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**CCW MEETING OF EXPERTS  
ON LETHAL AUTONOMOUS WEAPONS SYSTEMS**

**Experts Panel on Overarching Issues**

**“Human Rights Implications of Fully Autonomous Weapons”**

**Bonnie Docherty  
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- I. **[Cover]** Introduction
- a. **[Introduction]** CCW part of a larger body of IHL, which is traditionally the focus of discussions in this forum
  - b. But many states this week have called for consideration of IHRL as well as IHL
  - c. Pleased therefore that topic has been included on the agenda of this Meeting of Experts
  - d. Subject of my remarks today is significant implications LAWS, or FAWs, would have under IHRL
    - i. Will address why IHRL relevant to this topic
    - ii. Analyze concerns raised under three core elements of IHRL: right to life, right to a remedy, and principle of dignity
- II. **[Applicability]** Applicability of Human Rights
- a. HR law applies during both peace and armed conflict
  - b. Much of debate about FAWs centered on use in armed conflict
  - c. But FAWs could be used outside of conflict for law enforcement operations
    - i. Would trigger application of IHRL
  - d. Will define law enforcement operations broadly to include, for example,
    - i. Local policing, such as crime fighting, management of public protests, riot control, and other efforts to maintain law and order
    - ii. Use by state security forces to control their opposition
    - iii. ~~International counterterrorism efforts that do not necessarily rise to level of armed conflict~~
  - e. Some of these operations legitimate and some not
  - f. Regardless they could exemplify the kinds of situations outside of armed conflict in which FAWs could be used
- III. **[Foundations]** Foundations of Human Rights Law
- a. Use of FAWs threatens three of the most foundational elements of HR law
    - i. Right to life
      - 1. HR Committee described as “the supreme right”

- a. Prerequisite for all other human rights
- ii. Right to a remedy
  - 1. Fundamental because designed to promote enforcement of other rights
  - 2. Also seeks to mitigate harm to victims who experience violations
- iii. Principle of human dignity
  - 1. Underlies all other rights
  - 2. 1993 Vienna Declaration states that “all human rights derive from the dignity and worth inherent in the human person”
- b. All three of these elements introduced in the UDHR and later articulated in the ICCPR, as well as several regional conventions
- c. Will now walk through each of these elements and how implicated by FAWs

#### IV. [Right to Life] Right to Life

- a. Article 6 of ICCPR: “Every human being has the inherent right to life.”
  - i. Non-derogable—cannot be waived even in public emergencies that threaten the existence of a nation
- b. Not absolute prohibition on killing
  - i. Instead it prohibits “arbitrary killing”
  - ii. ICCPR declares, “No one shall be arbitrarily deprived of his life.”
- c. Three cumulative requirements to ensure force is not arbitrary
- d. Force must:
  - i. Be necessary
  - ii. Constitute last resort
  - iii. Be applied proportionally
- e. HR law generally has more stringent standards on use of lethal force than IHL does
  - i. Therefore even greater challenges for FAW to comply with this body of law

#### V. [RTL: Necessity] Right to Life: Necessity

- a. Law enforcement officials may only use force when “strictly necessary” and “exceptional”
- b. According to 1990 Basic Principles on Use of Force and Firearms, firearms may only be used to defend oneself or others from “imminent threat of death or serious injury”
- c. FAWs could not be preprogrammed to handle *all* scenarios
  - i. Therefore must be able to respond to unforeseeable situations
- d. FAWs would likely lack human qualities that facilitate assessing whether a threat necessitated use of force

- i. A machine, like a police officer, could take into account clearly visible signs of a threat such as whether an individual is armed
- ii. FAW, however, would face great challenges than a human officer in interpreting more subtle clues
  - 1. Could not identify with another human being in same way as a human law enforcement officer
  - 2. Would therefore have more trouble predicting an individual's actions
- iii. Might misconstrue important clues as to whether a real threat to human life existed
  - 1. React when force not truly necessary
- e. In addition, individual might respond differently to machine than to a human law enforcement officer
  - i. Could unintentionally appear more threatening
  - ii. The individuals' behavior could lead to an arbitrary killing in violation of right to life

- VI. **[RTL: Exhaustion]** Right to Life: Exhaustion of All Alternatives
- a. Lethal force under IHRL must also be a last resort
  - b. 1990 Basic Principles state that firearms may only be used when "less extreme measures are insufficient"
  - c. FAWs inability to relate to humans could make it harder for them to ensure all alternative means are exhausted
    - i. For example, FAWs would find it difficult to de-escalate situation by appealing to a human's reasons, emotions, or interests
    - ii. Couldn't "talk down" an individual and defuse a situation
    - iii. Furthermore, potential perpetrator more apt to connect with and be persuaded to stand down by a fellow human than a machine

- VII. **[RTL: Proportionality]** Right to Life: Proportionality
- a. Force under IHRL must be proportional to the threat involved
    - i. Law enforcement officials must "exercise restraint" and minimize harm they cause
  - b. Note not the same as IHL's proportionality test but it also requires balancing
  - c. FAWs would lack human judgment to balance the force of the response with the gravity of the perceived threats
  - d. A human officer could use reason to interpret a situation, taking into account such factors as perpetrator's background, mental state, and demands
    - i. Then could make a case-by-case decision about the minimal use of force necessary.
  - e. It would be difficult to replicate in FAW the human judgment that is used to respond appropriately to unforeseen circumstances

- f. FAWs would also lack compassion that could serve as safeguard against disproportionate use of force

VIII. **[RTL in AC] Right to Life in Armed Conflict**

- a. Note briefly that IHRL applies during armed conflict as well as law enforcement situations
- b. Debated how it applies, however, so won't discuss in depth
- c. One widely accepted approach says that, in situations of armed conflict, IHL (as *lex specialis*) is used to interpret the definition of "arbitrary" in arbitrary killing
- d. In other words, if an attack was unlawful under IHL, it would be arbitrary
- e. FAWs could be prone to committing unlawful acts in armed conflict for many of the same reasons as in law enforcement situations
  - i. Including because would most likely lack human judgment

IX. **[Right to Remedy] Right to a Remedy**

- a. Applies to violations of all human rights
- b. ICCPR obliges states parties to "ensure that any person whose rights or freedoms . . . are violated shall have an effective remedy."
- c. More specifically, states must investigate and prosecute serious violations of IHRL, and punish those found guilty
- d. Beyond prosecution, states should provide reparations to victims
  - i. And encouraged to enforce civil judgments
- e. **[Remedy & Accountability]** Right to a remedy promotes personal accountability, which designed to
  - i. Deter future violations
  - ii. Provide retribution to victims of past violations
- f. In both law enforcement and armed conflict, likely to be significant accountability gap
  - i. Programmer, manufacturer, commander, and operator would all escape liability
  - ii. Situation would contravene right to a remedy

X. **[RTR: Criminal] Right to a Remedy: Criminal and Civil Law**

- a. Criminal law
  - i. Under criminal law, superior or operator could be held liable for *intentionally* misusing robot to commit a crime, such as deliberately killing civilians
  - ii. But greater concern with situation in which FAW would commit an unforeseeable act
    - 1. Likely given it would lack meaningful human control

- iii. Unfair and, under existing law, legally impossible to hold human responsible for actions could neither know about in advance, nor prevent even if had knowledge
- iv. Problems exist for both direct responsibility and command (or superior) responsibility
- b. **[RTR: Civil]** Civil law
  - i. Also barriers to domestic civil suits
  - ii. (I've researched US law most closely, but true of many other countries' laws as well)
  - iii. Government and government contractors are generally immune from suit
  - iv. Significant evidentiary hurdles for victims to succeed in product liability case against programmer or manufacturer
- c. Elaborated on these issues at Monday side event about new report on subject so won't repeat details here
  - i. Happy to answer questions later

## XI. **[Human Dignity]** Human Dignity

- a. FAWs also threaten to undermine human dignity, principle that underlies all human rights
- b. FAWs could not understand or respect human dignity
  - i. As inanimate machines, could not truly comprehend value of individual life or the significance of its loss
- c. Allowing them to make the determination to take life away would thus conflict with the purpose of human dignity
- d. Principle of human dignity applies all humans including civilians, soldiers, and law enforcement officers
- e. As fellow panelist Chrstiof Heyns has written, "Machines lack morality and mortality, and should as a result not have life and death powers over humans."

## XII. **[Links across Disciplines]** Links across Disciplines

- a. Discussed implications of fully autonomous weapons under IHRL
- b. Worth noting that the arguments I've outlined relate to arguments made in other fields
  - i. Right to life seeks to restrain the use of force
    - 1. IHL also lays out restrictions on use of force, albeit exclusively in armed conflict
    - 2. FAWs would face similar challenges in complying with use restrictions under either body of law
  - ii. Right to a remedy tied to discussion of an accountability gap
    - 1. Lack of legal responsibility widely cited in general statements as one of key concerns about FAWs

2. Problem under not only IHRL but also IHL, international criminal law, and domestic civil law
- iii. Threat to human dignity intertwined with ethical opposition to FAWs
  1. Many object to prospect of machines making life-and-death determinations on battlefield or in law enforcement situations
  2. This objection would apply even if FAWs could comply with the right to life and the right to a remedy

### XIII. **[Conclusion]** Conclusion

- a. Many of concerns discussed here have come up over the course of the week
  - i. Some countries have explicitly referred to IHRL
  - ii. Others talked about the same issues of use of force, accountability, and dignity of humans under the other frameworks just mentioned
- b. The significant implications of FAWs under IHRL add to list of technical, legal, operational, and security threats discussed in general statements and on other panels
  - i. Together concerns call for prohibition of these weapons
  - ii. States should look to the precautionary principle to guide their response to the prospect of FAWs
    1. Even if there is scientific uncertainty about exactly what the technology could do, the threat of “serious or irreversible damage” argues for precautionary measures to be taken now before countries go too far down the road to development
- c. CCW is one of the most relevant fora in which to address these issues
  - i. States parties have the opportunity and ability
    1. To follow the precedent of Protocol IV on Blinding Lasers, and
    2. To take important steps to preempt the development and use of a revolutionary yet dangerous weapons technology