



Meeting of Experts of the Convention on Certain Conventional Weapons

A purpose-oriented working definition for autonomous weapons systems

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Mr. Chairperson,

Let me start by thanking the different speakers for their insightful presentations.

Before making some specific comments about legal reviews, I would like to make a few general observations about the legal discussion, in particular about compliance with international law, in particular IHL, which is in my delegation's view essential for any weapon system, including lethal autonomous weapons systems (LAWS).

- 1) International humanitarian law is certainly the most relevant body of international law governing autonomous weapons systems for our work under the CCW. Other branches of international law, most notably human rights law, may however equally impose limits on the use of force in armed conflicts, and international criminal law governs individual criminal responsibility for violations.
- 2) Switzerland believes that in the discussions on international humanitarian law and ensuring its respect, three distinct issues should be considered: (1) the substantive provisions of IHL applicable to the employment of autonomous weapons systems in

armed conflict; (2) the procedural rule of IHL related to the legal weapons reviews as a means of ensuring conformity with international law; and (3) the issue of accountability.

- 3) In addition to the fundamental principles governing the conduct of hostilities [namely distinction, proportionality and precaution] the employment of autonomous weapons systems also raises particular challenges with regard to rules such as the prohibition of the denial of quarter and the protection of persons *hors de combat*. Any reliance on autonomous weapons systems would need to preserve a reasonable possibility for adversaries to surrender.
- 4) Full compliance with IHL, however, is not limited to the rules governing the conduct of hostilities. Besides employing autonomous weapons systems as a weapon in attack, it is also conceivable that such systems could be used to perform other tasks governed by IHL. To make just one example we could think of the guarding and transport of persons deprived of their liberty. Additional specific rules need to be taken into consideration if autonomous weapons systems were to be relied upon for such activities.

Mr. Chairperson,

Applying these requirements of lawful use to autonomous weapons systems is not without complexity. The Geneva Conventions of 1949 and the Additional Protocols of 1977 were undoubtedly conceived with States and individual humans as agents for the exercise and implementation of the resulting rights and obligations in mind. In addition, many pivotal rules of IHL presume the application of evaluative decisions and value judgements. One example would be the assessment of “excessiveness” of expected incidental harm in relation to anticipated military advantage.

Furthermore, the overarching obligation of all belligerents to “respect and ensure respect” for IHL “in all circumstances” seems to imply a derived duty of exercising sufficient control or supervision over the development and/or employment of autonomous weapons systems to ensure full compliance with IHL and prevent outcomes that would be unlawful under existing international law. In accordance with this obligation, it is uncontested that preparatory measures must be taken to permit the implementation of IHL and implementation should be supervised.

Accordingly, Switzerland is of the view that given the current state of robotics and artificial intelligence, it is difficult today to conceive of an autonomous weapons systems that would be capable of reliably operating in full compliance with all the obligations arising from existing IHL without any human control in the use of force, notably in the targeting cycle.

On this basis, the question, therefore, is not whether States have a duty to control or supervise the development and/or employment of autonomous weapons systems, but how that control or supervision ought to be usefully defined and exerted.

Mr. Chairperson,

In this context, the obligation to conduct legal reviews is central to discussions on autonomous weapons systems. We see a number of challenges related to autonomous weapons systems distinct from traditional weapons reviews. Specifically, the question is how such systems and their specific characteristics can be meaningfully tested. Beyond the purely technical challenge of assessing IHL compliance of an autonomous weapons systems, there is also a conceptual challenge related to the fact that an autonomous system will assume an increasing number of determinations in the targeting cycle which traditionally are being taken care of by a human operator. This challenge specifically applies to the principle of proportionality and the legal review thereof. New evaluation and testing procedures may need to be conceptualized and developed to meet this particular challenge.

At this stage, let me briefly present our national legal review procedures. Legal reviews of weapons are based on an ordinance by the Ministry of Defence, enshrining the requirement to legally review weapons before acquisition, as well as on a directive of the Chief of Defence, regulating the process. The latter mandates the Law of Armed Conflict Section within the Ministry of Defence with the reviews. In the framework of the legal review, we assess in particular whether a weapon does not violate the prohibition of indiscriminate weapons, does not cause superfluous injuries or unnecessary suffering and does not violate any other treaty obligation. The review starts with the drafting of the system specification and is continuously performed until the final decision for procurement. Besides the legal review of weapons, we also perform reviews of doctrine and other relevant regulations to ensure IHL compliance of means and methods. Switzerland is currently reviewing its legal review process and will in particular include a definition of the weapons, which will clearly identify the subject of the review.

While the process of national legal reviews may require procedural and technical adaptations to fully capture the complexity of autonomous weapons systems, if rigorously implemented, it holds the potential of ensuring that all new weapons, means and methods of warfare are developed and acquired in compliance with international law.

I thank you Mr. Chairperson.