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Autonomous Armed Drones and the Challenges to Multilateral Consensus on Value-Based Regulation

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Introduction

In multilateral discussions on arms control, non-governmental organisations (NGOs) – believing in the purity and inviolability of the values they seek to salvage – are often pitted against powerful states that seem certain of the supremacy of their own cause. In each party's view, no other cause is more noble and, before long, discussions degenerate into a 'them versus us' tug of war. Yet those who normally bear the brunt of the outcome of such discussions, the ordinary people of the world, are far removed from the discussion table, sometimes even unaware that such discussions are taking place. Such may be the case in the current United Nations debate on autonomous armed drones (AADs).

Over the years, the use of armed drones in armed conflict and law enforcement situations has become a common occurrence (Akande et al. 2016). While far removed from the battlefield or point of impact, drone pilots project lethal and harmful force on their targets. Targeted killings through armed drones have also resulted in deaths of civilians (Columbia Law School 2012). Whereas humans remotely pilot armed drones, on the horizon are AADs – also known as killer robots, lethal autonomous weapon systems (LAWS) or simply autonomous weapon systems (AWS) – which, once activated, are able to decide who to kill or harm without any further human control (Heyns 2013a). AADs raise far-reaching legal, ethical and security concerns. On the legal front are questions about whether AADs are lawful weapons; whether they can be used in compliance with international humanitarian law (IHL) and international human rights law (IHRL), and

whether the use of AADs will create an accountability gap in violation of international laws on responsibility (Heyns 2013a). Some ethicists have questioned whether it is morally acceptable for AADs to make decisions about who lives or dies (Asaro 2016). Furthermore, it is argued that the advent of AADs will make it too easy for states to use force, thereby undermining international peace and security (Heyns 2013a).

In view of the above concerns, in 2013 the issue of AADs was tabled for discussion in the UN Human Rights Council (Heyns 2013a). States resolved that discussions on AADs should occur within the framework of the UN Convention on Certain Conventional Weapons (CCW) which subsequently established the UN Group of Governmental Experts (GGE) on AADs. The CCW is a treaty that requires consensus among its member states for any form of regulation to be adopted. Since 2014, there has not been consensus on major issues relating to AADs, and progress towards addressing concerns has been slow. The Campaign to Stop Killer Robots (CSKR) has criticised the CCW process on AADs for 'moving forward at a snail's pace' (CSKR 2019; Delcker and Gray 2020). The lack of consensus and slow progress have largely been attributed to a lack of shared definitions and common understandings of AADs. Given that some of the critical concerns on, and objections to, the use of AADs are anchored on our values – values that are arguably subjective – what are the chances of a regulatory framework emerging from this UN multilateral process?

In addressing that question, this chapter discusses factors that may better explain the current lack of progress and consensus in the CCW. Importantly, the chapter's discussion is premised on the position that a new, legally binding instrument is required to address the novel challenges that are posed by AADs (Chengeta 2020). The fundamental question is whether such an instrument can be attained through multilateral consensus given the current challenges, such as: the recent threats to multilateralism in arms control; the arms race in artificial intelligence (AI) military technologies; AADs' implications for military power and national security; Geneva diplomats' 'banphobia' and anti-NGO sentiments; and relativity and different interpretations of values applicable to AADs. Of course, for a very long time, what constitute values or whether such values are relative or universal has been a subject of debate in sociology, political science and other studies. Suffice to say at this point that, on the question of relativism or universalism of values that are relevant to AADs discussions, I adopt an expansive approach. Nevertheless, before the discussion of values that are relevant to AADs, it is important to locate the discussion within the context of recent threats to multilateral decision-making.

Recent Threats to Multilateral Decision-Making

On 22 January 2020, UN Secretary-General António Guterres identified the issue of AADs as one of the four current main threats to world security and recommended high levels of multilateralism and co-operation on the matter (Guterres 2020). Yet recent years have seen a threat to multilateralism from major powers. On 30 January 2020, the Trump Administration announced the United States president's cancellation of his predecessor's policy not to use anti-personnel landmines (US Press Secretary 2020). While the US is not party to the 1997 Ottawa Treaty that bans anti-personnel landmines, the Obama administration had made it a policy not to use them. Just as one would criticise AADs for their unpredictability, anti-personnel landmines have been condemned for being unpredictable and indiscriminate (ICRC 2018). Some commentators have strongly condemned the cancellation of the policy by the Trump administration and its impact on multilateralism in disarmament matters (see, for example, HRW 2020). Likewise, on 30 November 2017, the Trump administration – through a Department of Defense policy memo – decided to end the US's long-standing policy, issued by the Obama administration in 2008, not to use unreliable cluster munitions (HRW 2017), which are prohibited by the 2008 Convention on Cluster Munitions. There has also been an erosion of treaties such as the 1987 Intermediate Range Nuclear Forces Treaty, the falling out with Iran in relation to the 2015 Joint Comprehensive Plan of Action, and strains in the nuclear arms control treaty relationship between the US and Russia.

Furthermore, the departure of the US from the UN Human Rights Council, one of the most powerful and influential organs of the UN as far as protection of human rights is concerned, remains a considerable dent in multilateralism. Back in 2013 and before the US withdrawal, the discussion on AADs was first introduced to the UN through the UN Human Rights Council, in which the US participated (Heyns 2013a). One can only wonder what could have been the content of those discussions had the issue been introduced after the US's departure from the Council. While the United Kingdom has explicitly noted its concerns regarding the US's unilateral decisions on matters of international importance (House of Lords 2018), its own recent departure from the European Union is also not favourable to the idea of multilateralism. The European Parliament has already made resolutions calling for a ban on AADs (European Parliament 2018) and, with the UK's departure from the EU, such resolutions may be of diminished importance to the UK government.

The current breakdown in multilateralism and strained geopolitics in the area of arms control makes it difficult to reach consensus on AADs.

In the face of these threats to multilateralism, particularly in the area of AADs, Germany and France initiated the Alliance for Multilateralism (AFM), which is 'an informal network of countries united in their conviction that a rules-based multilateral order is the only reliable guarantee for international stability and peace' (AFM 2019a). As one of its initiatives, in 2019 the AFM made a declaration emphasising the importance of multilateralism on AADs to produce an effective, comprehensive, normative and operational framework (AFM 2019a). The declaration also repeats the idea that the CCW is the appropriate forum to discuss the issue of AADs because it 'seeks to strike a balance between military necessity and humanitarian considerations' (AFM 2019b). Yet that underlying balance is being threatened by seemingly irreconcilable differences among participating states. It is becoming more apparent that powerful states prefer discussions to occur within the CCW because of the mode by which decisions are made in that forum. As already indicated, any decision on AADs within the CCW will have to be made by consensus.

It can also be argued that France and Germany's 2018 proposal for a political declaration on AADs (instead of a legally binding instrument) was offered in the pursuit of consensus with states such as the US, the UK, Russia and Australia which are strongly opposed to a new legally binding instrument on AADs (PAX 2018). What remains to be seen is whether the desire to salvage multilateralism in the CCW on the issue of AADs at all costs will result in 'negative consensus', or whether the pursuit of consensus in international organisations 'may lead to paralysis and anarchy' (Claude 1984, 120). It is important to avoid such institutional paralysis in order 'to ensure the effective working of international organisations' (Kissack 2010, 59). The CCW has already been criticised for not producing any outcomes on issues of disarmament (Brzozowski 2019), so it is important to highlight how decisions are made in the CCW and in other multilateral institutions where AADs are currently being discussed or may be discussed in the future.

Multilateral Decision-Making on Armed Drones and AADs

For a long time, multilateralism through multilateral institutions like the UN, the EU and the African Union (AU) has been at the core of solving issues of international concern such as those relating to international security, disarmament and human rights. While in institutions like the UN Security Council, the most powerful states have the privilege of deciding the course of action on critical matters, majoritarian votes carry the day in institutions like the UN General Assembly (Kissack 2010). By contrast, institutions like the CCW that operate by consensus are in a way considered

to be the middle ground between majoritarianism and privilege (Kissack 2010). Consensus, majoritarianism and privilege as modes of multilateral decision-making originate from 'the equalitarianism of traditional international law, the majoritarianism of democratic philosophy, and the elitism of European great power diplomacy' (Claude 1984, 118). While the issue of privilege constantly arises in discussions and decision-making in AADs, the most relevant ones are majoritarian- and consensus-based institutions.

Majoritarian-Based Institutions

Majoritarian-based institutions refer to those institutions whose decisions are made on the basis of majority votes by member states. Such institutions, including the UN General Assembly and the UN Human Rights Council, operate on a normative pattern of democracy and are guided by the legal assumption that all sovereign states are equal (Claude 1984, 118). Majoritarianism in multilateral decision-making is considered critical because 'decision-making by majority vote emphasises the interests of actors affected by the decision' (Rittberger and Zangl 2006, 89). As such, decisions that are made through majoritarianism 'do not have to reflect the interests of all the powerful actors involved but rather the interests of a majority of these actors' (Rittberger and Zangl 2006, 89). There are multilateral treaties banning certain weapons that have been concluded outside multilateral institutions that operate on consensus. For example, the 2017 Treaty on the Prohibition of Nuclear Weapons was adopted by the UN General Assembly following a process outside the CCW. This treaty would probably not have succeeded in the CCW given that the five officially recognised nuclear-armed states – the US, Russia, UK, France and China – had openly rejected the idea of a new treaty prohibiting nuclear weapons. In the case of AADs, the US, Russia and the UK have clearly stated in the GGE that they oppose the negotiation of a new treaty on AADs (PAX 2018).

One could make a comparison with how the issues of armed drones and AADs have been handled so far in other multilateral institutions like the UN General Assembly, the UN Human Rights Council, the European Parliament, the African Commission on Human and Peoples' Rights and the African Group on Disarmament (AGD). When reports on the issues of AADs and armed drones were submitted to both the UN Human Rights Council and the UN General Assembly, the great powers using armed drones and those developing AADs insisted that the issues were in the wrong forum and should rather be discussed in the CCW. Yet the majority of states considered both issues relevant to the mandate of the UN Human Rights Council and proceeded – through majority vote – to adopt reports, containing regulation recommendations, issued by the UN Special Rapporteur on the Promotion

and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Emmerson 2014; Heyns 2013a; 2013b). The adoption of these reports was a huge step in putting the issues of armed drones and AADs on the agenda of the UN. Yet since 2014, when the issue of AADs was placed before the CCW, not much has been achieved as states struggle to reach consensus even on basic issues like whether the notion of human control of AADs should be on the agenda.

Other multilateral institutions that make decisions through majority votes, like the European Parliament, have been able to adopt resolutions requesting the banning of AADs. The AGD and the African Commission on Human Rights have also adopted declarations and statements on AADs (AGD 2018). These institutions took up the issue of AADs only some years after the CCW had started its discussions, yet they have made considerable progress. Nevertheless, it has been pointed out that the weakness of making decisions through majority votes is that it alienates powerful states. Some scholars argue that international laws that are made through majority voting may be useless if they alienate powerful states, even if they are in the minority (Buzan and Jones 1981, 326). The powerful states tend, after all, to be the ones most deeply involved in the development of AADs. As such, treaties that are made with the intention of binding certain states that choose not to be part of the process are liable to be seen as harmless thunderbolts. Furthermore, it is argued that while outputs of majoritarianism such as those from the UN General Assembly, the UN Human Rights Council and the European Parliament on AADs may 'have a significant normative value in the development of standards of behaviour among the society of states, they are ineffective when it comes to implementing concrete policy change in the short-term', as they are 'non-binding and unable to influence the behaviour of states unless they voluntarily accept them' (Kissack 2010, 59). It is in this sense that in February 2020 the UN High Representative for Disarmament Affairs, Izumi Nakamitsu, noted (Delcker and Gray 2020):

> If a possible treaty [on AADs] is pushed through by voting, that could happen – thanks to a majority of those countries that do not possess such weapons anyway. The question is what effect that would have? It might be a good expression of what people think, but can you consider that as something effective?

However, there is a counter-argument: even if powerful states choose not to be part of such treaties, the adoption of new treaties creates new international norms that can be used as a basis to pressure (or name and shame) those who are not part of it. Furthermore, such norms may, in the long

run – especially where there is no persistent objector – end up acquiring the status of customary international law, thus becoming binding on everyone. An example can be found in the case of the US and the 1997 Ottawa Treaty banning anti-personnel landmines. Although the US is not party to that treaty, the Obama administration felt the public pressure and ended up making it a policy not to use such weapons. It is in this sense that Miles Kahler, in responding to the criticism that majoritarianism in multilateral decision-making is a toothless force, notes that the fact that powerful states bitterly contest or criticise international organisations that make decisions on the basis of majority vote is proof of the importance of majoritarianism (Kahler 1992, 703). Furthermore, since majoritarianism is characterised by states' attempts to form majorities through coalition building, it encourages long-lasting multilateralism (Rittberger and Zangl 2006, 89).

Consensus-Based Institutions

In criticising majoritarianism, it is often argued that decision-making on matters of importance such as international security should reflect power dynamics in the real political world (Claude 1984, 118). As such, critics suggest that consensus in multilateralism ensures support for decisions, particularly in a highly divided international system (Buzan and Jones 1981, 326). To the same end, Robert Kissack has explained that consensus is critical in multilateral decision-making because 'states remain closely guarding of their sovereignty and unwilling to be bound by international laws and treaties they have not freely agreed to be party to' (Kissack 2010, 59). As already indicated, the debate on AADs was first tabled in the UN Humans Rights Council and later moved to the CCW, which subsequently formed the GGE on AADs. The GGE has since discussed several important themes and expressed converging and diverging views. Some of these prominent views of states are reflected in the eleven guiding principles of the GGE that are meant to guide discussions (GGE 2019, 13). Among these is the principle that the CCW – an institution that operates on consensus – is the appropriate forum within which the issue of AADs must be discussed (GGE 2019, 13). Arguably, consensus in a multilateral process like that of the CCW is meant to protect the privilege and interests of powerful states. For example, while the majority of states prefer to negotiate a legally binding instrument on AADs, the US and Russia have blocked the GGE from making such a recommendation. It is understandably within the sovereign rights of the US and Russia to choose not to be bound by a particular international treaty. Yet what may be more difficult to understand is why they can prevent other states choosing which treaties to negotiate or enter. This ability shows

powerful states' privilege of holding the world to ransom, even beyond the powers they enjoy in the UN Security Council. Moreover, this counters the argument by critics that decisions made by the majority (without the most powerful states) are ineffective, since those states are clearly worried about such decisions.

A good example of the privilege of powerful states in the AADs debate relates to the notion of meaningful human control (MHC), introduced by the NGO Article 36 as a possible solution to the challenges posed by AADs. As a participant in the UN debate on AADs, I have observed the notion of MHC gaining traction, with the majority of states and NGOs involved citing it as the crux of the discussions on AADs. Some scholars consider that the notion of MHC is inherent in existing international law, while others note that it encompasses ethical standards and values (Asaro 2016). The US has criticised the notion of MHC and instead uses the term 'appropriate levels of human judgment' (US 2018). Others have used terms such as 'sufficient human control'. Nevertheless, it does not matter what name or term is used to describe human control because what matters is the substance and standards of that control. In the August 2019 meeting of the GGE, the majority of states proposed that the notion of MHC should be elevated to the status of a guiding principle of the GGE. Once again, the US resisted this idea, leading to the exclusion of the term MHC from the 2019 report of the GGE and the use of the term 'human–machine interaction' instead (GGE 2019). While it is understandable that consensus only works with some level of compromise, it is important to note here that the majority of states in the GGE had not suggested that the US's preferred term 'appropriate levels of human judgment' should be excluded from the GGE report. Their suggestion was that the term MHC, supported by the majority, should be included in the report. A reasonable compromise would have been, perhaps, to include both terms. Yet it was the wishes of the US that carried the day. Likewise, an earlier version of the 2019 GGE Report included a paragraph that noted that the use of AADs may compound or worsen social injustices such as racial and gender discrimination. During the discussions, no state representative contested that paragraph. Later in the evening of the same day when another version of the report was provided, the paragraph had been removed. The delegations from South African and Canada questioned why this had occurred, but no remedy was provided and the text addressing discrimination risks remained excluded.

The above examples illustrate Inis Claude's observation that the rule of consensus and unanimity in international organisations as far as decision-making is concerned 'confers upon a minority of one the procedural competence and the moral authority to determine policy in a negative

fashion' (Claude 1984, 125). Consensus-based multilateral institutions are indeed sometimes permeated with the privilege of powerful states. It is no wonder, then, that Kissack referred to 'the immiscibility of privilege and multilateralism' when questioning whether 'privilege and multilateralism can be talked about in the same sentence, other than to point out that on first appearances the former appears to be the antithesis of the latter' (Kissack 2010, 99). In the same sense, CSKR coordinator Mary Wareham noted in February 2020 that 'the challenge with the CCW is that its method of consensus decision-making ultimately results in compromise text and weaker standards, if agreement is even possible' (Delcker and Gray 2020). Thus, while it would be ideal to have a 'universal treaty on killer robots with all the major military powers on board', there is a concern that the outcome may be too weak to address the concerns that are raised by AADs (Delcker and Gray 2020).

Lack of Consensus on Values Applicable to AADs

The challenges raised by AADs are not only about whether these weapons systems are compatible with international law but also about their acceptability in terms of our moral values (ICRC 2018, 7). Indeed, the call for a pre-emptive ban on AADs includes the ethical concern that their use will result in loss of human agency, diffusion of moral responsibility and the violation of human dignity (ICRC 2018, 22). Thus, ethical values are at the crux of the current debate on AADs (ICRC 2018, 20). Nevertheless, there is no consensus among debaters on the application and interpretation of ethics and other values such as those contained in the Martens Clause.[1] The Clause stipulates that where existing law is inadequate, fighters and civilians remain under the protection of the laws of humanity and the dictates of public conscience (Koutroulis 2017). The GGE has since stipulated the need for further discussions and clarifications when it comes to consideration of values such as ethics (GGE 2019, 4).

On the one hand, there are those who argue that human values such as the principles of humanity and public conscience are either inapplicable or too vague to be useful to the AADs debate as they are prone to endless fluctuations (Evans 2014, 731). In its 2019 working paper to the GGE, Argentina questioned whether, as a substantive matter, values such as the principles of humanity and public conscience should be taken into consideration in attempts to regulate AADs (Argentina 2019, 4). And Australia noted that, while it will consider these values, it takes a narrow view when interpreting what is meant by the principles of humanity or the dictates of public conscience (Australia 2019, para. 17). On the other hand, there are

those who note that the above-mentioned values are universal and timeless, regardless of 'developments in types of situations or technology' (ICRC 1987, 39; 2016, 413). Antonio Cassese notes that the Martens Clause is an 'ingenious blend of natural law and positivism' that 'has responded to a deeply felt and widespread demand in the international community: that the requirements of humanity and the pressure of public opinion be duly taken into account when regulating conflict' (Cassese 2000, 212). Along the same lines, Michel Veuthey considers the Martens Clause as the moral law that serves as a safety net that guarantees 'the survival and fundamental dignity of humankind' (Veuthey 2004, 609). After all, as observed by Mariëlle Matthee, the 'human face is the special character of international humanitarian law itself' (Matthee 2013, xvi).

Some note the relevance of the Martens Clause in its role as an interpretative tool for directing customary international human rights law into IHL (Mihr and Gibney 2014, 98). The International Committee of the Red Cross (ICRC) notes that 'the Martens Clause embodies a moral framework whereby in the absence of a necessity to kill, lethal force should not be used even against lawful targets' (ICRC 2014, 16). Human Rights Watch (HRW) argues that AADs are unlawful as they contravene the principles of humanity and the dictates of public conscience (HRW 2012, 26), and it considers the idea of AADs 'being given the power of life and death over human beings' to be 'unethical, shocking and unacceptable' (HRW 2012, 35). Using such weapons is like 'setting a mousetrap for human being' (Johnson 2013, 134) and treating 'our enemies like vermin' (Sparrow 2011, 11). Christof Heyns notes that the use of AADs 'risks taking humanity out of the loop' (Heyns 2013a, 16), and he thus views the use of AADs as 'some kind of mechanized pesticide' – contrary to principles of humanity (Heyns 2013a, 18). Furthermore, Bradley Strawser has argued that those who use AADs 'fail to satisfy reflexive duties to respect their own rationality, autonomy or dignity, they fail to take responsibility for their own actions' (Strawser 2013, 237).

In explaining the relevance of human values applicable to AADs and as contained in the Martens Clause, Peter Asaro notes that international law is a human construct that codifies social values and shared beliefs (Asaro 2016). In this sense, not only is the Martens Clause the 'point where social and moral values weigh on IHL – it is in many ways the whole point of IHL' as it embodies human values, written and unwritten norms, customs, shared moral sensibilities and collective interests (Asaro 2016, 372). Thus, international law is deemed to contain our moral inflections and conscience, which 'includes the felt forces of duty and obligation, and the moral sentiments attached to the processes of moral deliberation in their totality' (Asaro 2016, 375). Along the same lines and from a perspective

that states are part of the international community, John Geer notes that such moral conscience is characterised by moral overtones that are shaped by values and interests shared among nations, and by cohesive state behaviour to protect the nation's image or avoid international isolation (Geer 2004, 505). As such, 'the weight afforded to the principles of humanity and the dictates of the public conscience, will determine how the Clause can impact – or prevent – the development or use of [AADs] in armed conflicts' (Evans 2014, 723).

Understanding the Lack of Consensus on Values Relevant to AADs

The lack of consensus on AADs and the diverging interpretations given to the values that are applicable have thus far been largely explained in terms of lack of shared definitions and understanding of AADs, so it is worthwhile now to discuss some of the factors that may more fully explain the lack of consensus. Values – and their interpretation – may be informed by the different interests, beliefs and attitudes of different societies and communities that are currently represented by governments and other organisations in the AADs debate. As such, the lack of consensus may be explained in terms of relativity of values, and the diverging political and humanitarian interests that inform the default positions of stakeholders. Of course, values remain contested because there is no agreement as to what they are and what they do. Yet, notwithstanding such lack of consensus, it is indeed 'values [that] give direction to the way that individuals, organizations, and societies act; what they strive for; and what they deem important' (Jaspers 2016). Values as influenced by interests, attitudes and beliefs may differ in importance depending on context (Jaspers 2016). Without necessarily being conscious of it, often our responses as to whether a particular use of force is morally right may be influenced by: whether we perceive the victim to be innocent or guilty; whether the lives lived by the victims reflect our own lifestyles; whether the purpose of the violent action in question was or is for our own self-preservation; and so on. Thus, while there may be standards or even universal values, our reaction when these are violently violated may well depend on such factors. The same applies to the positions that are taken by states and other stakeholders in the current debate on AADs.

Default Positions of Debaters and Interpretation of Values

Stakeholders that are participating in the AADs debate can be divided into four kinds: the states that are developing AADs; powerful states that are

not developing AADs and are interested in multilateralism on the matter; smaller or less powerful states that are not developing AADs or have no capacity to do so; and the NGOs that want AADs to be pre-emptively prohibited. Among the last is the ICRC, whose crucial role is to encourage belligerents to respect IHL during armed conflict. The positions of these different stakeholders on AADs are influenced by different values and interpretations of certain values. The US has made it clear that it has taken a deliberate decision to permit weapons that are programmed to make decisions that relate to targeting (US 2018, 2). The US – like Russia and Australia – has taken the position that no new regulation on AADs is required at the moment. The UK, Switzerland, France and Germany have taken the position that they do not intend to develop fully autonomous weapon systems and emphasise the importance of complying with existing international law (Switzerland 2017). Yet without codification of certain ethical values applicable to AADs, such a position rests on quicksand, since existing international law is inadequate to govern AADs. China's position is that development of AADs should be allowed while their use must be prohibited, so it has suggested an additional legal instrument prohibiting the use of AADs (CSKR 2019). Clearly, there is no consensus among the powerful states on the way forward.

These states have largely attributed the lack of consensus on AADs to a lack of shared definitions and understandings of AADs, but some scholars have also explained that the different interpretation of applicable values depends on whether one approaches the issue from a deontological or a consequentialist standpoint. The main argument stemming from deontological ethics is (as highlighted above) that AADs contravene human dignity, and as such humans must retain moral responsibility over the use of force (Scharre 2018, 287; ICRC 2018). It is in this sense that UN Secretary-General Guterres views AADs as morally repugnant (Guterres 2019), and AADs are further considered to weaken moral responsibility and prevent considerations of humanity (ICRC 2018). By contrast, some consequentialists argue that AADs may make better decisions than humans and that using them may thus save more lives over time (ICRC 2018; Arkin 2013, 6; Marchant et al. 2011, 280). In addition to their speed of operation, AADs do not have emotional weaknesses such as anger, frustration, desire for revenge, fear or hysteria, which so often cause humans to make bad decisions in war (Marchant et al. 2011, 280). For these reasons, there may be a consequentialist basis to an argument in favour of an ethical obligation to use AADs (Herbach 2012, 14). Consequentialists also tend to prefer the idea of belligerents winning a war as quickly as possible and thereby minimising casualties. The 'unnecessary' exercise of empathy and mercy by

fighters towards lawful targets could thus be seen as delaying the ending of a war and thereby increasing the overall number of casualties – another 'weakness' that AADs do not have (Scharre 2018, 273).

The Arms Race in AI Military Technologies

Beyond ethics, power politics and diverging interests largely explain the different interpretations of values that are relevant to the regulation of AADs. The current rivalry in the race for dominance in the field of military AI – in particular, that including major powers like the US, China and Russia – is clearly not conducive to regulation of AADs (Imbrie et al. 2020). Major powers are aware that AI research and military technologies such as AADs have the potential to enhance geopolitical influence and impact the current balance of power (Imbrie et al. 2020, 27). China, for example, is particularly aware that leadership in AI carries the potential to position it as a global power with the capacity to control and influence norms (Imbrie et al. 2020, 28). While China is leading on AI commercial applications, the US leads on AI applications relating to national defence and military power (Imbrie et al. 2020). Thus, while China currently seeks to 'leapfrog' the US in innovation of AI military applications, the US is eager to maintain its lead in AI military technologies (Khan 2019). In this race for AI power among the powerful states, ethical values such as human dignity may have little if any influence. Multilateralism and consensus often require trust or at the very minimum transparency. Yet, while not a new phenomenon, the current heightened mistrust between US and China in the area of AI technologies – as exacerbated by Trump's anti-China rhetoric – makes co-operation and transparency on AADs regulation difficult, as there is always a fear of potential 'exploitation of access to sensitive information and targeting of intelligence efforts against experts, scientists, or officials' (Imbrie and Kania 2019).

The Implications of AADs for Military Power and National Security

To the minority powerful states, AADs present enormous military and national security advantages, such as force multiplication (Scharre 2014), being faster and sparing the use of a state's own soldiers (Horowitz 2019, 764). For these reasons, such states would probably be reluctant to forego such conceived or perceived military benefits (Davis 2019, 115). Furthermore, in the global fight against terrorism that constantly and mainly threatens the national security of states like the US, armed drones have played and continue to play a very important if not a decisive role. Armed drones have been referred to as

a weapon of choice against terrorists (Marcus 2015), and since AADs are a more advanced version of armed drones, it is reasonable to expect that some states may conceive of them as an important counterterrorism tool in the near future. Accordingly, just as the US creatively introduced new terminologies and standards in international law, such as 'elongated imminence' in 'anticipatory self-defense', to justify its attacks through armed drones, the US also creatively interprets values and standards that are applicable to AADs to justify their development and use (Akande et al. 2016; US 2018).

Yet the discussions on AADs also include smaller or less powerful states, some of which already feel that their territorial sovereignty has been and continues to be violated through the use of armed drones (Akande et al. 2016). For states in the Muslim world, armed drones that have been effectively – and sometimes recklessly – deployed in Muslim-majority territories stand as an anti-Islam symbol and a 'global war on tribal Islam' (Ahmed 2013). And if remotely piloted armed drones are perceived as a symbol of Western anti-Islam sentiments and perversion, AI-piloted (autonomous) versions might be seen as being even worse. Many other states that do not have the capacity to develop AADs are aware that the current global imbalance of power and historical invasion and colonisation of smaller states were a result of the military prowess of minority powerful states whose powers largely depend on their weapon arsenals. The venture of minority states to develop AADs might therefore be perceived as a quest for continued dominance and neo-colonialism. This may, to some extent, explain the position of African states and members of the Non-Aligned Movement in the UN's Geneva-based debates about AADs.

Anti-NGO Sentiments and 'Banphobia' in Geneva

On the basis of humanitarian values such as consideration and preservation of human dignity in armed conflict, NGOs and other international organisations have campaigned for the banning of landmines, cluster munitions and nuclear weapons, and for the negotiation of the 2013 Arms Trade Treaty. Without doubt, NGOs and other humanitarian organisations like the ICRC have played a significant role in the adoption of important treaties in arms control and disarmament. Yet it cannot go unnoticed that in recent years, some state delegations and diplomats have developed a 'banphobia' and an anti-NGOs sentiment. Some scholars, like Tyler Evans, view NGOs as hell-bent on taking every weapon from the arsenals of states and usurping their legislative powers (Evans 2014, 725; see also Meron 2000, 98). This has led to, or at least intensified, some states' opposition to NGO initiatives in disarmament. In this regard, Mark Perry (2020, 1) notes, for example,

that 'landmines were never important to the military – until NGOs tried to ban them' (Perry 2020). Arguably, this feeling among states and certain stakeholders further negatively impacts the chances of achieving consensus on the regulation of AADs.

Conclusion

Notwithstanding the differences highlighted above, there are some powerful states (for example, Germany) that are keen to see a tangible output on AADs through multilateral processes. Furthermore, because AADs present, to some degree, shared challenges, states will be forced to continue co-operating. For example, AADs present capabilities that may undermine the survivability of nuclear arsenals and potentially render them vulnerable, resulting in overwhelming threats to global security (Keir 2017). This is a concern for all states, and especially those that possess nuclear weapons. Even so, in multilateral processes that are characterised by consensus in decision-making, such as the current CCW process on AADs, the risk remains that the political interests of a few mighty powers may overshadow common values that the majority of states seek to codify. While the current lack of consensus in the CCW process on AADs has been attributed to a lack of shared definitions and common understandings of AADs, this chapter concludes that the lack of consensus is largely explained by diverging political interests in power politics and national security. Such political interests are rooted in the significance of AADs for global power and dominance, national security, and the territorial sovereignty of smaller or less powerful states. In turn, these diverging political interests influence whether a given state views the ethics of AADs from a deontological or consequentialist perspective. Given the CCW's consensus rule, it seems unlikely that a regulation on AADs will emerge from the current negotiation process. It is hoped, however, that such a regulation will emerge instead from majoritarian institutions like the UN General Assembly.

Notes

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1. The 'Martens Clause' was introduced for the first time in the preamble of the 1899 Hague Convention (Convention with Respect to the Laws and Customs of War on Land), on the proposal of Fyodor Fyodorovich Martens, a Russian lawyer and member of the Russian delegation to the 1899 International Peace Conference (Koutroulis 2017).

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