

RECENT DEVELOPMENTS AT THE UNGGE ON LETHAL AUTONOMOUS WEAPON SYSTEMS (LAWS): AN APPRAISAL

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



Recently, the United Nations Group of Governmental Experts (UNGGE) on Emerging Technologies in the Area of Lethal Autonomous Weapon Systems (LAWS) concluded their deliberations and adopted a consensus report. With the success of adopting a substantive and consensus report, the UNGGE on LAWS has made a huge comeback as the previous 2020 UNGGE failed to present a consensus report for consideration to the 2021 Sixth Review Conference of the Convention on Certain Conventional Weapons (CCW).¹

In December 2021, the Sixth Review Conference of the High Contracting Parties to the CCW decided that the UNGGE on LAWS, created through decision 1 of the Fifth Review Conference of CCW (CCW/CONF.V/10) would continue to work while adhering to the agreed recommendations (CCW/CONF.V/2).² Besides two formal sessions in March and July 2022, the UNGGE also held three sets of informal meetings in April, June and July 2022. In addition to the high contracting parties, signatory and observer states, the representatives of the European Union (EU), the International Committee of the Red Cross (ICRC) and the United Nations Institute for Disarmament Research

1 "GGE on Lethal Autonomous Weapons Systems," Dig Watch: Geneva Internet Platform, accessed on August 29, 2022, <https://dig.watch/processes/gge-laws>

2 United Nations, Sixth Review Conference of the High Contracting Parties to 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, "Final Document of the Sixth Review Conference," CCW/CONF.VI/11, January 10, 2022, <https://documents.unoda.org/wp-content/uploads/2022/01/CCW-CONF.VI-11-20220110.docx>

(UNIDIR) also participated in the deliberations of the UNGGE.³ The UNGGE reached a consensus and successfully adopted its final report in the second and last session. This report would be submitted to the meeting of the High Contracting Parties.

The UNGGE on LAWS covers the areas like the characterisation of LAWS, issues related to “human-machine interaction, positional militarisation of emerging technologies, challenges posed by LAWS to international humanitarian law (IHL) and potential options to address them.⁴ This year the issues like the characterisation of LAWS and challenges to IHL received less attention while the issues like state accountability, maintaining human control, development of good practices and risk mitigation measures took the centre stage. Within the broader context of the purpose and objectives of the CCW, the agenda before the UNGGE in 2022 was the

“consideration of proposals and elaboration, by consensus, of possible measures, including taking into account the example of existing protocols within the Convention, 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 of Governmental Experts related to emerging technologies in the area of lethal autonomous weapon systems, and bringing in expertise on legal, military, and technological aspects.”⁵

This report proposed that member states should take necessary measures to develop and share good practices related to legal reviews. To study, develop, acquire and adopt LAWS as new means of warfare, states must first determine whether that system would be prohibited by international law in a few or all circumstances. Over the years, this mechanism of national legal reviews was repeatedly suggested by various member states. It was also an important component of the final report of the UNGGE on LAWS in 2019.⁶ It would not be wrong to say that the mechanism of national legal reviews to determine compatibility with international law is a bit of a mixed bag. On one hand, it would ensure freedom of impartial analysis, decision-making, and development of new good practices but on the other hand, it could give rise to unnecessary judicial activism, civil-military

3 United Nations, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, “Report of the 2022 Session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems,” CCW/GGE.1/2022/CRP.1, July 29, 2022, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2022/gge/documents/chair-draft-report1.pdf>

4 United Nations, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, “Report of the 2019 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems,” CCW/GGE.1/2019/3, September 25, 2019, <https://undocs.org/en/CCW/GGE.1/2019/3>

5 United Nations, “Report of the 2022 session of the Group of Governmental Experts.”

6 Ibid.

imbalance, hyper-securitisation of LAWS and issues of interoperability among states in contemporary as well as future armed conflicts. Furthermore, different states have different forms of government, judicial mechanisms, levels of technological development, strategic culture, threat perceptions, and value systems. The study, development, acquisition and adoption of LAWS approved by the national legal framework of one state could be very unacceptable for another state.⁷ These differences could generate challenges for the uniformity and coherence of the global normative and legal framework on LAWS.

The report prohibits the use of LAWS where the effects of an attack could not be anticipated and are in violation of the principles of precaution, proportionality and distinction under international humanitarian law. Furthermore, it also forbids the development, possession and deployment of truly autonomous weapon systems that are designed to conduct attacks for which human commanders can not be held responsible. For states, it has also closed a window of blaming technology in case of any mishap. There is consensus among the members of UNGGE that every wrongful act of a state concerning LAWS involves the international responsibility of that particular state and humans at all times will remain accountable under IHL for all decisions related to the use of force. Any omissions vis-à-vis LAWS by any organ, agent and member of armed forces are attributable to the state.

Another significant feature of this recent report is the inclusion of various measures for the high contracting parties to adopt and elaborate to mitigate the risks of incidental loss of life, damage to civilian lives and infrastructure and unintended engagements. The consensus report categorically affirms that the choice of a state, engaged in an armed conflict, regarding employing various means of warfare including the new weapon systems in the area of LAWS is not unlimited. In addition to measures for the reduction of automation bias, it is the responsibility of a state to ensure the integration of risk assessment in every stage (design, development, testing, and deployment) of the entire life cycle of LAWS. While ensuring informed and empowered human control over LAWS, states must also limit and control the types of targets, duration, scale of operation, and geographic scope of the LAWS. Furthermore, states must also control and limit the integration of sensitive and risky mechanisms like self-deactivation, self-destruction, and self-neutralisation into LAWS.

Since 2014, the CCW has remained an appropriate forum for discussing the issues related to emerging technologies in the area of LAWS. Despite numerous complex ideological and conceptual differences, legal, technical, military and political differences, the UNGGEs on LAWS have made

⁷ Aamna Rafiq, "Lethal Autonomous Weapons: Where Does the International Arms Control and Disarmament Regime Stand?" Arms Control & Disarmament Centre (ACDC), Institute of Strategic Studies Islamabad (ISSI), December 30, 2019, https://issi.org.pk/wp-content/uploads/2020/01/IB_Aamna_Dec_30_2019-1.pdf

significant progress. From 2017 to 2019, UNGGEs not only convened their meetings annually but also achieved consensus on their final reports. The major development happened in 2019 when 11 guiding principles were adopted by the Meeting of the High Contracting Parties to the CCW. There were great expectations from the 2020 UNGGE as it had the opportunity to take a leap forward and transform this debate into formal treaty negotiations or an additional protocol of CCW for the 2021 CCW Review Conference. However, it failed to reach a consensus on the report, let alone a separate protocol. The debate on LAWS will continue to remain in UNGGE format in 2023 as well. The development and deployment of LAWS in contemporary conflicts are happening at a much faster pace as compared to the development of the global regulatory regime. States and the international community must speed up their efforts for concluding a legally binding treaty or protocol before the development of LAWS spirals out of control.