

PERMANENT MISSION OF PORTUGAL TO THE UNITED NATIONS OFFICE AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA

Proposals for consensus in relation to the clarification, consideration and development of aspects of the normative and operational framework

Contribution by Portugal

To the Chair of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems (GGE-LAWS) of the Convention on Certain Conventional Weapons (CCW)

Portugal salutes the initiative by the Chair of the 2021 GGE-LAWS, Ambassador Marc Pecsteen, to consult the High Contracting Parties on their ideas on possible consensus in relation to the clarification, consideration and development of aspects of the normative and operational framework on emerging technologies in the area of lethal autonomous weapons systems (LAWS).

In addition to the considerations submitted by the European Union, Portugal would like to on a national capacity, share the comments and proposals below.

I. Premises and state-of-play on which possible consensus

At the outset, Portugal reiterates its interpretation of the Guiding Principles adopted by the 2019 GGE-LAWS and endorsed at the last Meeting of the High Contracting Parties to the CCW and its vision for their operationalisation and development as stated in the Commentaries¹ submitted to the Chair of the 2020 GGE-LAWS, Ambassador Jānis Kārkliņš.

In line with arguments made by Portugal in the past at the GGE-LAWS and developing one of the commonalities identified by the Chair of the 2020 GGE-LAWS in the comments submitted to him, the 2019 Meeting of the High Contracting Parties of the CCW recognised that an exercise towards a clarification, consideration and development of aspects of other normative and operational framework on emerging technologies in the area of LAWS is aligned with the mandate of the GGE-LAWS – as provided in Decision 1 of the Fifth Review Conference of the High Contracting Parties to the CCW.

Bearing in mind that the GGE-LAWS is to consider *(i)* the Guiding Principles, *(ii)* the work on the legal, technological and military aspects and *(iii)* the conclusions of the Group (as reflected in its reports of 2017, 2018 and 2019) and use them as basis for its consensus recommendations in relation to the clarification, consideration and development of aspects of the normative and operational framework on emerging technologies in the area of LAWS, Portugal sees great merit on a thorough discussion for identifying and interpreting concrete international norms applicable to LAWS. Indeed, simply agreeing at the GGE-LAWS that international law applies to LAWS is not enough.

¹ Cfr. *Commentaries by Portugal on “Operationalising all eleven guiding principles at a national level”, Lisbon and Geneva, August 2020.*

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To enhance legal certainty, it is paramount to facilitate consensus on the existing normative framework applicable to LAWS. Such consensus may only be achieved if an exercise on the identification and assessment of the existing international law applicable to LAWS is carried out. This would allow the GGE-LAWS to strive for a more consensual interpretation on the international law applicable to emerging technologies in the area of LAWS and to find possible gaps that may call for a future internationally binding instrument.

To this end and striving for consensus in relation to the clarification, consideration and development of aspects of the normative framework on emerging technologies in the area of LAWS, Portugal makes the following proposal.

II. Proposals for possible consensus in relation to the clarification, consideration and development of aspects of the normative and operational framework on emerging technologies in the area of LAWS

Building up on Point (1) of the recommendations by the European Union², and following its interventions at informal and formal sessions of the GGE-LAWS, Portugal reiterates its availability to facilitate an exercise of study and clarification of international law applicable to LAWS.

This exercise could be conducted within item (a) of the agenda of the GGE-LAWS³ and would serve the operationalisation of Guiding Principles (a)⁴, (d)⁵ and (e)⁶. The exercise should consider all applicable international law, since not only IHL, but also relevant norms and principles derived from International Human Rights Law (IHRL) and International Criminal Law (ICL), compose the normative framework applicable to LAWS.

For example, on its comments on Guiding Principles (d) and (e), Portugal has noted that rules of IHRL and of ICL must be considered. In the case of IHRL, even though neither the CCW nor any of its annexed Protocols make direct mention of IHRL or its rules, the principle of humanity under IHL has at its core elements compatible with IHRL. Moreover, the relation between the legal frameworks of IHL and IHRL can be of extreme importance in certain scenarios of armed conflict (for example on the legal framework applicable to situations of occupation). As for ICL, the development, deployment or use of LAWS in a manner incompatible with international law would give rise to individual or State responsibility – for example, in accordance with applicable customary IHL.

² “The group should explore whether existing international law is sufficient to address concerns for ensuring compliance with IHL related to the use of emerging technologies in the area of laws. Such clarification could also facilitate the information-sharing on national experiences with ensuring IHL compliance when using weapons systems with autonomous features.”

³ “An exploration of the potential challenges posed by emerging technologies in the area of Lethal Autonomous Weapons Systems to International Humanitarian Law”.

⁴ “a) International humanitarian law continues to apply fully to all weapons systems, including the potential development and use of lethal autonomous weapons systems;”.

⁵ “(d) Accountability for developing, deploying and using any emerging weapons system in the framework of the CCW must be ensured in accordance with applicable international law, including through the operation of such systems within a responsible chain of human command and control;”.

⁶ “(e) 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 law;”.

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Portugal has mentioned before that the GGE-LAWS could consider the experiences from other international initiatives and fora. One such initiative is that of the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* (Montreux Document). The Montreux Document is not an international legally binding instrument itself. Instead, it reaffirms relevant pre-existing international legal obligations and includes a compilation of good practices enunciated on the basis of those obligations.

A comparable interpretative effort could be undertaken within the GGE-LAWS, through the clarification, consideration and development of aspects of the normative and operational framework, with a similar output to that of the Montreux Document or any other interpretative tool that the High Contracting Parties to the CCW would deem adequate for endorsement.

Lisbon and Geneva, June 2021