

“Transparency is not enough’

**Delivered by Miriam Struyk, PAX
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Dear ladies and gentlemen,

The title of this side event is “Transparency is not enough’. Now as we all know countless initiatives to demand transparency have sprung up across the world. From local citizens initiatives to NGOs calling for transparency, for example on air strikes in general and those of armed drones in particular. From Wikileaks to the recent Panama papers. All these initiatives are a welcome development, but transparency should spur action, and should not be the end in itself.

For example, knowing where and when unlawful air strikes have been undertaken is not the end goal. The end goal, based on this information, is that there will be accountability and that such unlawful acts will be prevented in the future. In the same way, I believe transparency is a necessary, BUT not a sufficient condition to address the most pressing concerns raised by Lethal Autonomous Weapon Systems (LAWS.) Transparency should inform our actions, and not BE the action, or at least not the only or the final action.

In this presentation I will make some general remarks on why the Convention on Conventional Weapons (CCW) should work on both strengthening weapon reviews (including making them more transparent) AND should focus on banning LAWS. But that these are, albeit closely interlinked, separate issues and in need of their own process.

Art. 36 of Additional Protocol I to the Geneva Conventions requires states parties to review any new type of weapon, means or method of warfare that they are studying, developing, acquiring, or adopting. While Article 36 only binds states parties, certain states not party have also established weapon review mechanisms.

In the discussions on autonomous weapon systems we have had here in Geneva and elsewhere over the past few years, a number of state representatives and others have mentioned weapon reviews as an adequate way to address concerns resulting from increasing autonomy in weapons systems.

NGOs however, many of them part of the Stop Killer Robots Campaign, are sceptical about calls for reliance on weapon reviews. The 3 main reservations to the current application of art 36 are:

Firstly, the vast majority of countries do not have weapon review procedures in place – not even all the states that ratified Additional Protocol I. Sipri, in its excellent paper called ‘Implementing article 36 weapon reviews in the light of increasing autonomy in weapons systems’, estimated that only between 15 – 20 states actually do. My own country, the Netherlands is one of the few that has procedures in place.

Secondly, weapon reviews are national procedures with no international control mechanisms, nor international oversight. There are no agreed international standards on how to conduct reviews and there is no formal mechanism for exchanging results or even experiences.

Because of the secrecy around the reviews, it is hard to know what they look like, for which weapons they are used, which reviews have taken place and what the effect of them is. It sometimes seems that reviews on cars, medicines or food are more transparent and strict.

Thirdly, it appears that there is no consensus on what falls under the definition of weapons, methods and means, which is esp. relevant when dual-use technology (incl. sensor/surveillance technology, artificial intelligence) is integrated into military technology. Also there is lack of common ground regarding the need to take into account International Human Rights Law.

Strengthening weapon reviews and having more transparency is therefore a welcome endeavour, but let me describe 4 reasons why this will not be the panacea to the dangers posed by LAWS.

1. Article 36 weapon reviews **will not take into consideration the ethical concerns** we have around LAWS. PAX and many other NGO’s have cumulative legal and operational, but mainly ethical concerns. **Taking the human out the loop and thereby humanity out of the loop, is in our eyes unethical.** Machines are unable to assess the value of life. But making moral judgments and having compassion is a key check on the killing of other human beings. But will reviews consider weapons in light of the ‘Martens Clause’, requiring that the weapon/method and means under review may be against the “principles of humanity” or the “dictates of public conscience”? Do they systematically take into consideration the societal concerns? We just don’t know. And especially in the case of LAWS this is crucial.

2. Secondly, these reviews - primarily oriented toward ensuring compliance with IHL and with other applicable International law do not appear to take into account **how this will affect the resort to the use of force** and international peace, stability and security. How it will alter global security and will enhance proliferation, also by non state actors or autocratic regimes.

3. **Thirdly, focusing CCW discussions on weapon reviews will not lead to the necessary, preemptive ban in time.** Past practice raises doubts about the efficacy of national weapon reviews in preventing humanitarian harm. It has proven necessary to adopt international weapon treaties because national reviews are apparently not sufficient to prevent unacceptable harm from blinding laser weapons or cluster munitions for example.

And in the case of LAWS, a pre-emptive treaty is highly crucial because, once developed, the existence of LAWS will be irreversible. It will be impossible to put the genie back in the bottle.

It appears that weapon reviews are not precautionary in their orientation. In spite of the principle that the choice of means of warfare is not unlimited, in practice, it appears that the burden of proof is born by those objecting to new weapon technology. That is a structural problem which brings a clear humanitarian risk.

So time is crucial in the debate on LAWS. If we were first to focus on strengthening weapon reviews, we would run the risk that we lose time we don't have.

4. **Fourthly, how many states are actually capable of performing these reviews?** Many states acknowledge problems with the current modus operandi on weapon reviews and acknowledge for example that more extensive, more technical tests are needed to predict compliance of LAWS with IHL. But is this at all possible? And even if so, how many states are actually capable of performing such extensive and costly tests? There aren't many countries currently performing elaborate tests and even they will have extreme difficulties in effectively testing LAWS.

Weapon reviews after all leave many issues to be determined by commanders in the field. The weapon review - as generally understood - is limited to excluding weapons that are by their nature indiscriminate. However, this does not solve all IHL compliance problems. The commander in the field is still tasked to ensure that the weapon does not produce indiscriminate effects in the circumstances of a particular attack. So if an autonomous weapons system independently detects, select and engage targets, how will the weapon review ensure proportionality in attack in abstracto?

So summing up weapon reviews are not the answer to the problem of LAWS as they are

- too limited and not preventive enough;
- they are national while in fact we need an international response because common values are affected;
- and they are intransparent and hardly implemented while in fact we need an effective regulatory response.

So let me conclude by making a case for a ban, rather than for case-by-case reviews

Today the most critical parts of military technological developments are closed to the public eye. There is a lot we don't know here. The other side of the story is what we do know: that many people – from ordinary people interviewed in opinion polls, to experts and professionals from the AI field – have urged decision makers to start taking steps before it is too late.

Whether you file that under the Martens clause or not – the public moral and ethical imperative is undeniably strong and should play a leading role. After all, at stake here are shared humanitarian values, common goods of the international community. A weapon system that degrades human dignity affects us all.

Hence, it is all of us who should have a say about this and we cannot leave this to the determination of individual states but must deal with it in an international forum through international rules. And let us not forget that the CCW was partly established out of the need for a forum to restrict or ban weapons as a collective measure instead of leaving it to states and their national reviews.

Let me conclude by saying that by no means I want to imply that strengthening weapon reviews is not a laudable initiative, on the contrary. Proposals we heard over the last CCW informal meetings such as publishing national procedures on legal weapon review processes, developing a set of best practices and increasing transparency and sharing additional information or introducing controls on the international transfer of autonomous technology in order to prevent proliferation etc. are very welcome and useful steps.

But I believe this area of work should be undertaken separately or parallel so as to not distract from the urgent work required to address LAWS.

And fortunately I think there is room within the CCW agenda to take up these two issues separately and give each the attention they need to improve our common goal of a more peaceful world where citizens are better protected against (uncontrolled) armed violence.

Thank you.