

## **Questionnaire - Section IV**

### **International Perspectives on AI: Challenges for Judicial Cooperation and International Humanitarian/Criminal Law**

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#### **Objectives and Scope**

The purpose of this Questionnaire is to solicit national responses regarding the following issue related to Artificial Intelligence (AI): the use of AI and its impact on International Humanitarian Law and on International Criminal Law. This Questionnaire briefly summarizes relevant legal issues, and then lists a series of questions related to this important legal issue.

#### **I. International Humanitarian Law and International Criminal Law**

##### **A) Summary of Issues**

- The use of Automated Weapon Systems (AWS) raises legal implications related to both *ius ad bellum* and *ius in bello*.
- The use of AWSs can influence public opinion and policy in favor of war, because the use of AWSs minimizes risks of death or bodily injury to soldiers/individuals involved in a war. Thus, the use of AWSs may have an impact on *ius ad bellum*.
- The use of AWSs can negatively affect the respect of fundamental principles of *ius in bello*, such as the principles of distinction and proportionality.
- By removing the human element from war, the use of AWSs can contribute to the increase in the number of deaths because of the absence of human feelings, such as fear and compassion, which may play a role in reducing the number of deaths.
- The use of AWSs may cause significant collateral damage.
- AWSs can commit international crimes; this raises serious attribution of criminal responsibility questions, including issues related to command responsibility (for

crimes committed by “killer robots”). Thus, an international approach to AWSs may be necessary

- The use of AWSs can raise jurisdictional issues, because AWS use may be trans-territorial. This also enhances the need toward a global approach to AWSs.

## **B) Questions:**

1. -Are AWSs defined in your national law? If so, where (military code? Legislation?)?
2. -Does your national law limit the use of AWSs in any way? If so, how?
3. -Is there significant academic and/or policy debate in your country regarding the use of AWSs? If so, please briefly describe the majority and the minority view.
4. -Within your legal system, which entity can officially declare war or officially begin using force against another country? The President, Congress, Parliament, etc.?
5. -Are there legal limitations on such declarations of war/uses of force? If so, which ones?
6. -Is your country bound by any specific regional agreements which limit the use of military force, or which obligate your country to become involved in a defensive operation?
7. -Are fundamental ius in bello principles, such as the principles of distinction and proportionality, embedded in your national law? If so, which type of law – military code of conduct, national law, etc.?
8. -What type of national law governs the conduct of soldiers in your legal system?
9. -Is there relevant case law/prosecutions of soldiers for war crimes, where such soldiers have violated the principles of distinction and/or proportionality? Or where such soldiers have caused excessive collateral damage?
10. -What type of criminal liability do soldiers and commanders face within your national system if they commit war crimes and/or other misconduct? Are soldiers and commanders subject to court martial procedures only, or are they also subject to criminal liability outside of the military system?

11. -What modes of liability exist within your national criminal system?
12. -Does your national criminal law provide for command responsibility/other types of liability? If so, what are the requirements for command responsibility?
13. -Is there case law within your criminal justice system or your military system of commanders for abuses committed by their subordinates, using the mode of liability known as command responsibility? If so, please provide relevant citations and a brief summary of such cases.
14. -Is there significant academic and/or policy debate in your country regarding the attribution of responsibility to soldiers/operators/commanders for misconduct of AWSs? If so, please briefly describe the majority and the minority view.
15. -Does your national system recognize any other modes of attribution of criminal liability?
16. -Does your national military or criminal system address the issue of liability for the “misconduct” of AWSs? Can an operator and/or his/her commander face criminal liability in such circumstances?
17. -Is there any relevant case law, within the criminal justice system or within the military system, which addresses the issue of operator/commander liability for crimes committed by AWSs? If so, please provide relevant citations and a brief summary of such cases.
18. -What mechanisms exist in your national law to handle jurisdictional/conflict-of-law disputes? Please cite any relevant case law on jurisdictional disputes.
19. -Does domestic law apply to AI systems processing data inserted into the Cyberspace from abroad?
20. -Does domestic law apply if the AI hardware system involved in committing a criminal offense is on national territory, but the artificial agent operates on websites or networks that can be traced back to foreign countries (and the converse situation)?
21. -If a crime using AWSs is committed using software located in your home country but hardware located elsewhere, how does your domestic law localize such a crime? Would such a crime be considered as being committed within the borders of your country? Please cite any relevant case law.

22. -Does your government have extradition treaties with other countries which cover crimes committed by AWSs? Name such extradition treaties. What offenses are typically covered in such extradition treaties?
23. -Have agreements/protocols been concluded between your State and other States on judicial and police cooperation?
24. -To what extent have the domestic law and the debate on the subject among scholars been influenced by international sources, initiatives, white papers or reports developed at European and/or International levels?

## **II. List of Topics for Special Reports (Section IV)**

1. Jurisdiction/conflict-of-laws issues related to the investigation and prosecution of crimes committed using AWSs
2. Addressing collateral damage issues related to the use of AWSs
3. The role of supra-national tribunals in prosecuting crimes committed through the use of AWSs, and the relationship between such supra-national prosecutions and any national prosecutions