or by the industry. If it requires more information, it may at any time ask for additional expertise either from subordinate levels of command inside the armed forces or from outside the MOD by asking the respective agency to provide additional information or its assessment.

We consider that our Steering Group facilitates the legal review process for the Directorate-General for Legal Affairs compared to previous ad-hoc reviews without the respective infrastructure.

That is why the Directorate-General for Legal Affairs has, based on its initial experience, now started to compile a Joint Service Regulation **“Review of New Weapons and Methods of Warfare”**.

Obviously, other states may use different methods of examination for the Article 36 review process. We believe that international trust and confidence-building could be furthered by increasing transparency regarding these review mechanisms. A first step could be to make public the national procedures. The CCW could provide the adequate framework.

Germany is ready to help build consensus among states thus opening the way for a transparency instrument for the national procedures pursuant to Article 36 Additional Protocol I.