

ICT4Peace at the 2019 Group on Governmental Experts on Lethal Autonomous Weapons Systems (LAWS) at the UN in Geneva, 25-29 March, 2019

The first week of GGE discussions on LAWS in 2019, convened through the Convention on Certain Conventional Weapons (CCW), took place from 25-29 March at the UN in Geneva, and was chaired by Mr. Ljupco Jivan Gjorgjinski of the Former Yugoslav Republic of Macedonia. It is the seventh CCW meeting on LAWS since the topic was taken up by the international arms control community in 2014, and the fourth meeting within a formal GGE.

The week was opened by a welcoming address by UN-Secretary General Antonio Guterres (presented by Director General of the UNOG Michael Møller), which included the following message:

“Machines with the power and discretion to take lives without human involvement are politically unacceptable, morally repugnant and should be prohibited by international law.”

The GGE on LAWS convened at the same time as the GGE on the Prevention of an Arms Race in Outer Space (PAROS), a fact that could explain why especially African delegations, who are often smaller in relation to others, were largely absent in the debate.

During the week-long meeting, the GGE continued its discussions on (1) the potential challenges posed by emerging technologies in the area of LAWS to IHL, (2) the characterization of LAWS in order to promote a common understanding on concepts and characteristics relevant to the objectives and purposes of the CCW; (3) the consideration of the human element in the use of lethal force; aspects of human machine interaction in the development, deployment and use of emerging technologies in the area of LAWS; and (4) the possible options for addressing the humanitarian and international security challenges posed by emerging technologies in the area of.

As discussions proceeded, it became clear that a majority of governments agree that human control is necessary over critical functions (detection, selection, tracking, attacking) of weapons systems. However, certain ‘militarily significant’ states¹ are dismissing the term ‘human control’ as a concept valuable for the discussion.² Some believe the notion of ‘human control’ is subjective³ and can be politicized, others argue that the level of human oversight over a weapons system should stay at the discretion of individual states.⁴ Objecting to ‘human control’ as a possible international principle can also be regarded as a tactic for slowing down the debate in order not to reach an agreement on an outcome document, a political stance taken by the ‘strong’ few.⁵ The same states parties often also argue that IHL does not need modernization or adaptation to the new (potential) weapons landscape, and often claimed that there is no empirical evidence of the shortcomings under existing international law to

¹ As highlighted in the Preamble of the Convention on Certain Conventional Weapons Systems (CCW). Arguably the United States, the United Kingdom, Russia, Israel, South Korea, Australia.

² United States: objects to the term ‘human control’, as it is subject to divergent interpretations, and is also skeptical about defining the term ‘human supervision’; Russia: argues that notions on ‘human control’ are subjective and can be politicized as well as having a politicizing effect on discussions within the GGE; Australia: have a different and broader view of ‘control’ than the majority of States. Therefore, it dismisses the usefulness of the term ‘human control’ for the GGE, could be that the distancing from the concept of ‘human control’ could also be a tactic to slow down the process in order not to reach an outcome document.

³ Russia, United States.

⁴ Russia, Israel.

⁵ United States, the United Kingdom, Russia, Israel, South Korea, Australia.

regulate LAWS,⁶ and that, sometimes, LAWS could even perform better than humans and, hence, comply better with IHL.⁷

Discussions are moving forward slowly, and to this day, the GGE has not decided on an outcome document. The only concrete progress of the GGE debate in March was the renaming of the ‘Possible Guiding Principles’, decided upon in 2018, to ‘Guiding Principles’.

One reason for slow advancement is that the decisions within a CCW framework must be taken with unanimity – it only takes one state to block a decision. Another reason is that the above-mentioned minority of ‘militarily significant’ states do not show a sense of urgency for achieving an effective diplomatic result. Currently, 28 states⁸ with – arguably – minor ‘military significance’ follow the call for a comprehensive ban on the use and development of LAWS, based on the activities of the Campaign to Stop Killer Robots.⁹

If the CCW states parties will decide to implement a principle of ‘human control’ in the targeting cycle of a LAWS as an international norm, there exist several options:

A **legally binding treaty** in the form of a CCW protocol could set (a) positive obligations to guarantee human control in the use of force, it could (b) be a comprehensive ban on the development and the use of weapon systems that lack human control in the targeting cycle, or it could (c) merely ban the use of those systems during international war, but still allow for their development, stockpiling, and domestic use. Compared to (b) and (c), a comprehensive ban (a) might also address security concerns and potential arms races.¹⁰

One challenge to a legally binding outcome could be verification: it is very difficult to legally verify the complex software capabilities that enable the autonomous function of a weapons system. ‘Autonomy’ is a characteristic that is not observable ‘from the outside’. Moreover, even if a weapons system had built-in options for human intervention, it would be hard to safeguard that they are actually used – the software could be changed after the military operation.¹¹

One could address this difficulty through a **legally non-binding document**, in which states could agree on a common understanding of the implementation of human control. Such a political declaration could include ‘human control’ as a guiding principle. Further, it could set minimum requirements for its implementation, and offer a discussion of best practices, which would also help foster further dialogue between states. Some states see a political declaration as a final outcome document, whereas others regard it as an interim document and as a basis for further negotiations towards a legally binding treaty.

⁶ United States, United Kingdom.

⁷ United States, United Kingdom, Russia.

⁸ Currently, states calling for a comprehensive ban are: Pakistan, Ecuador, Egypt, Holy See, Cuba, Ghana, Bolivia, State of Palestine, Zimbabwe, Algeria, Costa Rica, Mexico, Chile, Nicaragua, Panama, Argentina, Venezuela, Guatemala, Brazil, Iraq, Uganda, Austria, China, Djibouti, Colombia, El Salvador, Morocco.

⁹ See Campaign to Stop Killer Robots, <https://www.stopkillerrobots.org/> (accessed on April 2, 2019). Currently, states calling for a comprehensive ban are: Pakistan, Ecuador, Egypt, Holy See, Cuba, Ghana, Bolivia, State of Palestine, Zimbabwe, Algeria, Costa Rica, Mexico, Chile, Nicaragua, Panama, Argentina, Venezuela, Guatemala, Brazil, Iraq, Uganda, Austria, China, Djibouti, Colombia, El Salvador, Morocco.

¹⁰For a more in-depth discussion on regulatory measures, see iPRAW, 2018, Concluding Report, available at: https://www.ipraw.org/wp-content/uploads/2018/12/2018-12-14_iPRAW_Concluding-Report.pdf (accessed on April 2, 2019).

¹¹See e.g. Gubrud, Mark, and Altmann, Jürgen, 2013, Compliance Measures for an Autonomous Weapons Convention, ICRC Working Paper No. 2, available at: https://www.icrac.net/wp-content/uploads/2018/04/Gubrud-Altman-Compliance-Measures-AWC_ICRAC-WP2.pdf (accessed on April 2, 2019).

A number of states¹² see the 10 Possible Guiding Principles, decided upon by 2018's GGE, as a potential basis for a political declaration. Amongst other things, those guiding principles reiterate that IHL fully applies to all weapons systems, including those potentially developed and that are autonomous. The principles also stress that human responsibility for the decision of the use of a weapon must be retained, as accountability cannot be transferred to a machine.¹³

A fall back option in case states can neither agree on a legally-binding treaty or a non-binding political declaration are **weapons reviews according to Article 36 of the Additional Protocol I to the Geneva Conventions**. This article obliges states to review new weapons systems in order to ensure that they are lawful according to IHL. Weapons reviews leave the assessment to the individual states.¹⁴ Weapons reviews could also be an additional regulatory tool to a legal document or a political declaration.

If the states cannot decide on a common ground within reasonable time, a potential development similar to the ban of landmines could become likely: a group of like-minded states could **move the discussion of LAWS out of the CCW forum**. One option would be to integrate the issue into the UN General Assembly, where decisions are taken by majority vote, compared to the unanimity requirement within the CCW.¹⁵ Another option would be to tackle the problem outside of the UN framework.¹⁶ However, states at the forefront of LAWS development – those states that obstruct negotiation outcomes now – would most probably not follow this move. Hence, proliferation and arms dynamics with regards to LAWS might, in that case, not stop. What is more, with a high probability, a comprehensive ban could push development of LAWS 'into the shadows', which would make it even harder to monitor and control.

After two coming informal meetings (potentially May and June 2019), the GGE will officially convene for the second and last time this year on 20 and 21 August 2019. Whether states parties to the CCW will decide on an outcome document cannot be foreseen at this point in time. The risk that major state powers who are at the forefront of potential LAWS development hinder a negotiation process, still exists. Also, even though political will for it seems to shrink, the possibility that the currently 28 states who call for a ban on LAWS might move the issue out of the UN infrastructure should not be completely ruled out.

Regina Surber, 4 April 2019

¹² Arguably France, Germany, EU.

¹³ CCW/ GGE.1/2018/3

¹⁴ Art. 36 AP I GC: 'In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.'

¹⁵ Similar to the Treaty on the Prohibition of Nuclear Weapons, A/CONF.229/2017/8.

¹⁶ Similar to the Ottawa Convention to Ban Land Mines.