

CCW Meeting of Experts on lethal autonomous weapons systems
Friday 16 May, 10:00am, Conference Room XIX
Summary of the discussions on International Law – Part II

Thank you very much Ambassador Simon-Michel.

It was a pleasure to serve as the Friend of the Chair in this important meeting of experts. I would like to begin by expressing my thanks to all the experts who have participated at this meeting and more particularly to Professor Marauhn, Professor Heyns and Dr. Melzer for their excellent presentations and for kick-starting our discussions on other legal aspects of lethal autonomous weapons systems.

Our discussions centered on the potential impact autonomous weapons could have on State responsibility and individual criminal accountability for violations of international law. It was reassuring to hear that even with the deployment of lethal autonomous weapons and in situations where the human is out of the loop, an individual could be held responsible under international criminal law. Criminal responsibility would still continue to apply to commanders and operators on the basis of command responsibility. It is after all, a human who takes the decision to deploy an autonomous weapon and not the weapon itself.

Other questions concerned whether the designer, programmer or civilian supervisor of an autonomous weapon could be held accountable for a violation of international law by an autonomous weapon. It was observed that while programmers and designers could be prosecuted for aiding and abetting, there would be problems in fulfilling the *mens rea* criteria.

Civil liability could also be possible.

The use of autonomous weapons in the context of international human rights law was also deliberated on. It was observed that the consideration of Human Rights Laws was important as, unlike IHL, they apply at all times - within and outside conflict. What human rights and fundamental freedoms, such as the right to life and human dignity, would be put at risk by the use of autonomous weapons? How could other human rights, including the right to security of person, the right to protection from inhuman treatment, fair trial and the right to a remedy be guaranteed in the use of LAWS? The discussion on human rights was important for reminding us that in times of war and peace, human dignity is a value that cannot be set aside.

The need for transparency was also raised, as very little was known about the state-of-the-art in the development of LAWS by States. Such transparency would be important to guide further discussions on the subject.

In examining the emerging security challenges that could relate to the use of LAWS, it was noted that if force is being used against the sovereignty of another State, then the principle of *jus ad bellum* would apply. Exceptions to this include UN Security Council authorized action under chapter VII of the UN Charter, by consent and in self-defense. The requirements of necessity and proportionality and LAWS are still applicable in the use of interstate force.

An issue that has been raised throughout our discussions this week is the possibility of autonomous weapons lowering the threshold for the use of force in inter-State relations, and their employment escalating international tensions and confrontations. These are understandable and legitimate concerns. However, even if autonomous weapons are deployed, the law on the use of force and the relevant rules established under the United Nations Charter will remain firmly in place.

During the interactive debate, a number of issues were raised. These included the need for the principles of proportionality, and prevention to be assured in war; the need for the full application of international human rights laws; criminal responsibility in the case of malfunctioning of LAWS; accountability gap infringing on remedies for misuse; and the need for states to at least discuss processes and standards, as well as coherence.

These and other questions demand a closer and more in-depth examination. For example, could autonomous weapons be considered as inherently inhuman and therefore prohibited by law or is inhumanity a feature closely associated with the human being only? At this stage there are many more questions and concerns than there are answers. Hence the need to continue this fascinating legal debate that kept the entire room captivated. We believe that, as an initial process, this session, like all the others, has raised most, if not all of the issues, which should form the subject of more in-depth discussions.