

Food for Thought Paper

4th Session of the GGE LAWS, Geneva, 25-29 March 2019

Paper submitted by Belgium, Ireland, and Luxembourg

The main purpose of this food for thought paper is to take forward the discussions on the specific characteristics of lethal autonomous weapons systems that would make these weapons problematic from a legal, humanitarian or ethical point of view. Additionally, we propose a link between these characteristics and some policy instruments by which these illegal and/or unethical lethal autonomous weapon systems could be prevented from ever being introduced.

This paper aspires to further narrow down our discussion and in this way contribute to a shared understanding of the issues at stake and to build as broad a consensus as possible on the preferable way forward.

1. Characteristics of weapons systems that would be problematic from an IHL and/or ethical perspective

The Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems (GGE on LAWS) adopted a set of common guiding principles at its third session in 2018. A number of these common guiding principles are of prime importance to frame the discussion on the characterization of lethal autonomous weapons systems. These are the following:

- a. International Humanitarian Law continues to apply fully to all weapons systems, including the potential development and use of LAWS¹;
- b. Human responsibility for decisions on the use of weapons systems must be retained since accountability cannot be transferred to machines²;
- c. In accordance with States' obligations under international law, in the study, development, acquisition, or adoption of a new weapon, means or method of warfare, determination must be made whether its employment would, in some or all circumstances, be prohibited by international law³.

¹ CCW/GGE.1/2018/3 III.A.(a)

² CCW/GGE.1/2018/3 III.A.(b)

³ CCW/GGE.1/2018/3 III.A.(d)

- d. Consideration should be given to the use of emerging technologies in the area of lethal autonomous weapons systems in upholding compliance with IHL and other applicable international legal obligations⁴.
- e. Discussions and any potential policy measures taken within the context of the CCW should not hamper progress in or access to peaceful uses of intelligent autonomous technologies⁵.

Furthermore, in line with the adopted guiding principles on the human element in the use of lethal force, we are of the opinion that the commander, on what so ever level, who decides to use a weapons system, always remains responsible for the consequences of its use, either individually or according to command responsibility. Consequently, there should never be an accountability gap. The decisional authority should also be fully aware of the potential effects of a weapons system.

A number of specific characteristics would, in our view, pose serious concerns from a legal, humanitarian and/or ethical point of view when introduced into lethal weapons systems. Each of the following characteristics in its own would be problematic:

- a. The ability to run through a targeting cycle, with the final intention to apply lethal force, without any human intervention;
- b. The ability to switch to lethal mode without any human intervention;
- c. The impossibility to interrupt or deactivate the autonomous mode;
- d. The ability to redefine its mission or objective without any human intervention.

Although existing automated or partially autonomous weapons systems do not constitute the subject of the current debate, careful consideration should be given, in our discussions, to the sometimes blurred distinction between automated and autonomous weapons systems. This could for example be the case for weapons systems which are confined to specific conditions related to time, space or type of target. Consideration should also be given to the question if, in certain circumstances, specific characteristics of autonomous weapons system could increase compliance with International Humanitarian Law. These are areas where thorough discussions and exchange of information should continue in order to reach a shared understanding.

⁴ CCW/GGE.1/2018/3 IIIA.(g)

⁵ CCW/GGE. 1/2018/3 HLA.(i)

2. Policy response

Apart from the issue of the characterization of LAWS, another crucial area of discussion concerns the choice of the most appropriate policy response to regulate the development of these new technologies. How can we prohibit the introduction of the weapons systems, which we deem incompatible with legal, humanitarian and/or ethical standards?

In previous discussions, a number of States pointed to the importance of conducting legal reviews of new weapons, in accordance with international law and more particularly with article 36 of the First Additional Protocol to the Geneva Conventions. In our view, this remains a useful and important avenue to ensure that any weapons system is developed in compliance with international law and, in particular, International Humanitarian Law. The universalization of the legal review of new weapons would thus be an important step forward in coping with the challenge posed by LAWS.

However, additional policy options should also be considered, within the framework of the CCW. These can take the form of a strong political declaration and/or a dedicated international legal instrument.

Once the hurdle of the characterization is taken, a broad international consensus should be sought on the most effective way to reach our common objective, which is the prohibition of weapons systems that contravene the above-mentioned legal, humanitarian and/or ethical standards.
