

SUBMISSION TO THE UN SECRETARY-GENERAL RE: RES 78/241

24 April 2024 Index number: IOR 40/7981/2024

AUTONOMOUS WEAPONS SYSTEMS IN LAW ENFORCEMENT

In response to Resolution 78/241 “Lethal autonomous weapon systems”, adopted by the UN General Assembly on 22 December 2023, Amnesty International would like to submit its views for consideration by the UN Secretary-General.¹ The Resolution requests the Secretary-General to seek views on “ways to address the related challenges and concerns [that autonomous weapon systems] raise from humanitarian, legal, security, technological and ethical perspectives and on the role of humans in the use of force”. While recognizing that much of this debate has focused on the use of AWS by the military in conflict settings, primarily using the international humanitarian law (IHL) framework, this submission will highlight the intractable challenges related to the use of AWS in law enforcement contexts in relation to compliance with international human rights law (IHRL) and standards on the use of force.

Amnesty International is a global movement of more than 10 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations. Amnesty International is a founder member of the Stop Killer Robots campaign.

Amnesty International carries out primary research into violations of international human rights and humanitarian law in all regions. Our organization uses in-house technical and legal expertise to analyse the use and impact of a wide variety of weapon systems in conflict situations, as well as lethal and less lethal equipment in law enforcement contexts, seeking to assess compliance with international human rights law and, where applicable, humanitarian law. Amnesty International has consistently advocated and campaigned for prohibitions on the use of inherently inhumane or indiscriminate military equipment and law enforcement equipment that is abusive by design, as well as for the responsible and lawful trade of military and law enforcement weapons and equipment that can have a legitimate use. For Amnesty International, AWS are weapons systems that detect and apply force to a target based on sensor inputs, rather than an immediate human command.

INTERNATIONAL HUMAN RIGHTS LAW/ STANDARDS

The use of AWS for law enforcement raises fundamental - and ultimately unresolvable - problems related to the application international human rights law and standards on the use of force, as well as questions of dignity and accountability for unlawful acts. The use of AWS in law enforcement could threaten the right to life, liberty and security of person, the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, and the right to freedom of peaceful assembly, among other rights. It would also be incompatible with the key international standards related to the use of force and law enforcement practice: the UN Basic Principles on the Use of Force and Firearms (BPUFF) and the UN Code of Conduct for Law Enforcement Officials (CCLEO).²

THE PRINCIPLES OF POLICING

The use of AWS – whether lethal or less lethal – undermines the principles of human rights-compliant law enforcement, which are based on close, positive and proactive human relationships between law enforcement officers and the publics they serve. These principles are reflected in human rights standards and commentaries related to law enforcement.

Under Article 1 of the CCLEO, law enforcement should “at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts...”.³ The preamble of the BPUFF underlines law enforcement officers’ vital role “in the protection of the right to life, liberty and security of the person”.⁴ According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “law enforcement officials worldwide play an

¹ UN General Assembly (UNGA), Resolution 78/241: Lethal autonomous weapons systems, adopted on 23 December 2023, UN Doc. A/RES/78/241

² UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted on 7 September 1990; UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct), adopted on 17 December 1979 by General Assembly resolution 34/169

³ UN Code of Conduct, Article 1.

⁴ UN Basic Principles, Preamble.

important role in protecting society from violence, enforcing justice, and securing the rights of people”.⁵ Ultimately, human rights-compliant policing is built on trust and direct community engagement – particularly in deprived communities where trust in public institutions is often justifiably fragile.

The use of autonomous weapons systems for law enforcement risks fundamentally altering this relationship, bringing tools which depersonalise the most complex area of law enforcement’s interaction with the public – the use of lethal and less lethal force against individuals – and weakening community consent needed to deliver human rights-compliant policing.

HUMAN AGENCY

Human agency and judgement are required for the lawful use of force under IHRL law and standards. The decision to use force, whether lethal or less lethal, can only be made by a human being and human rights law “places a strong emphasis on human reasoning and interaction”.⁶ Furthermore, the language of key human rights law enforcement standards is explicitly underpinned by unique human capabilities. For example, BPUFF references concepts of “police ethics” and “ethical issues associated with the use of force” - concepts which imply human judgement and moral life – while CCLEO stresses service to community and protection of human dignity.⁷

According to BPUFF, human abilities to communicate, de-escalate, persuade and negotiate are central strategies for avoiding or minimizing the use of force – the core ideas governing the lawful use of force by law enforcement officials. Where force is deemed necessary, subtle human judgements, involving complex situational assessments of intentionality, threat levels and group dynamics are crucial to determine a lawful response. The decision to deploy intentional lethal force comes at an extremely high threshold, and is especially nuanced and complex, taking into account emotional, motivational, psychological and logistical factors to assess the imminence of a threat to life and limb.⁸ Conversely, according to the UN Human Rights Committee’s General Comment 36 on the Right to Life, the arbitrary deprivation of life contains elements of “injustice” – an intrinsically human quality – as well as “lack of predictability” which is a key notion in debates around the lawfulness of AWS.⁹

The idea that AWS could be pre-programmed to address certain situations runs counter to the notion that law enforcement officer must continuously assess a given situation in order to, if possible, avoid or at least minimise the use of force. Were a machine programmed to make these constant, fine-tuned, iterative assessments – to adapt to changing circumstances in real time - that would make it problematic in a different sense: the ability to adapt to environmental cues – particularly subtle indicators like perceived behavioural change - would make machines inherently unpredictable, placing them outside of meaningful human control.¹⁰ Ultimately, AWS cannot be used to replace indispensable human judgement in the decision to use force; and would not be able to operate in a way that seeks to minimize harm, prevent the loss of life or assess whether the necessity and proportionality of lethal force is still justified at a given moment.

ACCOUNTABILITY

The use of force without meaningful human control could create an “accountability vacuum”.¹¹ This derives from the fact that international human rights law binds states and individuals – not machines - and seeks to hold them to account, and the difficulties in law of ascribing human responsibility when using machines operating outside of meaningful human control.¹²

Under Principle 24 of the BPUFF, governments and law enforcement agencies “shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use”.¹³ However, the distancing effect from decisions to apply lethal or less lethal force that the

⁵ Report of the Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36, 1 April 2014, para. 22.

⁶ OHCHR, Presentation made at the informal expert meeting organized by the state parties to the Convention on Certain Conventional Weapons 13 – 16 May 2014, Geneva, Switzerland by Christof Heyns, Professor of human rights law, University of Pretoria United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, 13 May 2014, www.ohchr.org/en/statements/2014/07/presentation-made-informal-expert-meeting-organized-state-parties-convention; see also UK Parliamentary Committee, Professor Thompson Chengeta – Written Evidence (AIW0021), <https://committees.parliament.uk/writtenevidence/120291/html/>

⁷ UN Basic Principles, Principles 1 and 20; UN Code of Conduct, Articles 1 and 2.

⁸ UN Basic Principles, Principles 9 and 20.

⁹ International Covenant on Civil and Political Rights (ICCPR), General Comment 36: Right to Life (Article 6), 3 September 2019, UN Doc. CCPR/C/GC/36, para. 12.

¹⁰ Amnesty International, Use of Force, p. 60.

¹¹ Christof Heyns, “Human Rights and the use of Autonomous Weapons Systems (AWS) During Domestic Law Enforcement, Human Rights Quarterly”, Vol. 38, No. 2, May 2016, p. 366.

¹² Interim report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/65/321, 23 August 2010, para. 33

¹³ UNBPUFF, Principle 22; see also, International Covenant on Civil and Political Rights (ICCPR), General Comment 36: Right to Life (Article 6), 3 September 2019, UN Doc. CCPR/C/GC/36, para. 27.

use of AWS implies, and the resulting lack of understanding or predictability of the effects that AWS may have in any given situation, clouds this accountability process. It weakens the ability of a law enforcement officer or their superiors to make judgements about individual responsibility for the unlawful use of force and to take appropriate precautions to prevent further violations – one element of the provision of remedy for harm suffered.

DIGNITY

The question of dignity is core to IHRL. The Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights recognise that human rights are derived from the “inherent dignity” of all.¹⁴ The Special Rapporteur on extrajudicial, summary or arbitrary executions has argued that the concept of dignity is inextricably linked to the right to life as “it is the value of life that makes it worth protecting”.¹⁵ The African Charter on Human and Peoples’ Rights General Comment 3 on the right to life “proceeds from an understanding that the Charter envisages the protection not only of life in a narrow sense, but of dignified life”.¹⁶ In relation to law enforcement, Article 2 of the CCLEO states that law enforcement officers “shall respect and protect human dignity and maintain and uphold the human rights of all persons.”

BIAS/ DISCRIMINATION

One of the dangers in the development of AWS in non-conflict settings is the already well-developed use of biometric data in law enforcement. Many police forces have developed largescale databases linking biometric data to other personal data, including criminal justice system records.¹⁷ It would be a short step for law enforcement to feed this data into an AWS in order to target criminal suspects. The use of biometric markers to identify targets carries enormous risks. The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has noted that facial recognition can lead to profiling on ethnicity, race, national origin, gender and other characteristics, which are often the basis for unlawful discrimination.¹⁸

THE NEED FOR A LEGALLY BINDING INSTRUMENT TO PROHIBIT AND REGULATE AWS

To clarify and strengthen existing international humanitarian and human rights law as it relates to growing autonomy in weapon systems used in both military and law enforcement contexts, Amnesty International advocates for the creation of a legally binding instrument to prohibit some types of AWS and regulate others. Such an instrument would:

- prohibit the development, production, use of, and trade in systems which by their nature cannot be used with meaningful human control over the use of force;
- prohibit “anti-personnel AWS” – that is systems that are designed to be triggered by the presence of humans or that use human characteristics for target profiles;
- regulate the use of all other autonomous weapons systems;
- and include a positive obligation to maintain meaningful human control over the use of force.

Given that in law enforcement, lethal and less lethal weapons are used almost exclusively to apply force to humans, a prohibition of AWS which use sensors to profile, target and apply force to humans would rule out the use AWS in law enforcement. Furthermore, Amnesty International opposes the use of AWS in law enforcement because: the use of AWS would be inherently unlawful as international law and standards governing use of force in policing rely on nuanced human judgement; it would blur lines of responsibility/accountability; and it would undermine the right to remedy, as this is dependent on individual officers and superiors fully understanding the likely effects of their actions, being able to prevent unlawful acts and being held accountable for failing to do so. Finally, the use of AWS for law enforcement would be fundamentally dehumanising, violate the right to dignity and undermine the principles of human rights-compliant policing.

¹⁴ Human Rights Watch, *Shaking the Foundations: The Human Rights Implications of Killer Robots*, IV. Human Dignity, www.hrw.org/report/2014/05/12/shaking-foundations/human-rights-implications-killer-robots

¹⁵ OHCHR, Presentation made at the informal expert meeting organized by the state parties to the Convention on Certain Conventional Weapons 13 – 16 May 2014, Geneva.

¹⁶ African Commission on Human And Peoples’ Rights, General Comment No. 3 On The African Charter On Human And Peoples’ Rights: The Right To Life (Article 4), Adopted During the 57th Ordinary Session Of The African Commission on Human and Peoples’ Rights held from 4 to 18 November 2015 in Banjul, (3), Achpr.Au.Int/En/Node/851

¹⁷ For example, Amnesty International, *Automated Apartheid: How facial recognition fragments, segregates and controls Palestinians in the OPT*, 2 May 2023, (Index Number: MDE 15/6701/2023), www.amnesty.org/en/documents/mde15/6701/2023/en/; Amnesty International, *Ban the Scan*, banthescan.amnesty.org/

¹⁸ Surveillance and human rights: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UN Human Rights Council, UN General Assembly, A/HRC/41/35, 28 May 2019, para. 12: documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/76/PDF/G1914876.pdf