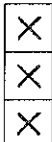


Article 36



Remarks on IHL to the CCW
Delivered by Thomas Nash on behalf of Article 36
15 April 2015

Thank you Chairperson and thank you to the presenters.

International humanitarian law (IHL) is one important legal framework through which autonomous weapons can be approached.

In particular, we should be wary of legal discussions that forget that the law is a human framework, addressed to humans. Processes of calculation and computation in a machine are not equivalent to deliberative human reasoning within a social framework. Machines do not make "legal judgements" and "apply legal rules".

The basic IHL rules on the conduct of hostilities are to be applied, by humans, on an attack-by-attack basis, taking into account the specific circumstances of each attack.

Whilst attacks are defined as acts of violence (whether in offence or defence) and can comprise several instances of force application, an attack must be bounded in time and space. Increasing autonomy in weapons systems risks expanding the notion of an attack in ways that undermine the exercise of meaningful human control. In the context of weapons that can detect and engage target objects, less control can be exercised by the weapon user over the effects of the weapon if:

- It operates for a longer time;
- It operates over a wider area;
- It uses broader proxy indicators; and
- If it is used in an environment where there are a greater number of persons and objects that match those parameters (for example, in what some states have called a cluttered environment).

An attack must therefore be sufficiently contained (geographically and in time) to allow a commander to acquire and assess the contextual information necessary to make informed judgments about the military utility, necessity, risk to civilians, moral acceptability, and legality of the proposed use of force.

The CCW needs urgently to apply itself to these questions if it is to establish a process of work that gets to the heart of the matter.

Madame Chairperson,

In relation to weapons review, we would agree with the ICRC that there are too many questions related to AWS to leave it up to national legal reviews of

weapons to address them.

Application of these reviews is already weak: The level of compliance is low; transparency is lacking; there is no standardisation; there is a varying interpretation of existing international legal rules; and there is no clarity about how to assess the necessary form or level of human control / human judgement needed in order to ensure a weapon is legal.

We have some specific questions on weapon reviews:

- States are obligated to conduct a legal weapons review against the provisions of Additional Protocol I or other rules of international law applicable to the State Party. It was unclear to us what role is being envisaged for human rights law within the 'weapons review criteria'. Could you and other presenters explain how human rights law could be relevant in this regard?

- If a new weapon must be assessed in terms of its 'normal, intended circumstances of use', and a weapons reviewer does not concern herself with the legality of individual attacks, then what should come out of a weapons review in terms of normative guidance to one's own forces, to ensure that the new weapon will in fact only be used 'as intended'? For example, this might be important if a weapon was only intended for use as a defensive system.

In relation to the recommendation that we should take a legal pause and allow the development of AWS:

- If we allow the development of such systems, is that really a pause? Or would it rather represent an active decision to pursue AWS as weapons that some perceive as legitimate? Can we think of situations in which states have allowed the development of certain weapons systems (during a "legal pause") and have then subsequently subjected them to regulation or prohibition due to concerns articulated by international community?

- It is not uncommon for states to argue that now that we have these systems and they have not been prohibited, they are therefore "legal". This, in our experience, has been a standard argument used by many states opposed to efforts to prohibit weapons that have caused significant civilian harm or run counter to the laws of humanity and the dictates of the public conscience.

So we would agree with those who have advised caution in these legal discussions about prematurely legitimising autonomous weapons systems:

- Do we want autonomous systems that can deploy fire or release munitions on their own, without a human being pulling the trigger or pressing the button? Yesterday the UK and France seemed to say no. Other states have also emphatically rejected this prospect. So if such systems are not going to be developed, we should be clear that it is not about applying international law to them. Rather it is about codifying their prohibition under international law, as the drafters of the CCW envisaged when they reaffirmed the "need to continue the codification and progressive development of the rules of international law applicable in armed conflict."

Thank you Madame Chairperson.