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Federal Republic of Germany
Foreign Office

CCW EXPERT MEETING
LETHAL AUTONOMOUS WEAPON SYSTEMS

Geneva, 13 – 17 April 2014

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

Mr. Chairperson,
distinguished colleagues,
ladies and gentlemen,

We have reiterated on Monday the two pillars of the German position with respect to LAWS: Unconditional respect for international law and the necessity to exercise appropriate levels of human control over the use of force. During my intervention, I will focus on the former and deal with our approach to contribute to compliance in this respect.

Technology develops in unforeseeable ways and comes in virtually unlimited varieties of shapes and modes of action. Fundamental principles of International Humanitarian Law in tune with this challenge avoid for good reasons specifications of particular technologies. The general-abstract approach of International Humanitarian Law keeps it applicable also to future technologies by focusing on effects of deployment rather than on certain weapons as such. It is incontrovertible that International Humanitarian Law also applies to autonomous weapon systems. Any possible understanding in respect of LAWS will therefore have to stick to this well balanced body of law offering the required flexibility in dealing with the current intangibility of future developments.

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

Article 36 requires “[the High Contracting Parties being in] the study, development, acquisition or adoption of a new weapon, means or method of warfare, [...] 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.”

This requirement for a legal review ensures that a new weapon or weapon system will neither be indiscriminate nor cause unnecessary suffering or superfluous injury. The review also determines whether there is any other particular provision under the law of armed conflict which might prohibit the use of the weapon. Customary law calls for this legal review of weapons and weapon systems and thereby requires all States' compliance, including those not party to the Protocol.

The development of any autonomous weapon system, and LAWS in particular, would clearly require such legal reviews. In addition, the weapon in question must still be examined under targeting law to determine whether the actual use of the weapon might be prohibited in some manner.

Independent of the above is the question whether future LAWS will be able to live up to the discussed requirements in order to be lawful. In our view, this considerable “technical challenge” that developers face is nevertheless not deemed to put the sufficiency of the existing law into question.

With respect to possible approaches to the implementation of the weapons review process, we would like to share our respective national format.

In order to foster the implementation of the obligation under Article 36 AP I, we have established a Steering Group “Review of new Weapons and Methods of Warfare” within the German Federal Ministry of Defence. Under the leadership of the Directorate-General for Legal Affairs' International and Operational Law Branch representatives of all competent Directorates-General of the MoD are convened in the Steering Group. Hereby we are enabled to synergize the in-house knowledge of all experts, ranging from political to technical or operational expertise.

We consider that our Steering Group facilitates the legal review process for the Directorate-General for Legal Affairs compared to ad-hoc basis reviews without a respective infrastructure. Obviously, other States may have differing methods of examination in the Art. 36 review process. We believe that international trust and confidence building could be furthered by transparency regarding the review

mechanism. A first step could be to make public the national procedures. The CCW could provide the adequate framework.

As explained earlier, Germany would welcome and is ready to support actively the development of a consensus among States allowing for a transparency instrument in this sense.

