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Contested views? Tracing European positions on Lethal Autonomous Weapon Systems

Introduction

Artificial Intelligence (AI) is expected to transform many aspects of the military sector by enhancing the equipment and techniques of modern warfare with autonomous functionality (Payne 2021, p.1). Indeed, most of today's advanced air defence systems already have significant autonomous capabilities, and next-generation fighter aircraft are being developed with a clear focus on intelligent autonomous components (Boulanin and Verbruggen 2017; Holland Michel 2020). Having an edge in AI capabilities could also translate into strategic military advantages (c.f. Scharre 2017; Horowitz 2018). However, this is not some far, dystopian future: a UN report concluded that already in March 2020, lethal autonomous weapon systems (LAWS) were used in Libya. The report states that the system was "programmed to attack targets without requiring data connectivity between the operator and the munition" (UN 2021, p. 17). That is exactly why the Campaign to Stop Killer Robots has been very critical of how AI might be used in the military. The Campaign wants to ensure that, when an actor is resorting to the use of force, humans retain control over targeting and attack decisions (Campaign 2021). As a result of their advocacy, since 2013, the international community is discussing at the UN disarmament forum (Convention on Certain Conventional Weapons, CCW) about the possible regulation of LAWS.¹

In the European Union (EU), LAWS are an issue that speaks to the arms control agenda falling within the scope of the CFSP/CSDP cluster (Keukeleire and Delreux 2014, p.15) where member states are the key actors to achieve a common position and uphold it

¹ See Schmitt (2021) for a broader discussion on international negotiations of AI.

(Biedenkopf, Costa and Gora 2021, p. 332). Given the unanimity requirement, even one member state's disagreement can veto or block an EU position. That explains why the 2016 Global Strategy barely mentioned the regulation of AI in the military. Or why in the 2017 and 2018 implementation reports of the Global Strategy, the issue vanished from the EU external action agenda (EUGS 2017; 2018). That is very relevant as the EU foreign policy is based on two clear policy goals: promoting norms and promoting multilateralism (Barbé et al. 2016). Despite the interest shown by the EEAS in achieving the two goals, the Council has at most welcomed international negotiations on the matter (Council of the EU 2020, p. 57), thus responding to the multilateralism goal. Yet, it remained silent on more specific steps to be taken, thus falling short on the Union's norm promotion goal. In the meantime, the Commission – through the High-Level Expert Group on AI – and especially the European Parliament paid increased attention to autonomous weapons. This coincided with the EU's internal consensus to not fund autonomous weapons within the European Defence Fund (EDF)² and the Franco-German proposal for a soft law instrument at the CCW. Regardless of the Commission's and Parliament's initiatives, member states have not properly discussed the issue in the CFSP/CSDP agenda. It leads to wonder what is being contested by member states, and by extension, what is the EU position on LAWS (Badell and Barbé 2020).

To answer these questions, this article refers to the norm contestation literature, tracing the deliberations by the EU and its member states on autonomous weapons. Contestation is defined as an act of objection over specific norms (Wiener 2014) and serves to identify elements of normative consensus and collision. The manuscript draws on seven semi-structured interviews conducted between 2020 and 2021, as well as primary and

² The EDF agreement does not, however, restrict member states from funding such kind of systems at national level.

secondary sources. The analysis of deliberations by the EU and its member states is organised along three stages of the negotiations held at the CCW. The first stage covers the period 2013-2016, moving from informal discussions to the establishment of the Group of Governmental Experts (GGE); the second stage covers the period 2017-2019, when the formal GGE discussions produced the 11 guiding principles; and the third stage covers the period between 2019 and 2020³, during which steps were taken towards a normative and operational framework.

We find that there is a shared willingness within the EU to address LAWS in the international arena but, at the same time, there persists an inability to have a CFSP position on the issue. That is the result of a double contestation:⁴ First, at the level of member states, while there is consensus on the respect for International Humanitarian Law (IHL) and the need for human control, contestation persists on what is the appropriate regulatory framework (hard or soft law). Second, contestation is also exerted towards the EU by some member states who contest the EEAS's involvement for two reasons. Some are conscious that presenting an "EU position" might constrain their ability to build global coalitions advocating for a ban of LAWS. Others do not want the EU to interfere with their national sovereignty on such a critical security issue. While these two elements work against a common EU position, we also observe a window of opportunity for action for the EU. Notably, the EU can strengthen the CCW by funding the forum structures and secretariat, which could become an important body in the implementation of the foreseeable agreements.

³ The cut-off date of this research was May 2021. Since then, additional informal and formal meetings at the CCW have taken place.

⁴ We would like to thank the anonymous reviewer for their very helpful comments in this regard.

The article first introduces the conceptual framework on the EU's internal norm contestation. This is followed by the case study on the EU and its member states, tracing their positions vis-à-vis lethal autonomous weapon systems. The conclusion summarises the main findings, speculates about plausible next steps in the negotiations, and points at further avenues of research.

Conceptual framework on the EU and internal contestation

The foundational treaties of the European Union constitute the Union's norms and principles upon which its identity is constructed. Article 2 of the Treaty on the European Union (TEU) clearly defines the Union's constitutive norms, establishing the EU's identity as a liberal actor (Wagner 2017). The norms we associate with the EU identity are "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". Consequently, the Union's foreign policy identity, established in Article 21 of the TEU, is based on the following norms "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law". And when analysing the role the EU has been playing in the international system, the EU has often been described as a norm promoter or norm externaliser (Lavenex and Schimmelfennig 2009). This has led scholars to consider the EU as a normative power (Manners 2002). Traces of the EU normative power are present in the 2003 European Security Strategy and the 2016 EU Global Strategy. The two documents build the Union's foreign policy around two fundamental objectives: the promotion of EU norms and the upholding of multilateralism.

Following the global power shifts of the past years, contemporary research has studied how external contestation has led the EU to choose between the promotion of norm or the promotion of multilateralism (Barbé et al. 2016). Furthermore, actors within a normative community sharing the same norms may still have different views on what exact implications result from them (March and Olsen 2004, p. 8-9). This highlights the need to explore the contestedness of EU liberal identity within the EU (Wagner 2017). Contestedness considers that norms are and should be contested (Wiener 2007). Along these lines, Costa (2019) has pointed out that in the study of EU foreign policy “little consideration has been given to the possibility that the regulative, as well as constitutive norms that underpin EU external relations, might themselves be the object of political conflict” (Costa 2019, p. 1). Regulative norms constrain and shape state behaviour by delineating what is appropriate in each situation, and constitutive norms define the actors’ interests and identity (Onuf 1997). Arms control norms speak to the realm of regulative norms.

More importantly, norm contestation literature has opened a new line of research in the field of EU foreign policy (c.f. Johansson-Nogués et al. 2020). The new line of research analyses the actions of the EU through a more politics-oriented perspective (Jenichen 2020). Different authors have addressed this question by studying how EU foreign policy has moved from permissive consensus to constraining dissensus (Hooghe and Marks 2009; Barbé and Morillas 2019). One could argue that, internally, a Union of 27 member states is by nature open to normative disagreement and divergence, where norm contestation is inevitable. This does not even have to be a bad thing. In Wiener’s words, disagreements can help the EU to find more legitimate solutions (Wiener 2014), as long as contestation follows a logic of argumentation (Risse 2000; Zimmermann 2017b), taking place in a space where mechanisms of dialogue are previously agreed (Badell

2020). Looking at other arms control negotiations like landmines or cluster munitions, it seems to be valid that contestation helps the EU to find legitimate solutions. But the two cases also presented a (grossly exaggerated) image of the EU dominated by normative consensus: As a matter of fact, achieving common positions in the cases of both landmines and cluster munitions was extremely hard and not assured sometimes until the very last moment (Costa 2009). If any, the cases of landmines and cluster munitions support the idea that norms do not progress in a linear way within the EU, and consensus should not always be taken for granted (Elgström 2000; Jenichen 2020)

All in all, this manuscript is anchored into the recent literature on studying norm contestation and EU foreign policy (Johansson-Nogués et al. 2020). Based on Wiener's (2014) definition, we define norm contestation as *discursive objections either external and/or internal through formal or informal mechanisms towards concrete norms in the realm of EU foreign policy*. While norms have a dual quality by which they can be both stable and contested, they can nevertheless be situated on a spectrum from those norms where there is complete consensus to those being contested (Stimmer and Wisken 2020, p. 525). As this paper is tracing the contestation of lethal autonomous weapons within the EU, it does so in line with the politics-oriented approach that gives greater recognition to internal political dynamics when studying EU foreign policy deliberations (Hill and Smith 2011). And it sheds light on the norm meanings and normative positions of the EU and its member states vis-à-vis autonomous weapons and the CCW negotiations.

As mentioned before, LAWS are part of the arms control agenda being discussed in the EU intergovernmental system of foreign policy (i.e. CFSP and CSDP) (Keukeleire and Delreux 2014, p. 15). In such a transnational policy framework, the member states, through the European Council and the Council of the EU, retain the exclusive purview to decide whether there is an EU position on the matter. Crucially, there is a difference to

previous arms control negotiations: following the Lisbon Treaty reforms, the functioning of the CFSP/CSDP not only depends on the role member states play but also on the role played by the EEAS (and its HRVP). Due to the empowerment of the EEAS within the system in terms of resources and agenda-setting power, it may drive member states to work together on sensitive issues of national sovereignty. If overplayed, pro-active initiatives by the EEAS/HRVP can be counterproductive and potentially even trigger disengagement from member states (Maurer and Wright 2021).

In light of this, the CFSP/CSDP encapsulates a risk that consensus, when it is achieved, will be based on the lowest common denominator, i.e., following the preferences of the actor most reluctant to accept norm change (Thomas 2021, p. 628). Still, if there is no consensus among member states to set the agenda, civil society and/or EU institutional actors such as the Commission, the EEAS, or the European Parliament could bring the issue on the agenda. But initiating work on a topic and increasing its saliency would be meaningless unless consensus is achieved within the CFSP/CSDP setting. In that sense, we argue that, when there is no common CFSP position on LAWS despite pressure from the other institutions, member states are essentially contesting the current CFSP/CSDP institutional design. In other words, they are contesting the legitimacy of the EEAS involvement in an intergovernmental field of action.

Moreover, scholars have suggested that internal contestation was either the result of the disagreement coming from the most powerful member states and their commitment to a common European position (Hyde-Price 2006) or the result of the enlargement processes (Newman and Stefan 2020, p. 474). As a result, contestation can be the rule rather than the exception. In other words, contesting is something normal. And it is the result of promoting norms, where the promotion is not linear but an ongoing process (Elgström 2000) and is mostly about competing normative interpretations (Wiener 2014).

But previous examples of arms control negotiations highlight that to solve normative disagreements between the member states, the norm at the international level should move from the emerging stage to the acceptance stage (Finnemore and Sikkink 1998). This line of thought posits the EU as an actor that depends on the international liberal order to achieve internal consensus. This was the case when divergences between France, the UK and the rest of the member states over the International Criminal Court and the Rome Statute had to be overcome (Costa, Collantes-Celador, Badell 2021). But consensus can also be achieved by internal means when the EU and its member states agree on a CFSP common position, which will work as a normative entrapment (Thomas 2021). This was the case of landmines and the Ottawa Convention (Costa 2009). The normative entrapment theory suggests that it may be considered unacceptable not to agree on a common position if an EU document exists proving that the Member State has committed to the norm in question. For that to happen, the issue should be moving along the CFSP/CSDP policy cycle, implying that a certain degree of consensus should exist. A third way of solving the normative dissensus relates to the transfer of authority from the member states to the European Commission. On that note, a transfer of authority to the Commission might lead normative contestation to take the form of validity claims where member states could pit themselves against the Commission's position (including the EEAS) and vice versa. Yet, the European Commission through the European Defence Fund (EDF) is becoming increasingly involved in security and defence, domains long considered as quintessential elements of national sovereignty (Håkansson 2021). Here, the transfer of authority took place through established mechanisms for dialogue, avoiding validity claims.

However, if no agreement on the norm is possible, we consider that the EU will still be subject to what we call "multilateralism entrapment". From the new institutional setting

derives an entrapment leading the Union to identify all international regimes or issue areas as potential arenas to present an EU voice. That is the result of the Lisbon Treaty and the creation of the EEAS, which included the management of the EU delegations based in the UN offices in New York and Geneva. Notably, we argue that this configuration challenges the EU's foreign policy unity, as the perception of a permanent involvement could deepen normative tensions within the Union, thus making frictions and normative dissensus more likely to occur.

The Europeans, lethal autonomous weapons, and the UN

The case study sheds light on the deliberations by the EU and its member states vis-à-vis LAWS, mainly by paying attention to the UN CCW meetings (see table 1). We identify three key stages of negotiations during the observed period of 2013 (immediately preceding the establishment of the GGE) and December 2020. These three stages are 2013-2016 (“from informal discussions to the establishment of the GGE”), 2017-2019 (“formal GGE discussions and agreement of the guiding principles”), and 2019-2020 (“towards a normative and operational framework”). All of it is triangulated by resorting to document analysis and seven semi-structured interviews with diplomats and key officials.

[INSERT TABLE 1 HERE]

2013-2016: from informal discussions to the establishment of the GGE

Internationally, LAWS were originally discussed at the UN Human Rights Council (HRC). It was a major milestone for the Campaign to Stop Killer Robots. During the 2013 HRC interactive dialogue, France with the support of the EU delegation in Geneva, suggested moving the debate on LAWS to the UN disarmament forum, the Convention

on Certain Conventional Weapons (CCW). The decision was motivated by the complexity of the issue, both legally and technically (European Union, 2013). Reframing the debate in terms of security was an unusual move as previously the human rights framing has predominated in arms control negotiations (Costa 2009), underlining how the EU was pushing innovative ways to find the appropriate multilateral forum to address LAWS. This change of venue was a risky strategy since the CCW – even though admitting the adoption of documents by majority voting – follows a tradition of consensus decision-making. Yet, the decision-making format might be useful for the EU to become an important actor during the negotiations as it has a longstanding experience in building up consensus at this forum and could accommodate different positions to converge towards common ground (Barbé and Badell 2020, p.140). Despite not having a common CFSP position, the EU delegation welcomed the formalisation of the change of venue in 2014 by the CCW High Contracting Parties: in its statement, the EU stressed that the CCW was more suitable because the forum could respond in “a flexible way to future developments in the field of weapons technology” (European Union 2015). The Union (and, by extension, the 28 member states) was defining the CCW as a potential forum to incubate ideas (Sauer 2020).

As a result of France’s petition to move the issue to the multilateral forum of arms control, the country was appointed chair in the 2014 informal meeting. The initial debate revealed two elements that would constantly be present throughout the meetings: to what extent LAWS would be able to comply with international law, and what would be the necessary degree of human control. At that early stage, no state openly declared an interest in developing LAWS, and several countries expressed concerns regarding the use of autonomous weapons inside and outside armed conflict. There was an awareness that resorting to LAWS could erode existing humanitarian norms as it would lower the

threshold of the use of force. In the following sessions, even though the EU was still not able to present a CFSP common position, the EU delegation and the EU member states continued to play an active role in the informal meetings. It was implied that the EU voice on LAWS would be determined by the commonalities found between the member states during negotiations. That is, the EU delegation would be able to present positions and commentaries only if all member states would agree (Interview 7). Bearing in mind the intergovernmental nature of CFSP/CSDP, an agreement on LAWS could resemble the ideal outcome of the one least receptive to change (Thomas 2021, p. 628).

Having said that, Germany in 2015 and 2016 chaired the CCW meetings and helped put a very strong focus on the protection of civilians, outlining the importance of the fundamental norm of civilian immunity. Along these lines, delegations started to cover the question of the extent to which LAWS were able to comply with international law, as well as to what degree human control was required. In addition to that, all delegations declared that LAWS should comply with international humanitarian law (IHL) as they referred to the traditional organizing principles of civilian immunity, such as the principle of distinction between civilians and combatants (codified in articles 48, 51.2 and 52.3 of the Protocol Additional (I) to the Geneva Conventions), the proportionality of the attack (codified in articles 51.5, and 57 of the Protocol Additional (I) to the Geneva Conventions), and the principle of precaution against the effect of attacks (codified in articles 58(c) of the Protocol Additional (I) to the Geneva Conventions). More importantly, the norm enforcer of humanitarian norms, the International Committee of the Red Cross (ICRC), stressed that human control should be the key principle to assure compliance with IHL (ICRC 2016). Previously, human control was referred to only in implicit ways in the Convention on Cluster Munitions that prevents the stockpiling of

cluster bombs, or in the Ottawa Treaty banning anti-personnel mines (Human Rights Watch 2016).

The sessions chaired by Germany redirected the debate from the deadlocking discussion on the definition of autonomy to one around human control. Avoiding the deadlock was the merit of the NGO Article 36 (part of the Campaign), which put forward the term “meaningful human control” (Roff and Moyes 2016). Yet, France was the only EU Member State to cast its doubt regarding this new framing. The country considered the term “meaningful” to lack the precision and technical accuracy to guarantee that humans remain in the full life-cycle of any weapons system (Government of France 2016). To overcome this situation, Germany in its chairing report appeased advocates and critics of human control by referring to it as the “appropriate human judgment and involvement” (United Nations 2016b). All of this resulted in a debate that substantially advanced as in November 2016 the CCW High Contracting Parties adopted by consensus the establishment of a Group of Governmental Experts (GGE).

In sum, EU member states, especially France and Germany, were key to moving the debate from the HRC to the CCW, and to help formalize the object of discussion. The GGE was called to “explore and agree on possible recommendations on options related to emerging technologies in the area of LAWS, in the context and objectives and purposes of the Convention” with a particular focus on human control (United Nations 2016). Until this point, the external action of the EU was only speaking of the need for “global rules” in the field of AI and robotics to avoid “related security risks and reap their economic benefits” (EUGS 2016, p. 43). Although the EU supported international negotiations on the matter, LAWS were not explicitly on the radar of the EU foreign policy. This was due to the Member State reluctance to promote an EU understanding of the norm.

2017-2019: formal GGE discussions and agreement of the guiding principles

In subsequent negotiations, it was reiterated that “humans must at all times remain accountable in accordance with applicable international law for decisions on the use of force” (United Nations 2018, p. 28). Discussions were now turning around the need to establish emerging commonalities regarding LAWS. Yet, the 2018 UN report pointed out the existence of three groups of states weighing the emerging norm differently (United Nations 2018, p. 27). On the one hand, Australia, Israel, the US, the UK (still an EU member state at that time), South Korea, and the Russian Federation considered that the existing IHL was sufficient to deal with LAWS. They argued that a moratorium or ban was too premature, or even unfounded and counterproductive. It was claimed that human control was already secured in article 36 of Protocol Additional (I) to the Geneva Conventions as it says that states are asked to verify whether LAWS would be prohibited by the Protocol or by any other rule of international law. In this vein, the Russian Federation affirmed that it would withdraw from negotiations if deliberations took the form of a more formal debate planning to negotiate either hard law or soft law regulating human control in the targeting cycle. During that period, UN General Secretary António Guterres included, for the first time, in his disarmament agenda the need to address LAWS. He declared these weapons to be defying the existent normative framework, this being IHL and conventions (United Nations Secretary-General 2018c, 2018a). In this vein, he embraced the call for a norm banning LAWS (United Nations Secretary-General, 2018b). An emerging coalition of countries in favour of banning LAWS, led by Austria, Brazil, and Chile, welcomed this call, pointing at the principle of meaningful human control. To date, the coalition has gathered more than 28 like-minded countries willing to open negotiations on an international legally binding agreement that guarantees human control by banning weapon systems that lack human control in the targeting process.

The two competing norms increased the likelihood of the GGE not reaching an agreement. To avoid deadlock, a third group of states under the auspices of France and Germany resorted to soft law to propose a political declaration to work on a lowest common denominator outcome. The EU delegation aligned itself with the Franco-German proposal for a political declaration, seeing it as a third way between those wanting a banning treaty and those supporting the status quo. The EU supported this proposal as it was perceived that the document put forward by the Franco-German couple could have triggered European unity around LAWS (Interview 7). And unity in the intergovernmental setting of CFSP/CSDP is something the EEAS is programmed to achieve. More importantly, the EU embraced the political declaration as it was presented by two of the most important EU member states. As a result of Brexit, the EU started to take more into account the French views on arms control and non-proliferation as the country became the only security provider with nuclear capabilities (Interview 7). At the same time, Germany is seen as a reputable actor having considerable influence on arms control issues (Interview 7). That is, the EU was supporting a document balancing two internal aims: being a good international citizen and being a security provider.

As such, the proposal is the clearest European voice presented in front of the GGE. It echoes several EU commitments related to international law and stresses – in line with the ICRC opinion – that IHL is fully applicable to the case of LAWS. Moreover, it emphasises the importance of Additional Protocol I to the Geneva Conventions. In other words, in 2018, it seemed that the EU – through the political declaration – was on the brink of having an internal agreement. The document has also tried to come up with a working definition whereby LAWS are defined as fully autonomous lethal weapon systems, where human control is framed as an ambiguous organizing principle: the exercise of sufficient control. The group of actors foresees a pragmatic deployment of the

article 36 normative components where it seeks to ensure transparency and accountability through national weapons reviews. Moreover, once the political declaration would be adopted, the instrument might consider more sophisticated soft law measures such as a politically binding measure in the form of a code of conduct as well as establishing a committee of experts within the CCW to inform of the technological developments related to LAWS (Political Declaration 2017). All in all, the political declaration was to be seen “as the third way” and gained the support of 28 countries, among which we count both delegations preferring the status quo and delegations willing to ban autonomous weapons. In the words of one interviewee, the compromise idea of putting forward a political declaration avoided another deadlock (Interview 3).

However, the position of the two main European players continued to evolve as negotiations advanced. France, with the support of the EU delegation, rejected, once again, that the debate on LAWS should be resolved in the forum for human rights or any other fora. During the negotiations, the French delegation in their statements proved to be willing to preserve the existent normative framework through some limited actions rather than more fundamental changes. Throughout the debate, France claimed that given the early stage of this technology, the making of a clear judgment about weapons compliance with international law is impossible, and thus opposes a preventive ban or moratorium (Government of France 2015; 2016). Even though France considers that LAWS need to comply with IHL, the country started to work on securing a sufficient level of human control. During deliberations at the CCW, France has contested the wide-moral reach of human control, arguing that a military approach should prevail as they framed the principle of responsible human command (Government of France 2018). France sees the political declaration as a final step where LAWS are a feasible initiative in the long term (Government of France 2018). For instance, the Ministry of Defence is

currently working on a national regulation advancing the role of AI in the military, where autonomous systems are not ruled out if human control is assured (Government of France 2019).

Opposing the French views, Germany agrees on the need for change but differs on the exact scope and content of the norm. Throughout the debate, Germany developed a position closely resonating with the group advocating for a legally binding agreement banning the use of weapon systems that lack human control in the targeting process. To give an illustration, Germany stated in 2015 that legal weapon reviews as required by Article 36 would lead to the result of LAWS being illegal (Government of Germany 2015). In a similar vein, the country stated in the 2018 General Assembly (UNGA) that it is open to banning LAWS (Government of Germany, 2018) as well as framing in civilian terms the organizing principle of human control by referring to the “principle of effective human control” (Government of Germany 2019). At home, the country has advanced in its AI Strategy that the German military has no intention of acquiring or procuring LAWS. Yet, the country looks forward to working with France “to promote measures less than a ban, and less than a legally binding instrument or a legally binding treaty” (Delcker 2019 quoting Wareham). More significantly, Germany sees the political declaration as a “major step” to achieve a legally binding regulation safeguarding human control in the use of force (Government of Germany 2019). This suggests that Germany could play a major role in putting together a coherent EU voice on LAWS regulation.

While almost all EU member states have welcomed the political declaration, there is normative dissensus when it comes to operationalizing human control and its codification. This is the case of Slovenia, which considers that the international community should safeguard human control in the use of force by adopting a new additional protocol (Government of Slovenia, 2018). Croatia shares that idea by claiming

that “international prohibition of weapon systems operating without meaningful human control should not be something unthinkable” (Government of Croatia 2015b), further emphasizing that “creating a future legally-binding agreement [...] should not be left completely out of sight” (Government of Croatia 2015a). Meanwhile, Ireland sees merit in a “legally binding option, but the current lack of a common understanding of what is meant by LAWS means that we do not yet have an appropriate platform on which to build an effective negotiating process” (Government of Ireland 2018) and considers a political declaration to have the potential to create the conditions and support the efforts going forward. In parallel, the country started to work closely with Belgium and Luxembourg to safeguard human control in the targeting cycle. Previously to that action, the Parliament of Belgium requested its government to work on a legally-binding instrument banning the development and use of weapon systems that lack human control in the targeting process (Belgian Parliament 2018). The case of Belgium is worthy to consider as it is the EU Member State where the Campaign has been most successful in shaping the country’s position. In the end, the three countries proved that the emerging principle on human control is becoming more central, and even moving up the scale by becoming a norm with wide-ranging moral impact.

Whereas some EU member states have shifted their positions during negotiations, Austria is the only like-minded Member State that has supported since the beginning the call made by the Campaign and leads the coalition in the CCW to advance a legally binding regulation contemplating the ban on the development and use of weapon systems that lack human control. The explanation for the Austrian behaviour lies in the fact that the country follows its self-projected identity of being a good international citizen whose delegations have been a norm initiator, promoter, and keeper in most disarmament regimes (Dunne 2008). The Austrian proposal differs from other member states aiming

to advance a legally binding regulation setting obligation to safeguard human control in the use of force, since Austria is also willing to address the security concerns derived from proliferation and arms dynamics.

From the perspective of EU external action, while the Global Strategy was at least making vague references to AI and robotics, the issue disappeared in the 2018 and 2019 Global Strategy reports. Nevertheless, Mogherini brought the issue of LAWS to the European Parliament in September 2018 and chaired the November 2018 Annual European Defence Agency Conference dedicated to autonomous weapon systems. This was a result of the Parliament resolution on autonomous weapons, which urged member states and the European Council “to work towards the start of international negotiations on a legally binding instrument prohibiting lethal autonomous weapons systems” (European Parliament, 2018). Moreover, Mogherini established a Global Tech Panel, which has continued to meet under HR/VP Borrell, whose participants shared the need to provide inputs ensuring that the development of AI that can be used in weapons systems fully complies with international law and respects human dignity (EEAS 2018). To date, it remains unknown what kind of policy recommendations the Global Tech Panel advised, and whether the HR/VP have taken them into account (Mogherini 2018a, 2018b).

While it seemed that the EU was starting, internally, to open a dialogue on LAWS, the UN discussion moved forward. In 2018, the CCW approved ten guiding principles, to which the 2019 Annual Meeting of the High Contracting Parties added another one: human-machine interaction. These 11 guiding principles should serve as a basis to address a potential operational and normative framework on LAWS. More importantly, the internal discussions and the advancement at the UN level confirmed that there is a clear agreement between EU member states on the need for human control over the use of force.

All in all, considering the normative actorness of the EU and its dependency on the member states to project a common voice on LAWS, the Union has been key in facilitating the debate in an institutional setting that is seen by all actors as the right one, but also where every actor is treated equally. Moreover, the EU delegation has also been an important player to move the debate forward working in close coordination with France and Germany to present a political declaration as a way of bridging opposing views on LAWS. Yet, milestones such as the 2018 European Parliament resolution for banning LAWS or negotiations on the European Defence Fund (EDF) have not shaped either the role of the delegation in Geneva or member states missions. Not even the Franco-German political declaration triggered the unity around LAWS that the EEAS was anxiously seeking. No feedback loop existed between what was being negotiated at the UN in Geneva and the increasing interest taking place in Brussels.

2019-2020: towards a normative and operational framework

The 2020 sessions were expected to explore the questions of the operational and normative framework but were severely impacted by the COVID-19 pandemic reducing the number of meetings from two to one. At the same time, the reluctance of the Russian delegation to be involved in the GGE hybrid format may also hinder, in the long run, the progress made during the 2020 September session. Despite the potential setbacks that LAWS negotiations may face, the question of what role for the EU was also an important one. On the one hand, the EU delegation in Geneva wanted to produce a joint EU commentary on the 11 guiding principles, but countries such as Austria opposed it (Interview 3). The willingness of the EU delegation to present a joint commentary was the direct result of the increasing interest on LAWS within the EU in the Working Party on Non-Proliferation and the Working Party on Conventional Arms Exports, which discussed LAWS with the ICRC and the International Panel on the Regulation of

Autonomous Weapons (iPRAW), an expert-group on LAWS receiving support from the German government.

Various delegations preferred not to work in the EU format. This is the case of EU member states Austria, Belgium, Germany, Ireland, and Luxembourg, which chose to coordinate in a group of nine ban-favouring countries (also including Brazil, Chile, Mexico and New Zealand). These states prefer to maintain the group's cross-regional dimension and openness to non-EU partners, which facilitates engagement and outreach with groups such as the Non-Aligned Movement (NAM). It emerged from the interviews that producing anything labelled as EU would have created a lot of mistrust between the regional groups. In other words, while the EU has been granted an active voice during the first stage of negotiations, there was now a shared perception that deliberations at the CCW may be picking up momentum concerning the operational and normative framework, where (small) member states do not want a strong EU voice. Such a situation can be read as a red flag to the EEAS actions by which the institution should bear in mind that the CFSP is just an intergovernmental system of foreign policy based on cooperation. Thus, until (dis)agreement is reached either in 2021 or during the 2022 Sixth Review Conference of States Parties, there is no EU active role to be expected at the external level.

But it does not mean that all is lost for the EU as a global actor. A normative consensus between EU member states on the need for human control and compliance with IHL exist. Yet, as in previous well-known arms control negotiations, member states continued to present a variety of preferred policy outcomes (Interview 1, 2, 3 and 5). However, there is a crucial difference to past negotiations: this time the Commission has left a backdoor open. With the agreement of the 27 member states and the Parliament, it is setting in motion the EDF, including a first-of-its-kind ethics screening on autonomous weapons.

Despite concerns about how the ethical screening is going to engage with article 36 of the Geneva Convention related to weapons revision that would violate international law, it may well be that the ethics screening will serve as a blueprint for any international mechanism, hence offering the Commission an indirect but influential way of shaping LAWS regulation (Interview 7). While this might be a game-changer for the EU and its member states, the Commission's work on autonomous weapons is currently focusing only on the internal market aspects (Interview 6). The Commission's reluctance to shape the external position of the EU and its member states is set in stone in the Commission's 2021 proposal for AI regulation, where the Commission clearly says that AI in the military falls within the scope of the CFSP. As things stand, the Commission refrains from validity claims to not pit itself against the member states. Yet a door to regulate LAWS remains opened, only if international negotiations are deadlocked (Interview 7). Notably, this position of the Commission clashes with the views of the European Parliament. During the EDF trilogue negotiations in early 2019, driven by the Greens/EFA group, the Parliament instructed the Commission and the Council to prohibit the funding of LAWS. Yet, the Parliament position on LAWS has softened over the years. In 2018, the Parliament (8th term) had still called for a ban on the development, production and use of LAWS. In 2021, however, the Parliament (9th term) recalled its position to ban the development, production and use of LAWS and instead opened the possibility to use LAWS, in line with the EDF regulation, if human control is assured over the selection and engagement decisions when carrying out strikes. Actually, the Parliament has been a strong actor pushing the EU to spend on disruptive technologies. (Calcara 2020; European Parliament 2021b).

The normative gap between the EU and its member states, and between EU institutions, is also notable between two key member states. Since France and Germany presented the

proposal for a political declaration, the gap between the countries has widened. On the one hand, Germany has started to work with other countries as is the case of the group of 9. On the other hand, France has refused the invitation to join this cross-regional group and has remained anchored in its proposal: political declaration is the endpoint. Concerning what may explain the different behaviour of France and Germany, it can be highlighted that Germany has been willing to engage with civil society organizations. For instance, the country has provided funding to the expert group iPRAW or hosted international conferences on the matter. In France, however, civil society is absent from the debate, being mainly led by the Ministry of Defence (Interview 3). And is one of the few member states that frame as strategic the use of AI in the military, including (to some extent) autonomous weapons (Franke and Sartori 2019). More importantly, while formal discussions in Brussels around LAWS continued to be blocked by France and other member states, Germany during their 2020 Council presidency has been willing to have an active EU in disruptive technologies and weapons. For instance, Germany, in December 2020, launched informal discussions on the need to regulate LAWS and other disruptive technologies (Interview 7). But as pointed out by another interviewee, the perception of France moving away from an accord containing positive and negative obligations might change as the country is expected to chair the most important meeting on LAWS, the Sixth Review Conference of States Parties to the CCW in 2021 (Interview 5). But France is not the only member state prioritizing national sovereignty over an EU common position. In the 2020 sessions, Poland and Hungary have moved closer to the US positions (prone to the status quo). On that note, the US has continued to be led, even during the Trump era, by the State Department, which sticks to a legalistic approach, not playing, for example, the NATO card to pass certain policies or messages to block the

debate. More importantly, the GGE is one of the few forums where the US can have an active talk with China and Russia.

Taking all this into account, there is a small window of opportunity for the EU to play a major role in the LAWS debate, by which it could start uploading its views. The potential involvement that can be foreseen for the EU in the international negotiations relates to a pragmatic normative approach where the EU has started to focus on the CCW structure and secretariat robustness (Interview 5). In the last 2020 sessions, the EU willing to find a place in the negotiations has become a proactive actor in the field of financing discussions on LAWS. Such an increase in funding could, indirectly, enhance the secretariat's bureaucratic power. Indeed, there is an increasing awareness that the secretariat could be responsible for gathering and sharing best practices in the use of LAWS. To date, even though EU member states have their own national ethics screening teams, the Commission is well placed to gather a team of legal experts projecting their ethics screening of autonomous weapons as the EU position. Indeed, during the interviews, it was shared that the Commission is ready to step up and regulate LAWS within the EU only if member states fall short to do so at the international level (Interview 7). It was said that for the Commission this is not just a matter of arms control, but geopolitical competition. During the interviews, it was also mentioned that an EU common position on LAWS could be triggered in 2022 when NATO presents its AI strategy.

Conclusions

This article traced the EU and member states deliberations on autonomous weapons. It followed the negotiations at the CCW and organised them into three distinct periods. The analysis showed how the EU and several of its member states strive for norm promotion

at the international level, though strategies differ throughout the process, leading to certain tensions. While there is a general agreement within the EU to discuss LAWS in the CCW multilateral forum, the Union's deliberations on the issue are marked by a double contestation that hinders the likelihood of having a CFSP position. First, between member states concerning the normativity given to a LAWS regulatory framework, while agreeing on the need to retain human control; and second, between member states and the EU where there is strategic opposition to having an active Union's involvement (mainly the EEAS) in the multilateral negotiations. This may also be a result of an entrapment, i.e., the post-Lisbon configuration that elevated the EEAS/HRVP's role in EU foreign policy and thus risks causing overreach and subsequent pushback by member states vary of giving up national prerogatives.

Initially, displaying a common EU voice was seen as strategically useful by France for shifting the international discussions from the Human Rights Council to the CCW. While the EU delegation aimed for maintaining an active voice in the negotiations, the lack of a CFSP position on the matter inhibited it from speaking up strongly. It could only resort to supporting the multilateral discussions. The most active member states working towards a ban of LAWS, notably Austria and – later on – Belgium, Ireland, and Luxembourg, preferred pursuing their efforts without any EU label, as this would have inhibited their outreach to other countries. Yet, a window opened in 2018 when EU unity around LAWS could have been possible. It was the result of a European Parliament pushing for greater European presence in the international scene, calling the European Council and the Commission to work towards the ban of LAWS. This coincided with the Franco-German proposal for a political declaration, seen by the EEAS as key to triggering EU unity. The Parliament was also crucial to prohibit the funding of LAWS in the framework of the European Defence Fund, but subsequently softened its position on the

use of autonomous weapons. Nowadays, the Commission is responsible for developing an ethics screening assuring that autonomous weapons are not funded by the EU. The Commission states that their role is just to focus on the internal market, but it sees the issue of geopolitical relevance and a backdoor regulation could be considered.

All this highlights the lack of a feedback loop between what was happening at the CCW in Geneva and what was being discussed in Brussels. One could initially think that the missing focus on military applications by the Brussels institutions may partially derive from the historically ingrained reluctance to touch upon such sensitive topics. In line with our findings, we argue that it was a conscious choice by key member states to keep the issue of LAWS under the lid in Brussels, either for negotiation reasons (as an EU branding would have undermined the alliance-building capacities of those member states pushing for a hard law) or because they do not want the EU to interfere with this crucial aspect of national sovereignty.

Since 2020, discussions are increasingly concerned with setting up a normative and operational framework. The EU common voice continues to be contested, and member states dissensus has deepened, notably by Germany and France diverging further on their preferences. However, the EU could still emerge as a relevant actor by leveraging its work on the procedural aspects, such as funding the secretariat or presenting a blueprint for an ethics screening based on its EDF. Following Bode and Huelss (2018), a LAWS regulation could be derived precisely from the procedures and practices in which the EU is eager to play a larger role than in the CCW negotiations.

If this materializes, the EU would indeed make true on its dual objective of norm promotion and multilateralism. Yet, countries such as France seem to only allow the EU to act as a norm promoter as long as it does not conflict with their core national interests.

But the appointment of France as the next chair for the Sixth Review Conference of States Parties to the CCW in 2021 might mould the country's position. This is because the Sixth Review Conference is expected to produce an agreement on the matter, thus raising expectations on the chair to work towards some sort of compromise.

Looking further ahead, if negotiations at the CCW do not proceed at a speed and direction deemed sufficient by key participants, there are other channels through which progress may be achieved by coalitions of willing countries – though with the risk of excluding or even alienating others. For instance, NATO has opened discussions on military uses of AI and 2022 could be a turning point. Whether and how this translates to concrete, global, and legally binding agreements on the use of LAWS remains the subject of further study. Another avenue of research that is important to analyse is how the Commission's ethical screening is developed. The self-named geopolitical Commission has now gained authority in the realm of AI and defence, yet does not dare to touch the issue of LAWS more aggressively. Thus, it would be of interest to shed light on how and why the Commission has chosen this path.

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List of interviews

#	Interviewee	Date
1	Member State representative	9/10/20
2	Member State representative	16/10/20
3	Member State representative	28/10/20
4	UN representative	12/10/20
5	Member State representative	18/3/21
6	EU representative	23/07/21
7	EU representative	03/09/2021