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Remote controlled and Autonomous Weapons under International Humanitarian Law

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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**



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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



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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)



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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



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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.



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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.



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Outline – Autonomous weapon systems

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



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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.**



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- 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...



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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)



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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



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Where and when to exercise human control?

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

Predictability!!!!



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4. Accountability

- The law of State responsibility
- International criminal law
- The laws of product liability



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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?



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THANK YOU!

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