Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System
Geneva, 4-8 March and 26-30 August 2024
Item 5 of the provisional agenda

Further consider and formulate, by consensus, a set of elements of an instrument, without prejudging its nature, and other possible measures to address emerging technologies in the area of lethal autonomous weapon systems, taking into account the example of existing Protocols within the Convention, proposals presented by High Contracting Parties and other options related to the normative and operational framework on emerging technologies in the area of lethal autonomous weapon systems, building upon the recommendations and conclusions of the Group, and bringing in expertise on legal, military, and technological aspects

Working paper

Submitted by Bulgaria, Denmark, France, Germany, Italy, Luxembourg and Norway

1. This working paper is aimed at contributing to the mandate given to the GGE on LAWS by the Meeting of High Contracting Parties of the CCW in November 2023:\footnote{CCW/MSP/2023/7, 23 November 2023 https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_Meeting_of_High_Contracting_Parties_(2023)/CCW_MSP_2023_7_A dvance_version.pdf}: «In the context of the objectives and purpose of the Convention, the Group is to further consider and formulate, by consensus, a set of elements of an instrument, without prejudging its nature, and other possible measures to address emerging technologies in the area of lethal autonomous weapon systems, taking into account the example of existing Protocols within the Convention, proposals presented by High Contracting Parties and other options related to the normative and operational framework on emerging technologies in the area of lethal autonomous weapon systems, building upon the recommendations and conclusions of the Group, and bringing in expertise on legal, military, and technological aspects».

2. There is growing support among High Contracting Parties that the ‘normative and operational framework’ governing LAWS needs to be developed further and that one possible way to proceed is through a two-tiered approach. Such an approach would, on the one hand, prohibit certain types and uses of LAWS, and, on the other hand, place limits and requirements on the development and use of all other LAWS.

3. On the basis of this approach, the following proposals are submitted for the consideration of the GGE with regard to a possible set of elements of an instrument within the framework of the CCW:
Elements of an instrument and other possible measures to address emerging technologies in the area of LAWS

I. Preambular part

The future instrument should:

1. Reaffirm the objectives and purposes of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, which seeks to strike a balance between military necessity and humanitarian considerations;

2. Recall the Eleven guiding principles agreed by the High Contracting Parties as contained in document CCW/MSP/2019/9;

3. Recall that International Humanitarian Law continues to apply fully to all weapons systems independently of the military technology used, including autonomous weapons systems;

4. Underlines that weapons systems that cannot comply with IHL are de facto prohibited and that systems incapable of being used in accordance with IHL should not be developed or used;

5. Reaffirm that the rules and principles of IHL, including inter alia distinction, proportionality and precautions in attack, must be adhered to in the development, deployment and use of weapons systems based on emerging technologies in the area of lethal autonomous weapon systems.

II. Scope of application

The future instrument should:

6. Apply to lethal autonomous weapons systems i.e. systems that, once activated, are able to identify, select, track, and apply force to targets, without further human intervention;

7. Establish a clear distinction between:
   • Lethal autonomous weapons systems operating completely outside human control and a responsible chain of command (i.e. systems capable of setting their own objectives or modifying, without any human validation, their initial programme or their mission framework);
   • Lethal autonomous weapons systems featuring decision-making autonomy in critical functions (i.e. lethal weapons systems featuring decision-making autonomy in critical functions such as identification, classification, interception and engagement to which, after assessing the situation and under their responsibility, the military command can assign the computation and execution of tasks related to critical functions within a specific framework of action).

8. Exclude remotely piloted and tele-operated systems, automated systems and systems featuring autonomy in "non-critical"/"low-level" functions (such as altitude hold, observation, camouflage).

III. Prohibitions

9. The future instrument should prohibit the following weapons systems:
   • Lethal autonomous weapons systems that are inherently indiscriminate and/or incapable of distinguishing between civilians, enemy combatants and combatants hors de combat;
• Lethal autonomous weapons systems the effects of which cannot be limited, anticipated and controlled, as required by international humanitarian law in the circumstances of their use;

• Lethal autonomous weapons systems operating completely outside human control and a responsible chain of command;

• Lethal autonomous weapons systems of a nature to cause superfluous injury or unnecessary suffering.

10. **Reaffirm** that States are responsible at all times for adhering to their obligations under applicable international law, including International Humanitarian Law. As such, States can be held responsible for internationally wrongful acts or violations of IHL resulting from the development or the use of the above-mentioned weapons.

IV. Regulations

The future instrument should:

11. **Call** on High Contracting Parties to take the necessary measures aiming at ensuring that lethal autonomous weapons systems covered by the future instrument and not prohibited under the future instrument (lethal autonomous weapons systems featuring decision-making autonomy in critical functions) are developed and used in full compliance with International Humanitarian Law. To that end, High Contracting Parties should put in place measures to:

• Assess - taking into account inter alia the technical performance, anticipated use, and intended tasks and types of targets - whether these systems are capable of being used in conformity with applicable international law, including international humanitarian law taking into account existing capacities and capabilities;

• Evaluate the reliability, understandability and predictability of such weapons systems inter alia by applying appropriate testing and certification procedure as well as appropriate training of human operators. In particular, High Contracting Parties should assess how such systems are expected to perform in the anticipated circumstances of its use as well as review the planned use of such systems;

• Control, limit or otherwise affect the types of targets that such weapon systems can engage as well as the duration, geographical scope, and scale of the operation of such weapon systems;

• Preserve and retain human control at all times, in all circumstances and across the entire life cycle of the machine with a view to ensure that humans:
  - Have a sufficient understanding, depending on their role and level of responsibilities, of such weapons systems' way of operating, effect and likely interaction with their environment and are able to predict and explain the behaviour of such weapons systems;
  - Will always define and validate rules of use, rules of engagement as well as a precise framework for the mission assigned to the system limited in time, space and by determined objectives according to the situation and context;
  - Are able to monitor the reliability and usability of the systems during its deployment and to approve any substantial modification of the mission's parameters;
  - Are in a position to exercise their judgement with regard to compliance with rules and principles of IHL, in particular distinction, proportionality and precautions in attack, and thus take critical decisions over the use of force.

12. **Call** on High Contracting Parties to put in place tailored risk mitigation measures, including technical safeguards, during the design, development, testing, and deployment of such weapons systems. Such measures and safeguards should aim at preventing and mitigating risks regarding the safety and security of such weapons systems, including but not limited to the following risks: risk of unintended bias, such as on gender aspects, risk of
unintended engagements, risk of loss of control of the system and risk of diversion to unauthorized users including terrorists groups.

13. **Reaffirm** that High Contracting Parties remain responsible for, inter alia, all internationally wrongful acts committed by their organs such as their armed forces as well as all other actions or omissions attributable to the State, including any internationally wrongful act involving the use of partially autonomous lethal weapons systems, in accordance with applicable international law.

14. **Reaffirm** that individual responsibility for violations of international law, specifically IHL, can never be transferred to machines.

15. **Call** on High Contracting Parties to put in place into national law the relevant legal mechanisms to ensure accountability, including to investigate allegations of war crimes potentially perpetrated by their armed forces and nationals, or on their territory, or by any person under their authority, through such weapons systems.

V. **Consultation and cooperation**

The future instrument should:

16. **Put in place** a mechanism with a view to facilitate the consultation and cooperation of High Contracting Parties with each other on all issues related to the operation of the future instrument.

17. **Encourage** High Contracting Parties to exchange, on a voluntary basis, best practices with regard to national measures that they have put in place with a view to implement the requirements contained in the future instrument, including on the conduct of legal reviews.