



Foreign &
Commonwealth
Office

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

STATEMENT

to the

**Informal Meeting of Experts
on
Lethal Autonomous Weapons Systems**

11 - 15 April 2016

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Possible Challenges to IHL due to Increasing Degrees of Autonomy

Mr Chairman,

On behalf of the UK I want to thank all of those who have contributed to these important discussions on Lethal Autonomous Weapons Systems and international humanitarian law, including the panelists for their informative presentations. The UK strongly supports efforts to promote greater understanding of and compliance with IHL across the board, not just in relation to LAWS.

The UK's clear position is that IHL is the applicable legal framework for the assessment and use of all weapons systems in armed conflict. Distinction, proportionality, military necessity and humanity are fundamental to compliance with IHL. Any weapon system, no matter what its specific technical characteristics or which or how many of its critical functions are autonomous, would have to comply with those principles to be capable of being used lawfully.

It is the UK's view that those principles, and the requirement for precautions in attack, are best assessed and applied by a human. Within that process, a human may of course be supported by a system that has the appropriate level of automation to assist the human to make informed decisions. We refer to this as the intelligent partnership. As weapon systems develop, we expect humans to need to rely increasingly on autonomy, in order to make informed decisions.

Article 36 Weapons Reviews are the correct means to assess a weapon, means, or method of warfare and its use, as required by Additional Protocol 1 to the Geneva Convention. The UK is aware that despite the large numbers of States being signatories to the first Protocol, not all formally conduct legal weapons reviews. Conversely there are States that are not signatories to the Protocol which conduct Article 36-style legal weapons reviews. The UK is committed to transparency where possible in this area, and so has published its weapons review procedures online. I will include the link in the version of this statement which will be uploaded to the CCW website (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507319/20160308-UK_weapon_reviews.pdf). We hope that sharing our approach may encourage other states to publish theirs, or begin implementing such reviews if they don't do so already. The UK welcomes engagement and comments on its process. To this end, the UK hosted a Weapons Review Forum in October 2015 at which 14 states and a range of academics discussed the Article 36 obligations and how best to give effect to them. NGOs views were also represented. Another such forum is planned for October 2016.

The UK's Article 36 reviews are conducted by a team of military lawyers from all three Armed Services who work closely with the equipment project teams. This can mean attending demonstration days, technical meetings and talking to the companies that design and build the equipment. The lawyers engage with the project teams early and throughout the procurement cycle, but will aim to conduct formal legal reviews at three stages. These stages are described in more detail at the web link I mentioned earlier. These stages are designed to ensure that a legal review is provided prior to major decisions being made about progress and spending, so that IHL requirements are part of the decision

making process. The details of individual UK Article 36 reviews are confidential due to factors including the classified nature of the equipment reviewed, the accompanying legal advice and the sensitive commercial and contractual nature of the related procurement processes. However, we can describe the five main areas considered in the reviews:

1. Whether the weapon is prohibited, or whether its use is restricted by any specific treaty provision or other applicable rule of international law;
2. Whether the weapon is of a nature to cause superfluous injury or unnecessary suffering;
3. Whether it is capable of being used discriminately;
4. Whether it may be expected to cause widespread, long-term and severe damage to the natural environment; and
5. Whether it is likely to be affected by current and possible future trends in the development of International Humanitarian Law.

Any system, whether it displays any level of autonomy or not, would have to meet the required standards for all five of the areas of consideration. Assessing weapons systems with increasing levels of automation or autonomy does not require another process. The requirement for Article 36 Reviews is already prescribed in International Humanitarian Law. So we do not see the need for additional legislation, in the form of a pre-emptive ban. Instead, we would like to see greater compliance with existing IHL.

It is worth noting that all weapons can be used unlawfully. The Article 36 review cannot stop a weapon being used unlawfully by an unscrupulous user intent on breaking the law, or by a badly trained operator. However, it can ensure that a weapon is capable of being used lawfully before it is sanctioned for use by the military. In the UK, the danger of misuse by an operator is addressed through robust training, clear Rules of Engagement, rigorously tested Concepts of Operation and the availability to commanders of operational legal advisers.

Turning now to the issue of the accountability chain, the UK's position is that there must always be human oversight in the decision to deploy weapons. It is with this person/people that responsibility lies. Responsibility will flow up through the Chain of Command, which is so important in military structures. This chain of command is vital not just for accountability and compliance with the law, but also in order for decisions to be made and communicated, for forces to be controlled and for military judgement to be exercised. Both state and individual criminal responsibility are inherent in this concept of command responsibility.

If in the future LAWS that could comply with an Article 36 Review were ever to exist, we do not believe that accountability would or should be any different from what has already been outlined above. The person who decides to deploy the weapon would ultimately be responsible for the consequences of its use. Accountability might even be improved if we assume that the automated record systems that an autonomous system would need in order to operate may provide better evidence to support

subsequent investigation.

In closing, IHL has successfully accommodated previous evolutions in military technology such as the aeroplane and submarine. There is no reason to believe that IHL will not be capable of dealing with an evolution in automation.

Mr Chairman, we look forward to further discussion on these issues and, in the longer term, to agreement on the applicability of IHL to this discussion, and the need to enhance compliance.