

NATO 2030: NATO-Private Sector Dialogues with GLOBSEC

Transatlantic Cooperation on Ethical Deployment and Governance of New Technologies - 25 March

Policy Takeaways

NATO, its allies, and the private sector are all facing the reality of an increasingly complex ethical landscape when it comes to governing new technologies. The unsettled parameters of this landscape, and the tensions this uncertainty raises between NATO allies and companies requires developing a coordinated trans-Atlantic approach. Adequately responding to these challenges will require more extensive and innovative collaboration between the Alliance and the private sector. The fifth of the NATO-Private Sector Dialogues with GLOBSEC brought relevant stakeholders together to exchange views and insights about how the private sector can contribute to dealing the geopolitics of ethics and regulation, as well as the ethical and legal challenges associated with both kinetic warfare and non-kinetic warfare.

– The Geopolitics of Ethics and Regulation –

Key Insights:

- The private sector can use its expertise to help the public sector to determine when proposed regulation is too excessive and highlight gaps in regulations that governments may not see, as more regulation is not always better regulation.
- NATO can serve as a venue for members and partners of the alliance with differing perspectives on governing emerging technologies to develop common norms and address how these technologies will impact military interoperability and the morality of military engagement.
- There are still too many information silos within industries and sectors which prevents knowledge sharing, NATO can play a key role in bridging these divides.

Discussion Points:

Generally speaking, there are three categories of governance issues; what countries do domestically, military issues, and the geopolitics of regulation. When it comes to domestic governance issues, NATO can play a supporting role by encouraging dialogue to minimize transatlantic differences on issues like privacy rights and other periphery issues. Military governance issues often center on use of force issues, where NATO has a key role to play. The geopolitics of regulation also presents challenges for NATO and its allies.

There is currently a return to great power competition underway, and NATO allies will need to decide whether to fight for ethical norms of emerging technologies that prioritize the defence of civil liberties and privacy concerns. However, NATO and its allies will need the private sector to tackle these issues. The public sector often lacks a good understanding of how emerging technologies work, which can lead to the creation of ineffective regulations. Therefore, the private sector can play a role in helping governments find gaps in regulatory structures, and help the public sector better understand new technologies.

At the same time, the private sector also has its own governance challenges. Countries across the world are translating their distinct values and ethics into laws and regulations that govern new technologies. This means that companies with an international presence are forced to operate across all these legal structures. Operationally this means that companies must provide the same user experience to all their customers across the world with different back-end software depending on each country's specifications. These different requirements are incredibly expensive and complicated to operate within based on the different legal and backend structures, which by extension means that only established companies with substantial resources can afford to have a truly global presence.

Private sector clients often do not think about the ethics of their products or services in a proactive way and are complacent in thinking about what the implications or risks of their new technologies are, choosing instead to focus primarily on the opportunities they present. Normally it is the case that these ethical issues are usually flagged once projects are launched, which is too late.

The public and private sectors can both operationalise their ethical concerns. Given the impact that ethical concerns will have for interoperability, developing a list of principles that should govern new technologies will be critical. The principles developed by the US DoD for emerging technologies is a useful source for NATO

allies to refer back to when in doubt. In addition, developing increased testing and certificates to affirm the ethical standards of new innovations would be beneficial. A similar system is already in place for self-driving cars. This highlights the need to promote common dialogue within the alliance between industries that do not normally cooperate. NATO should help develop new mechanisms for this communication.

-Ethical and Legal Challenges of New Technology: Kinetic Warfare-

Key Insights:

- NATO should look to position itself as a forum for allies to discuss existing legal and normative frameworks and their application to the current and future use of new technologies.
- The private and public sector need to increase their collaboration when it comes to keeping up with new trends of emerging technologies, with the private sector playing a leading role in informing policy makers on the current capabilities and functionalities of new technologies.
- The public sector should aim to decrease the 'gray zone' between the lawful and unlawful through the creation of more detailed normative and legal frameworks regarding the use and deployment of autonomous weapons systems. This step would aid the private sector in applying new technologies into the creation of systems compliant with the laws of war.
- Emphasis should be placed on the enforcement of normative and legal frameworks to avoid future dilemmas of traceability and liability.

Discussion points:

The rapid advancement of new technologies widens the gap between their capabilities and existing normative and legal frameworks allowing for their potential misuse or abuse. Participants agreed that the current regulatory frameworks are not satisfactory vis-à-vis the potential threats new technologies could have on the international system, with autonomous weapons systems representing the largest source of risk.

Although autonomous weapons systems are currently being deployed defensively, one of the biggest challenges identified with the advent of autonomous weapons systems and their potential offensive usage was an inherent lack of traceability as part of their deployment onto the battlefield. Unlike conventional weapons or even unlawful chemical weapons, the traceability of autonomous weapons systems was assessed to be extremely challenging, complicating the issues of accountability and liability. Representatives of both the private and public sectors endorsed the importance of 'keeping humans in the loop'.

Questions were also raised on whether there was a moral difference between the usage of fully autonomous weapons systems and those that require human approval for final engagement. The private sector argued that the current advancements in AI technology are not sufficient to enable fully autonomous weapons systems on the battlefield. Furthermore, the private sector explained that customers are not seeking out fully automated weapons systems but rather hybrid systems with automated functions.

It was stated that while designing and implementing new legal and normative frameworks on the regulatory side, a better course of action would focus on automated functionalities within systems rather than regulating autonomous weapons systems as a whole. Avoiding overarching regulations would avert generalizations which create the legal 'gray zone' of autonomous weapons systems regarding the laws of war. By giving clearer guidelines, policymakers would therefore help the private sector produce lawful systems. However, concerns were raised about an excessively rigid frameworks. By 'tying our hands' on the use of offensive automated weapon systems, adversarial forces in possession of these systems would benefit from an unfair competitive advantage in theatre operations.

Moreover, it was agreed that despite all regulatory efforts, a certain level of ambiguity will always be present and potential for the misuse of new technologies by governments and non-state actors who disregard our norms will always exist. The enforcement of existing and potential new frameworks should therefore be prioritized.

In terms of collaboration, the participants agreed that there is a need for increased dialogue between the private and public sectors. Private sector voices expressed that the public sector did not fully comprehend current technological advancements and their different applications. Consequently, a detailed and transparent dialogue

regarding the capabilities of new technologies would not only improve the collaboration between public and private spheres but would also elevate the thinking policy makers when reviewing existing frameworks.

-Ethical and Legal Challenges of New Technology: Non-Kinetic Warfare-

Key Insights:

- There is a common misconception that the interface between the private and public sector occurs within a single silo, it is instead driven by unique internal dynamics and motivations that significantly complicates the governance and ethical deployment of new technologies.
- There is a sense among the private sector that governments' current regulatory role leaves them ill equipped when it comes to understanding how certain technologies work and would benefit from more technical input when formulating future policies.
- The non-kinetic use of new technologies by states and non-state actors, is blurring traditional dichotomies, which represents a real problem for international lawyers because the application of international law is heavily reliant on these traditional dichotomies.
- Within in this non-kinetic domain, it is imperative to ensure that the Alliance has an interoperable notion of applicable legal parameters, which should continue to be developed based on consensus and shared values.

Discussion points:

Given the increasing pace of technological change within the private sector, it was argued that the public sector is no longer sufficiently qualified to assess the impacts that these new technologies will have on society. A fundamental lack of strategy, basic understanding of these technologies, and in some cases public will, has hampered the ability of the public sector to set appropriate ethical guidelines and legislate effectively. This has created a growing space for adversaries to exploit the non-kinetic warfare domain.

To overcome this challenge, a reframing of the public-private sector relationship is essential. This requires developing new platforms for the public sector to source more technical expertise, like advisory boards, and a gradual shift towards evolutionary oversight models. To date, the existing forms of oversight, like regulations, are static and need to be more adaptive to respond to changing technologies. In some cases, supplementing existing regulatory regimes would be more effective than developing entirely new models.

Furthermore, the public sector must be more actively involved in the legal and ethical design process of products at the earliest stages. It was noted that when a technical expert designs a new item or software program, they can decide the practical and ethical implications of that product. Consequently, this ability for the creator to allow or disallow for certain product features necessitates the early involvement of the public sector to ensure ethical applications are integrated at the nascent product cycle stage, as opposed to at its end stage when regulation would be less effective. This model would furthermore ensure that core values of the transatlantic community are properly incorporated into the product's development and reduce the chance of future abuse.

Within the rules and principles setting stage of new technologies, it was acknowledged that a lot of activity among various actors is taking place both on the international and national level; these efforts are often uncoordinated. More needs to be done to bring these various actors and institutions towards a common position and protect our values. Given NATO and its allies' experience in navigating the question of cyber threats and the application of international law, it was argued that NATO again has a prominent role to play in solving the question of legal ambiguity when it comes the application of emerging technologies in the military and defence sector.

Finally, the ethics of non-kinetic warfare are inherently more complex compared to kinetic warfare due to its relatively new introduction to the combat landscape. While the traditional rules of warfare were based on historical precedent of state-on-state wars, non-kinetic warfare is waged simultaneously on multiple different fronts and without a clear purpose. The involvement of non-state actors further complicates the creation of viable ethical baselines. This reality should force NATO and its allies to accept the limitations of this exercise and reconsider where the ethical burden lies in non-kinetic warfare.