Remarks by Thomas Nash, Director, Article 36
Informal Expert Meeting on Lethal Autonomous Weapon Systems
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Thank you Chairperson.

We are pleased with the focus on meaningful human control here this week. The obligations of IHL require human commanders, the people upon whom the law bears, to make deliberative case by case judgements on the legality of individual attacks. We should be wary of any discussion that implies weapons systems making decisions about the legality of attacks.

Future weapons systems may condition and affect the way in which human commanders make legal decisions, but it must always be a human to make these legal determinations. This point is essential to how the principle of humanity is enacted through the law and this obligation should be made explicit. We consider meaningful human control over individual attacks to be fundamental to this process. This concept of meaningful human control represents the boundary at which effective human deliberations over individual attacks are no longer possible.

Human control over the use of force goes beyond respect for the rules governing the conduct of hostilities, however. It is not enough simply to consider whether we think such weapons systems can be used in compliance with the rules of distinction, proportionality and precaution. The material presented by Professor Asaro during the discussion on ethics and morality yesterday provide a useful basis for understanding how the broader principles of humanity relate to meaningful human control. We agree with those who have noted that the Martens clause is of course relevant here.

So, one way to consider the link between legality of autonomous weapons and meaningful human control is to consider that the principles of humanity – on which existing international humanitarian law and international human rights law are based – can be seen to require deliberative moral reasoning, by human beings, over individual attacks. Weapons that do not allow such human control and attacks without such human control should be prohibited. A new legal instrument seems necessary in order to make this explicit.

We are pleased that article 36 reviews of weapons, means and methods of warfare, have been a focus of discussion here as well. Such reviews will need to be based on an understanding of the requirement to ensure meaningful human control over such weapons systems. So to undertake such reviews there will need to be some common understanding of what meaningful human control represents in practice. Questions of the predictability of the effects of attacks using such weapons systems are important in this regard, as noted yesterday by the ICRC and others.

Lastly, we would welcome further discussions on article 36 reviews here in the CCW, beyond the question of autonomous weapons.

Thank you Chairperson.