

SWEDEN

Thank you Mr. Chairman,

Thank you all panelists for excellent presentations on the various challenges to international humanitarian law.

We would like to contribute to the discussion with a brief account of the Swedish experiences of the Article 36 review process. The Swedish Delegation for International Humanitarian Law Monitoring of Arms Projects (the Delegation) was established in 1974. The Delegation is an independent authority and not part of the Government or the Swedish Armed Forces. Its organization and working methods are regulated in an ordinance

The Delegation has adopted a multidisciplinary approach and its eight members, elected by the Government, consist of experts in international and national law, military and medical experts and experts in arms technology. The members come from the Ministry of Defence, the Ministry of Foreign Affairs, the Swedish Armed Forces, the Defence Material Administration, the Swedish Defence Research Institute and the Swedish Defence University.

The meeting ratio of the Delegation depends on the number of notifications from the authorities, but approximately three to four times a year.

The Delegation's monitoring follows article 36 of Additional Protocol I to the Geneva Conventions. It is thus examining whether the employment of a new weapon, means or method of warfare would, in some or all circumstances, be prohibited by the Additional Protocol I or by any other rule of international law applicable to Sweden – including human rights law and disarmament law.

The Swedish Armed Forces and other authorities, such as the Defence Material Administration and the National Police, are obliged to notify every project about the study, development, acquisition or modification of weapons or methods of warfare to the Delegation. Furthermore the Delegation has a right of initiative if it becomes aware of any weapons it wishes to review.

A weapon project is presented by the applying authority together with the necessary documentation. A legal assessment is made in each specific case based on the written and oral presentations. Computer simulations could be referred to by an applying authority. There can also be real life test. All tests are the responsibility of the applying authority. In case of doubt or scientific uncertainty the Delegation can ask for further information or that the applicant uses other test methods.

The Delegation reviews the characteristics of the weapon, how the weapon is planned to be used and other relevant aspects. In many cases the focus is on the usage of a new weapons or ammunition, and the Delegation thus reviews how the planned usage will

adhere to the requirements of international law. There is also a need to control how the applying authority secure compliance with the legal requirements through training and education of users, the use of manuals or other types of instructions or regulations.

The review is based on the law as it currently stands but the constant development of international law needs also to be taken into account. The Delegation has for these purposes denied a request by an applying authority to use a list of standardized requirements for future purchase of ammunition.

The review process may also include the use of non-lethal weapons by the armed forces or the use of lethal weapons by law enforcement agencies. In these instances the legality of the new weapon and its use needs to comply with human rights law which include the right to life and the principles of necessity and proportionality as these principles are understood in the legal framework of human rights law

There is no continuous monitoring performed by the Delegation. However, the applying authority is to report to the Delegation about its experiences concerning the use of a weapon or a method that has been examined by the Delegation.

Many of the weapons used in Sweden also have been produced in Sweden and the review process so far has often been conducted at the production stage. The Delegation can of course also review weapons bought by the Swedish Armed Forces outside of Sweden.

In case the presented project does not fulfil the legal requirements the Delegation can recommend the applying authority to make the necessary modifications or issue limitations for its use but it cannot halt the production of a weapon. It can, however, notify the Government of any circumstances that have given cause to considerations by the Delegation during a review. The Delegation's decision can be appealed to the Government.

As all authorities in Sweden the Delegation is subject to the Freedom of the Press Act and its provisions on the public nature of documents. It allows the public to gain access to public documents as well as general and anonymous requests for access to information. All documents of the Delegation thus have to be registered and this register is open to the public. However, several weapon projects presented to the Delegation do contain classified information and it should therefore be stressed that the Freedom of the Press Act does not prevent the Delegation from handling such classified information.

Thank you Mr. Chairman