

5 (a) An exploration of the potential challenges posed by emerging technologies in the area of lethal autonomous weapons systems to international humanitarian law

Belgium aligns itself with the statement of the EU and would like to make a number of comments in its national capacity.

Turning to your first question:

- Does autonomy in the critical functions of weapons systems challenge the ability of States or parties to a conflict, commanders, and individual combatants to apply IHL principles on the conduct of hostilities (distinction, proportionality, precautions) in carrying out attacks in armed conflict?

My country is of the opinion that autonomy in the critical functions could indeed challenge the ability of parties to a conflict to apply IHL. Numerous experts who addressed the GGE LAWS in the last 3 years have argued that IHL cannot be encoded in algorithms. The principles of distinction, precaution, and proportionality indeed require a high degree of common sense that is intrinsically human in the evaluation of the conduct of hostilities.

Autonomous systems could support and help parties to a conflict make quicker decisions and better analyze the operating environment but those weapons would not be in a position to, for instance, effectively distinguish between civilians and combatants in complex operating environment (e.g. urban warfare where terrorists, with no distinctive signs, would hide amongst the civilian population).

- Does autonomy in the critical functions of weapons systems challenge the maintenance of combatant and commander responsibility for decisions to use force?

Turning to your second question:

Belgium is of the opinion that the commander, on what so ever level, who decides to use a weapons system, always remains responsible for the consequences of its use, either individually or according to command responsibility. Consequently, there should never be an accountability gap. The decisional authority should also be fully aware of the potential effects of a weapons system.

- What is the responsibility of States or parties to a conflict, commanders, and individual combatants in decisions to use force involving autonomous weapons systems, in light of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience (Martens Clause)?

As to the third question. The responsibility of States or parties to a conflict, commanders, and individual combatants in the decisions to use force involving fully autonomous weapons systems would be the same as for other conventional weapons. The implications of a decision to use certain weapons systems does not differ whether they are autonomous or not.

Parties to a conflict always remain fully responsible and accountable for their decision to use force involving autonomous weapons. Accountability may never be transferred to the weapons system itself.

- How can legal reviews of weapons with autonomous functions contribute to compliance with IHL? What are past or potential challenges in conducting weapons reviews of weapons with autonomy in their critical functions, and how can these challenges be addressed?

In accordance with States' obligation under international law and in particular, article 36 of the First Additional Protocol to the Geneva Conventions, States should determine at the earlier stage whether a new weapon or its intended use would, in some or all circumstances, be prohibited by international law. Since the legal review screens the new weapons, with or without autonomous functions, on the compatibility with IHL, it helps ensuring compliance with IHL in particular and international law in general. As already stated above, Belgium considers that any autonomous weapon would only be an element and not an actor of the targeting cycle.

Belgium is of the view that the universalization of the legal review of new weapons would be an important step forward in coping with the challenge posed by LAWS.

During the 2016 informal meeting of experts on LAWS, the Belgian Ministry of Defense gave a presentation on how Belgium conducts its legal review. The presentation addressed the role and mandate as well as the composition of the Belgian Commission for weapons reviews and identified some good practices that were developed by Belgium regarding specific weapons. It also identified some challenges regarding LAWS.

One of the first main challenges would certainly be the technical assessment of those weapons. The used technology would be so advanced and so highly complex that the members of the Commission would, first of all, have to be particularly aware of the specificities of the weapon and its functioning before being able to legally review it. In order to fulfill its duty, the Commission might be forced to rely more and more on experts. But not all the States would have the internal resources to develop such an expertise. States would therefore most probably have to rely on information emanating external experts.

The very question of the legal review itself then comes in mind. Regarding their particularities, LAWS might indeed require legal review commissions to consider with new eyes several international law principles, notably the principle of proportionality and the principle of accountability. The Martens clause, which is already taken into consideration in regard to more conventional weapons, would probably also be put in a new light.

To conclude I would like to insist that for Belgium art 36 Review is a valuable tool but insufficient in se to tackle the challenges caused by LAWS.