



# **AUTONOMOUS WEAPONS SYSTEMS: A Caribbean Perspective**

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## Autonomous Weapons Systems- A Caribbean Perspective

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### Abstract

This paper is intended to give brief insights into the developing threat posed to the Caribbean Community by the upsurge of the use of, and potential civilian access to autonomous weapons systems (AWS). Security stands as the fourth pillar of regional integration for CARICOM Member States, alongside economic integration, human and social development, and foreign policy. It is a mandate that calls for the CARICOM Community to secure the resilience of the region through combatting and eliminating threats at the international, regional and national levels. In this regard, it is inimical to the CARICOM security agenda to remain reactive to this burgeoning issue which has the potential to have far-reaching violent effects on the Community. Early identification of the challenges and nuances peculiar to our region is critical to shaping the collective regional security landscape.

**Key Words:** autonomous weapons systems (AWS), artificial intelligence, human rights law, regional security, criminal justice, CARICOM.

### Introduction

1. The upsurge of civilian use and access to Autonomous Weapons Systems (AWS), a particular class of weapon system that utilizes artificial intelligence via computer algorithms and sensor suites, is a matter of concern for CARICOM and its Member States. As an emerging technology, there has yet to be an agreed-upon definition of AWS. The International Committee of the Red Cross (ICRC) defines AWS as “*any weapons that select and apply force to targets without human intervention*”<sup>1</sup>. Similarly, the US Department of Defense Directive defines it as “*weapon system[s] that, once activated, can select and engage targets without further intervention by a human operator.*”<sup>2</sup> AWS can be pre-programmed to kill specific target profiles and are oftentimes better referred to as “*killer robots*” or “*slaughterbots*”. AWS have consequently become an increasing point of discussion due to their potential impacts on global peace and security, including resulting implications on, *inter alia*, cybersecurity, human rights and humanitarian law, criminal law, ethics and corporate criminal liability.

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<sup>1</sup> "What You Need to Know about Autonomous Weapons." *Www.Icrc.Org*, 26 Jul. 2022, [www.icrc.org/en/document/what-you-need-know-about-autonomous-weapons](http://www.icrc.org/en/document/what-you-need-know-about-autonomous-weapons). Accessed 16 Aug. 2023.

<sup>2</sup> Congressional Research Service (CRS). "Defense Primer: U.S. Policy on Lethal Autonomous Weapon Systems." *CRS Reports Database*, 15 May 2023, [crsreports.congress.gov/product/pdf/IF/IF11150](https://crsreports.congress.gov/product/pdf/IF/IF11150). Accessed 16 Aug. 2023.

2. The regional criminal justice landscape is shaped by various domestic and international influences, ranging from petty theft, to school violence, home invasions, domestic violence, sexual abuse, human trafficking, drug-gang warfare, murders, cybercrimes and transnational organised crime. The Caribbean acts as both a hub and a transshipment route for many organised crime syndicates. As such, regional security remains a priority. As recently as April 2023, all CARICOM Heads of Government met in Trinidad and Tobago for a Regional Symposium to address Crime and Violence, and to examine the causative factors of criminality and adopt strategies and interventions to reduce this scourge. A Declaration on '*Crime and Violence as a Public Health Issue*' was adopted and underscored that the epidemic of crime and violence in the Caribbean, fueled by illegal guns and organized criminal gangs, requires a robust regional response as an all-of-society strategy to ensure that our region can exist in an environment of peace and safety.
3. For the Caribbean, on the domestic paradigm, the use of digital and emerging technologies in criminal conduct has already emerged as a threat to some national law enforcement and security arrangements. In Trinidad and Tobago in July 2023, reports of drone contraband deliveries into a national prison have caused some concern<sup>3</sup>. While some devices are seized by law enforcement there is limited mechanism to trace the chain of liability in these instances which, *prima facie*, illustrates the challenges with this type of technology. Another nascent technological issue challenging law enforcement agencies is the manufacture, creation and use of '*ghost guns*'. As recently as August 30, 2023, the Trinidad and Tobago Police Service seized a 3D Printer, Computer system and other projectiles<sup>4</sup>. The challenges of emerging technology and its use in domestic criminal conduct are patent.
4. In the international paradigm, the globalized environment is such that the lack of regulations and easy access to weapons in one State can impact the sovereignty of an entire region. The under-regulation and liberal policies of conventional weapons by the Region's hemispheric partner, the United States of America, have proven problematic and led to a proliferation of illegal firearms regionally. This issue is clearly illustrated through the CARICOM Heads of Government support for the Mexican government in its legal claim against US-based gun manufacturers<sup>5</sup>.

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<sup>3</sup>Drone Drops into Prison, 28 July, 2023, The Trinidad Express Newspaper [https://trinidadexpress.com/newsextra/drone-drops-into-prison/article\\_48531e40-2d57-11ee-9b9f-ab09892c02a2.html](https://trinidadexpress.com/newsextra/drone-drops-into-prison/article_48531e40-2d57-11ee-9b9f-ab09892c02a2.html). Accessed 24 August, 2023.

<sup>4</sup> Trinidad and Tobago Police Service, Media Release dated August 30<sup>th</sup>, 2023.

<sup>5</sup> <https://caricom.org/declaration-by-heads-of-government-on-crime-and-violence-as-a-public-health-issue/>. Accessed 28 August, 2023

5. While AWS has not yet presented a direct threat to our national and regional security, it is clear that the proliferation and future access to and use of AWS by non-state actors will present the region with a new and dangerous problem which CARICOM States may not have the resources, capacity and capabilities to address. The mass potential for unregulated AWS to trickle into the region once available to gangs, criminals, international terrorists and organised crime syndicates is easily conceivable. The repercussions on Caribbean peace and security can be devastating.
6. AWS presents novel implications for the region, including human rights, ethical, criminal justice and humanitarian challenges. Against this backdrop, the absence of an international legally binding instrument, incorporating prohibitions and regulations on AWS poses serious problems for the Caribbean.

### **AWS in the international context**

7. The United Nations Convention on Certain Conventional Weapons (CCW), which entered into force in 1983, has been deemed a *'key instrument' of international humanitarian law and seeks to ban or restrict the use of specific types of weapons that have indiscriminate effects on civilians or cause unnecessary suffering for combatants*". The CCW was initially signed by 50 States and as of April 2023, there were 126 State Parties to the Convention. Notably, only four (4) CARICOM Member States are High Contracting Parties to the CCW: Antigua and Barbuda, Grenada, Jamaica and St. Vincent and the Grenadines.
8. The CCW serves as the primary framework for addressing AWS and weapons systems that can potentially have mass social, humanitarian and international security implications. The purpose of the CCW is to prohibit or restrict the use of certain specified types of weapons that are considered to subject combatants to unnecessary or unjustifiable suffering or affect civilians indiscriminately.
9. In this regard, AWS have gained pronounced traction on the international front. Stemming from the CCW, a Group of Governmental Experts (GGE) established in 2016 began examining the possible challenges AWS poses, and in 2019, approved a non-binding document with 11 Guiding Principles including human responsibility and control and respect for international law. While there is currently no consensus on the need for an international legal instrument to regulate AWS, a New Agenda for Peace released by UN Secretary-General Antonio Guterres on July 20, 2023 has urgently called on States to adopt a treaty to prohibit and regulate AWS by 2026.

## Caribbean endeavours

10. The Caribbean region has been proactive in making significant strides to sensitize its counterparts on the issues surrounding AWS. Remarkably the first of its kind, the *Latin American and Caribbean Regional Conference on the Social and Humanitarian Impact of Autonomous Weapons* was held in Costa Rica on February 23-24, 2023 as an initiative of the Government of Costa Rica in collaboration with the Foundation for Peace and Democracy. Several CARICOM Member States were present at this conference, including Antigua and Barbuda, Barbados, Bahamas, Belize, Guyana, Jamaica, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.
11. Antigua and Barbuda highlighted the urgent need for legislation prohibiting and regulating the use of autonomous weapons; Jamaica gave its commitment to support harmonized regional efforts in the establishment of a common position on the requisite framework and measures needed to ensure proper regulation of the development and use of autonomous weapons; and Trinidad and Tobago recognized the necessity to begin negotiations on an international legally binding instrument that establishes prohibitions and regulations to guarantee meaningful human control with regard to AWS. CARICOM gave full support for advancing an international legally binding agreement on AWS.
12. Further to this undertaking, CARICOM Implementation Agency for Crime and Security (IMPACS) hosted the *CARICOM Regional Conference on Achieving the Universalization of the Convention on Certain Conventional Weapons*, which was held in Trinidad and Tobago on July 11-12, 2023, in collaboration with the United Nations Office for Disarmament Affairs (UNODA) and the Office of the Attorney General and Ministry of Legal Affairs, Trinidad and Tobago, with sponsorship from the European Union. This conference saw high-level representation from twelve (12) CARICOM Member States, namely Antigua and Barbuda, The Bahamas, Belize, Grenada, Guyana, Haiti, Jamaica, St. Lucia, St. Vincent and the Grenadines, St. Kitts and Nevis, Suriname and Trinidad and Tobago.
13. At the conclusion of the Conference, CARICOM Member States agreed via an Outcome Statement to commit to actively engage in discussions on the national level on matters relative to the CCW and LAWS in order to intensify State participation and promote active engagement in meetings of the CCW and other fora related to LAWS; promote collaboration among CARICOM Member States to develop a common position on LAWS; collaborate with CARICOM IMPACS to support CARICOM Member States to enhance shared awareness and technical literacy of Artificial Intelligence and LAWS; recommend consideration of accession to the CCW and its related protocols; and recommend that the

Conference of CARICOM Heads of Government adopt a CARICOM Declaration on LAWS.

14. Further to this undertaking, CARICOM IMPACS, in collaboration with the Office of the Attorney General and Ministry of Legal Affairs, Trinidad and Tobago, Stop Killer Robots and Soka Gakkai International, will host the *CARICOM Conference on the Human Impacts of Autonomous Weapons* on September 5-6, 2023 in Port of Spain, Trinidad and Tobago. The purpose of this conference is to deepen shared understanding of the challenges posed by AWS, providing an arena for substantive discussion and encouraging more active participation of Caribbean States in AWS-related discussions. Ultimately, the meeting aims to advance, if feasible, a CARICOM Declaration on AWS and elaborate a common CARICOM regional position.

### **Implications of AWS on our Region**

#### Human Rights/Ethical Challenges

15. Human Rights Law governs protections for citizens in a domestic and international framework. It places obligations on governments to ensure that State and non-State bodies do not infringe on fundamentally guaranteed rights. According to Amnesty International, AWS presents five primary challenges in the human rights context. Three which are of immediate concern for this region are that (1) the CCW does not necessarily cover the full scope needed to protect against internal incidents; (2) accountability issues arise in the context of AWS; and (3) AWS fails to comply with international standards as required under International Human Rights Law<sup>6</sup>.
16. It must be acknowledged that an immediate concern for States within this region are the effects of AWS in “non-conflict use”. As discussed above, the current international legal framework currently shaping the discussion on AWS is the CCW. While four CARICOM Member States are parties to the CCW, there is a need for a critical examination of the scope and applicability of this Convention to the Caribbean context.
17. Despite an amendment to Article 1 of the CCW, expanding its scope to include some instances of armed conflict not of an international character, the CCW clearly states that it “*shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts*”. Having regard to the history of this region and the current regional and domestic criminal climate, it is more likely for Small Island Developing States (SIDS) to face isolated AWS incidents by non-state actors and/or domestic criminal actors as opposed to

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<sup>6</sup> Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration. 2015. Amnesty International. Amnesty International Publications.

international armed conflict State actors. As such, while the CCW remains a useful starting point, it may be necessary for CARICOM Member States to consider additional fora to advance its position for the regulation and prohibition of AWS.

18. The supremacy of the Constitution is well known in the Commonwealth Caribbean. This places a considerable responsibility on governments to ensure that AWS are managed in a manner by State and non-state actors to ensure accountability, respect for the human person and national safety and security. Several Caribbean countries have, through the introduction of a Bill of Rights, enshrined protections to life, liberty and security of the person into their Constitutions. By way of example, within the preamble of the Trinidad and Tobago Constitution is a direct reference to the fact that the “*nation of Trinidad and Tobago is founded upon principles that acknowledge the **dignity of the human person***” [emphasis added]. It goes further to say that the Constitution should make provisions for ensuring the “*protection of fundamental human rights and freedoms*”. It continues, within the Bill of Rights, with reference to the “*right of the person to life, liberty, security of person...*”. There is also reference to the need for the State to avoid imposing “*any cruel and unusual punishment.*”
19. A lesser, but equally concerning issue on regulation is how AWS intersects with the protection of enshrined rights to property. By way of example, the sale and purchase of drones, [which are not autonomous], of differing degrees and specifications is currently under-regulated in the region. In Trinidad and Tobago, while owning and flying drones are legal, according to the Trinidad and Tobago Civil Aviation Authority, there are regulations requiring a license in order to operate the drone in specified circumstances<sup>7</sup>. Of interest to this ongoing debate relative to regulation of civilian use of technology, the enforcement of this license requirement seems to be of recent vintage. Moreover, how governments regulate the importation of materials which may modify drones and other artificially engineered technology in such a way as to cause harm or death, while balancing individual rights to enjoyment of property will be left to be determined.
20. Finally, a related challenge with AWS is the alarming ethical concern of substituting human control for software and machine processes which can have lethal consequences. There is the potential for discrimination based on pre-programmed biometric biases that are intrinsic to AWS. There is also concern surrounding the ability of AWS to discern nuances within an environment. For example, the presence of children and other vulnerable groups in a volatile environment. This may lead to morally and ethically unacceptable behaviours and disregard for the principle of human dignity as recognized

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<sup>7</sup> Drones to be Confiscated by Customs and Excise, 30 August, 2023, The Trinidad Guardian Newspaper <https://www.guardian.co.tt/news/drones-to-be-confiscated-by-customs-and-excise-6.2.1788301.08b925b70f#:~:text=Citizens%20of%20T%26T%20who%20are,courier%20companies%20earlier%20this%20week>. Accessed 30 August, 2023.

under the ICCR Declaration on Human Rights. This is also *prima facie* antithetical to maintaining the dignity of the human person under the respective Commonwealth Constitutions.

### Criminal Justice Challenges

21. A primary legal consideration is the dualist system of law found in developing, common law jurisdictions within the Caribbean region. The regulation and/or prohibition of AWS in a dualist system means that any internationally binding instrument must be translated into domestic law in order to take effect. In this regard, even where CARICOM Member States become High Contracting Parties to the CCW and any subsequent internationally binding treaty, domestic legislation on AWS must be enacted in order to have a legally binding effect. Several domestic pieces of legislation will therefore require reform and/or amendments in order to legally prohibit and/or regulate the use of AWS at the national level and hold those criminally responsible to account.
22. Further, consideration of criminal liability creates some challenges. Motive/intent or to use the latin phrase "*mens rea*" is key to establishing liability for serious criminal offences in many Caribbean jurisdictions. This interrelates to some of the human rights obligations of States as human rights law requires States to investigate breaches of fundamental rights and to bring the perpetrators to justice<sup>8</sup>. The obvious question is "who is accountable for an injury and/or death perpetrated by an AWS"? Is it the manufacturer, the owner, the user/the programmer (if one is identified)? Are national law enforcement agencies even equipped to decode these types of systems?
23. Another legal challenge is the issue of cybersecurity. Where the integrity of the autonomous weapons systems becomes compromised due to a cyber-attack, there is the question of whether the creator/owner is capable of detecting the cyber-attack in real-time in order to minimize the risk of harm.
24. Amnesty International also discusses the potential use of AWS by domestic law enforcement agencies<sup>9</sup>. There is great potential for AWS in law enforcement work as it reduces certain risks to law enforcement officers in situations of high violent outbursts or while undergoing exercises in volatile areas. The challenge foreseen here is that while there are benefits, AWS, once programmed to deploy or react to pre-determined stimuli, lack the ability to discern and to execute any measures of force proportionately.

### Humanitarian Law Challenges

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<sup>8</sup> Ibid, p25.

<sup>9</sup> Ibid, p12.



25. In this context, there is the humanitarian risk of harm for those affected by armed conflict, including both civilians and combatants, and the dangers associated with conflict escalation. One such challenge is compliance with the rules on the conduct of hostilities regulated by the principles of distinction, proportionality and precaution under international law. In the context of AWS, the attack must respect these three (3) core principles in order to be deemed legal. On the principle of distinction, there must be a lawful target of attack. On the principle of proportionality, the expected harm must be proportionate to the military gain. On the principle of precaution, all feasible precautions must be taken to limit the harm caused and further, where any information comes to light changing the assessment of distinction or proportionality which might suggest unlawfulness, the attack must be suspended. In this regard, the question of criminal liability presents itself where these core principles are not met by an independently controlled, pre-programmed machine. There is the consideration of whether the creator of the machine and/or the individual or company that owns the machine will be held criminally liable for any unlawful attack.

## **Conclusion**

26. AWS pose a particularly novel challenge for the Caribbean region. In the context of international security, CARICOM has been at the forefront of several internationally negotiated security agreements including the Arms Trade Treaty and the Treaty to Prohibit the use of Nuclear Weapons. This endeavour will be no different. In advancing the discussions surrounding AWS it is clear that there is a need for an international legally binding instrument, incorporating prohibitions and regulations on AWS regulations and prohibitions. The call for CARICOM governments is to remain proactive in that discussion so as to shape an agreement which considers, among other things, the region's nuances, interests and above all, the safety and security of its people.