Article 36, Weapons Reviews and autonomous weapons

by William H. Boothby
What are weapon reviews?

“In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a [State] is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by [the] Protocol or by any other rule of international law applicable to the [State].”

Customary law requires legal review of all new weapons
Weapon review criteria

- Existing law applies
- Superfluous injury/unnecessary suffering
- Indiscriminate weapons rule
- Collateral damage to environment
- Environment as a weapon
- Rules applicable to particular technologies
Autonomous weapons – additional criteria

- Can weapon system comply with targeting law?
- Can it assess military advantage/collateral damage in advance?
- Can it compare them?
- Can it choose weapon/method/target to minimise collateral damage?
- Can it distinguish able-bodied vs hors de combat – and combatants vs peaceful civilians?
Current technology:

- Cannot achieve evaluative targeting law requirements
- Limited defensive/remote applications may be lawful
- Offensive autonomous attack weapons should fail weapon reviews
- Comply with weapon reviews
- A ban would be inappropriate
Meaningful human control

- Useful interim policy approach
- But
- Not an additional legal criterion

- Questions?