

An International Regulation of Lethal Autonomous Weapon Systems: What Role for the EU?

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Policy Recommendations

- Build a EU leadership in the governance of AI in the military domain
- Adopt a binding common position on LAWS at the EU level
- Clarify the meaning of “human control” over LAWS
- Resume the EU’s role in the negotiations of the GGE CCCW in Geneva

The scientific and technical progress in the domain of artificial intelligence (AI) represents a game-changer for our modern societies that raises significant ethical and legal concerns. In the military domain, the implementation of AI has led to the development of so called lethal autonomous weapons systems (LAWS), the proliferation of which is considered capable of leading to an unprecedented arms race with major legal and moral implications, whereby the machine may replace the human factor on the battlefield.¹ For the purpose of the present analysis, the definition provided by the European Parliament (EP) Resolution in 2018 will be used, where the term LAWS refers to “weapon systems without meaningful human control over the critical functions of selecting and attacking individual targets”.² It should be noted however that an agreed definition of LAWS at the

international level is lacking and the difficulties in reaching an agreement on its precise contours represent one of the most vexed aspects of the ongoing multilateral negotiations on these novel weapon systems.

LAWS are considered a new weapon in the purview of Art. 36 of 1977 Additional Protocol I of the Geneva Conventions and numerous states have agreed to enter into international negotiations to regulate and possibly prohibit them. Since 2014, State Parties to the UN Convention on Certain Conventional Weapons (CCCW) have begun to discuss the topic of LAWS during annual meetings of the High Contracting Parties in Geneva. In 2016 a Group of Governmental Experts (GGE) was established under the aegis of the CCCW with the mandate to discuss a potential multilateral regulation of LAWS. In 2019, the GGE approved a non-binding document, affirming 11 Guiding Principles on the respect of international law in the development and use of LAWS.³ Presently, the GGE is called upon to operationalize the 11 Guiding Principles, taking into account the comments and best practices to be submitted by States, International Organizations and NGOs.

Against this background, the present analysis aims at shedding light on the contribution offered so far by the EU to the debate on LAWS. Some policy considerations on the role the EU could play in the governance of AI in the military domain will be drawn.

The EU's role in the forum of the UN CCCW

Since their initial stage, with the exception of the past year, an EU delegation has been participating in the negotiations within the CCCW framework, attempting to foster the EU's role as a global actor for peace, especially in the domain of disarmament and non-proliferation. The EU statement submitted during the GGE's meeting in Geneva in March 2019 stressed the centrality of human control in the development and use of LAWS. In the view of the EU delegation, human control over decisions to employ lethal force against a target should always be retained. It is also specified that the element of human control should characterize the entire life cycle of LAWS; ranging from the weapon's design to the targeting phase. Thus, the EU delegation stressed the need to define the required level of human-machine interaction in order to assure the compliance of LAWS with general international law, international humanitarian law (IHL) and human rights law (HRL), so taking ethical considerations into due account.⁴

While the EU delegation has been able to “speak with one voice” in the context of CCCW annual meetings, it will be shown that this voice does not embody a cohesive position among EU institutions and Member States. What is absent is the adoption of a binding common position on LAWS, which was nevertheless already advocated by the European Parliament (EP) in 2018.

The European Commission (EC) has undertaken a very proactive approach towards the broader phenomenon of AI, as exemplified by the adoption of several soft law instruments such as the 2018 EU Plan on AI (then reviewed in April 2021), and the 2019 Ethics Guidelines for a Trustworthy AI which was issued by the High-Level Group on Artificial Intelligence, and established by the EU Commission in 2018. Nonetheless, the EU Commission has proved quite reluctant to discuss the effects of AI on the defence sector, so much so that the 2020 White Paper on AI did not deal with military aspects at all.

The gap left by the EU Commission has been filled to a certain extent by the European Parliament (EP) and

by the Vice President of the Commission/High Representative (VP/HR).⁵

The former VP/HR Mogherini has demonstrated some attention to the issue of LAWS, holding various institutional discussions and nominating a pool of international experts to set up the Global Tech Panel.⁶ These efforts notwithstanding, no clear policies have been adopted in this regard at the time of writing. With the Council also remaining silent on the matter, the implications of AI in the military sector have not yet found their place in the EU defence and security agenda.

In this context, the EP stands out as the most active EU actor in the debate on LAWS. With the 2018 resolution on autonomous weapon systems, the EP called on the VP/HR, the Member States and the European Commission to adopt a common position on LAWS, centred on the principle of “meaningful human control” over all critical functions of these new weapons, as a matter of urgency. Moreover, the EP stressed the importance of negotiating a legally binding instrument, within the forum of the UN

CCCW, to ban the development and the use of LAWS without significant human control.⁷

In January 2021, the EP issued another, very elaborate, resolution on AI and the questions of interpretation and application of international law in the areas of civil and military uses. The EP has emphasised the importance for the EU to take the lead in the governance of new technologies and to promote, together with the

UN and the international community, a global legal framework governing the use of AI in the military domain. Namely, the EP has encouraged the “Union and its Member States [to] retain control over the regulations to be established, so they are not forced to adopt or accept standards set by others”.⁸ Thus, the call for the adoption of an EU common position on LAWS has been reiterated. With this recent resolution, however, the EP has moved away from a total ban of LAWS, to embrace a more detailed understanding of these new weapon systems and of their possible uses. The EP “[c]onsiders that LAWS should be used only as a *last resort*, and are lawful

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only if they are subject to strict human control [...] in the process of making lethal decisions”.⁹

Overall, the EP has considerably changed its initial position. Under the 2021 resolution, only “human off the loop” weapons systems (i.e. LAWS that exclude any human control) will be prohibited and LAWS are deemed lawful when they are subject to a quite loose human-machine interaction model, namely “meaningful human intervention and supervision” in the process of making lethal decisions against human targets. Hence the human-machine interaction is no longer advocated over the weapon’s entire life cycle.¹⁰ Furthermore, the concept of “last resort” raises serious concerns as to the room it may leave for possible interpretation and distortion.

Several reasons may have determined a change in the EP’s approach, for example the need to reconcile diverging positions on LAWS among Member States and the urgency to govern rather than to outlaw a promising industrial domain for European States. This is well exemplified by the agreement reached by the EC, the EP and the Council to consider projects on LAWS that do not envisage meaningful human control over the targeting process against humans as being non-eligible for financial support by the European Defence Fund. While this initiative can certainly be praised, it should not go unnoticed that these restrictions are quite limited, excluding only a certain type of LAWS, while “actions for the development of early warning systems and countermeasures for defensive purposes” are not affected by these restrictions.¹¹

As to the lack of the EU participation in the 2020 GGE meetings in Geneva, it remains unclear whether this was due to organizational shortcomings caused by the COVID-19 pandemic or rather if it marked a diplomatic deadlock at the EU level. It is also regrettable that the EU, unlike several Member States, failed to submit its commentaries on the 11 Guiding Principles adopted by the GGE in 2019.¹² The upcoming meetings of the GGE CCCW, scheduled for August and October 2021, will serve as the benchmark to assess the level and the merits of the EU’s engagement in the negotiations of LAWS’ international regulation. In the meanwhile, some policy recommendations can be offered.

Policy Recommendations

• Build a EU leadership in the governance of AI in the military domain

The phenomenon of AI and its implications for the military domain should be governed by an appropriate and effective regulation that preserves the respect of human dignity, where the human being, human behaviour and individual responsibility remain at the centre of the normative paradigm. The EU, as a regional and international actor, can take the lead in the governance of new technologies, as shown by the numerous initiatives on AI undertaken by the EC. Given the centrality of AI in the defence and security sector and the legal and ethical challenges it raises, the EU should also engage in the governance of AI in the military domain.

• Adopt a binding common position on LAWS at the EU level

To achieve this, the EU should undertake a comprehensive and coherent approach towards LAWS, involving all relevant EU institutions on the same footing. The adoption of a binding common position by the EP, the EC, the HP/VP and Member States would represent a crucial step in taking the lead to define the international legal framework applicable to LAWS. This would also foster European and universal humanist values geared at granting the respect of human dignity under general international law, IHL and HRL.

• Clarify the meaning of “human control” over LAWS

The adoption of a binding common position would also be occasion for the EU to clarify some ambiguous positions adopted by the EP, namely on the meaning and the extent of “human control” required for the legality of LAWS and on the notion of “last resort”, introduced with the 2021 Resolution.

• Resume the EU’s role in the negotiations of the GGE of the CCCW in Geneva

It will thus be essential for the EU to urgently resume its role in the forum of the GGE CCCW meetings in Geneva. Only a multilateral effort to negotiate a binding legal instrument regulating LAWS under international law will be of use for the international community, to minimize the risk of AI serving the purposes of military and industrially advanced States, at the expense of the rule of law.

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- ¹² CCWC, CCW/GGE.1/2020/WP.7, Annex III, 19 April 2021.

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Acknowledgement

This publication is based upon work from COST Action CA17119 ENTER, supported by COST (European Cooperation in Science and Technology).

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Funded by the Horizon 2020 Framework Programme of the European Union