Remote controlled and Autonomous Weapons under International Humanitarian Law

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Stéphane Kolanowski
ICRC Brussels
Outline – Remote controlled weapons

1. Scope of application of IHL
2. Substantives rules
3. Distinction, proportionality and precaution in attack
4. Other issues of concern
Scope of application of IHL

- IHL applies in armed conflict: what is an armed conflict?

Of particular relevance for the debate: the geographical scope

- IAC: territory of the belligerents
- NIAC: more problematic
Non-international armed conflict

1. Within the territory of a single State: issues linked to conduct of hostilities and law enforcement, interplay between IHL and IHRL
2. Spill-over
3. 3rd State(s) involvement in a pre-existing NIAC

Most debated issue: use of lethal force against individual(s) directly participating in hostilities from territory of a non-belligerent State.

2 schools of thought: (1) that person «carries» the AC with him/her. (2) no such expansion acceptable (ICRC views)
Substantives rules

- No specific IHL rules: general rules apply
- No general prohibition on the use of remote controlled weapons (RCW)
- But possible prohibition if RCW deploy prohibited weapons (APM, CM, BW, CW, ...)
- Article 36 API applies
Distinction, proportionality and precaution in attack

**Distinction:** … at all times distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other. Attacks only against combatant and military objectives.

**Proportionality:** prohibition of attacks against military objectives that may be expected to cause incidental death or injury to civilians or damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

**Precaution in attack:** all feasible precautions to spare the civilian population, civilians and civilian objects. Includes: distinction, choice of means and methods, and possibly deciding not launching or cancelling or suspending an attack if distinction and/or proportionality require.
Other issues of concern

- Responsibility for respecting IHL;
- Less hesitation to recourse to RCW strike than to other means (may cause a rise in civilian exposure) – more a political question;
- Psychological effect for the operator and for the (potential) victims – lack of first-hand info;
- Status of the RCW operator under IHL.
Outline – Autonomous weapon systems

1. Definition and compliance
2. Existing norms
3. Human control under IHL
4. Accountability
5. Ethics and Autonomous weapons system
1. Definition and compliance

Any weapon system with **autonomy in its critical functions**. That is, a weapon system that can select (i.e. search for or detect, identify, track, select) and attack (i.e. use force against, neutralize, damage or destroy) targets without human intervention.
• No specific IHL rule
• Must be capable of being used in conformity with IHL
• Must be used in conformity with IHL

IHL rules create obligations for human combatants in the use of weapons to carry out attacks…
2. Existing norms

- “In case not covered by existing treaties, civilians and combatants remain protected by customary IHL, the principle of Humanity, and the dictates of public conscience”

- Legal review of new means and methods (art 36 API)
3. Human control under IHL

• What limits on autonomy to ensure IHL compliance?

• “Meaningful / effective” human control

• Core Components of human control:
  ➢ Predictability and reliability
  ➢ Human intervention
  ➢ Knowledge and information
  ➢ Accountability
Where and when to exercise human control?

A. Development stage
B. Activation stage
C. Operation stage

Predictability!!!!
4. Accountability

• The law of State responsibility
• International criminal law
• The laws of product liability
5. Ethics and Autonomous Weapons

- Arguments *for* autonomous weapons
- Arguments *against* autonomous weapons

Can a machine or an algorithm take the decision to use force? To use lethal force? What moral responsibility?
THANK YOU!

Stéphane Kolanowski
ICRC Delegation to the EU, NATO and Belgium
skolanowski@icrc.org
www.icrc.org/be