

Resolution 2485 (2023)¹

Emergence of lethal autonomous weapons systems (LAWS) and their necessary apprehension through European human rights law

Parliamentary Assembly

1. The Parliamentary Assembly notes that rapid technological progress in the field of artificial intelligence is paving the way for the emergence, in the near future, of lethal autonomous weapons systems (LAWS).
2. According to the definition by the International Committee of the Red Cross (ICRC), the term LAWS encompasses any weapon system with autonomy in its critical functions. That is, a weapon system that can select (i.e. search for or detect, identify, track, select) and attack (i.e. use force against, neutralise, damage or destroy) targets without human intervention. LAWS, therefore, are neither remote-controlled systems in which a human retains control throughout, nor automatic systems in which a particular process has been programmed in advance so that their action is totally predictable.
3. The emergence of LAWS has prompted concern on the part of numerous States as well as civil society. Fifty-four non-governmental organisations have launched a campaign in favour of a preventive prohibition of research on and development of these emerging technologies – and even more so of the use of these systems which they refer to as “killer robots”. This position of principle was adopted by the European Parliament in a resolution dated 12 September 2018.
4. The “arms race” logic implied in this field prompts some to see LAWS as the third military revolution in the history of international relations, after the invention of gunpowder and that of nuclear weapons. Military powers which fail to invest in this technology would therefore risk being left behind.
5. LAWS carry the risk of lowering the threshold for engaging in conflict, by reducing the risk of a country’s own troop losses. LAWS also raise a fundamental issue of human dignity: allowing machines to “decide” to kill a human being.
6. The conformity of LAWS with international humanitarian law hinges above all on the possibility, or not, of complying with the principles of distinction, proportionality and precaution when attacking.
 - 6.1. The principle of distinction between civilian and military targets could be complied with by LAWS that are well designed and programmed to execute surgical strikes aimed solely at military targets.
 - 6.2. Judgment calls as to whether an attack satisfies the principle of proportionality are made on the basis of values and interpretations of the particular situation rather than on numbers or technical indicators. Making such judgments, which reflect ethical considerations, requires human judgment which is unique. It is for this reason that at least a minimum degree of human control is indispensable.
 - 6.3. To comply with the precautionary principle, the course of action taken by LAWS must be predictable. Users must be capable of adjusting or nullifying the effects of the weapons systems if necessary, something that is possible only if they can reasonably foresee how a weapons system will react.

1. *Assembly debate* on 27 January 2023 (9th sitting) (see [Doc. 15683](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Damien Cottier). Text adopted by the Assembly on 27 January 2023 (9th sitting).



6.4. The conformity of LAWS with international human rights law, and notably with the European Convention on Human Rights (ETS No. 5, the Convention), depends on clear regulation of their use. Article 2 of the Convention requires that the right to life be protected by law. This means that the State must introduce a legal framework defining the limited circumstances in which the use of these weapons is authorised. The case law of the European Court of Human Rights relates to other types of weapons, however the use of LAWS should not be subject to standards that are any less strict.

7. From the viewpoint of international humanitarian law and human rights law, regulation of the development and above all of the use of LAWS is therefore indispensable. The crucial point is human control. Respect for the rules of international humanitarian and human rights law can only be guaranteed by maintaining human control, to varying degrees according to the stances taken by States and other actors of the international community. Several levels of human control may be envisaged: significant control, effective control or appropriate levels of human judgment. Human control must be maintained over lethal weapons systems at all stages of their life cycle.

7.1. Human control can be exercised at the development stage, including through technical design and programming of the weapon system (ethics by design): decisions taken during the development stage must ensure that the weapon system can be used in the intended or expected circumstances of use, in accordance with international humanitarian law and other applicable international norms, in particular the European Convention on Human Rights.

7.2. Human control may also be exerted at the point of activation, which involves the decision of the commander or operator to use a particular weapons system for a particular purpose. This decision must be based on sufficient knowledge and understanding of the weapon's functioning in the given circumstances to ensure that it will operate as intended and in accordance with international humanitarian law and other applicable international norms. This knowledge must include adequate situational awareness of the operational environment, especially in relation to the potential risks to civilians and civilian property.

7.3. To ensure compliance with international humanitarian law and other applicable international norms, it may be thought necessary to exert additional human control during the operation stage, when the weapon autonomously selects and attacks targets. Human intervention may be necessary to comply with the law and to remedy shortcomings at the development stage and at the point of activation.

8. Unlike humans, machines do not have feelings and are not moral agents. If a person commits a war crime with an autonomous weapon, it is the human who commits the crime, using the autonomous weapon as the tool. Humans must be not only legally accountable but also morally responsible for the actions of LAWS. Some decisions pertaining to the use of weapons require legal and moral judgments, such as weighing likely civilian casualties against military advantages from conducting attacks. These judgments must be endorsed by humans since they are also moral judgments and have legal scope.

9. The relevant provisions of international humanitarian law imply that such weapons systems must not be used if they are likely to cause superfluous injury or unnecessary suffering, if they are inherently indiscriminate or if it is not possible to use them in accordance with the law.

10. On the assumption that future LAWS meet all the legal requirements of the laws of war when they operate normally, malfunctions of such systems could nonetheless cause erroneous attacks and thereby raise accountability issues. It must be possible to establish legal responsibility in the event of a malfunctioning lethal autonomous weapons system by analysing compliance with the requirement of adequate human control. It should be possible to link unlawful actions committed by using a lethal autonomous weapons system resulting in violations of international humanitarian law and other international norms alternatively to the individual or groups of individuals behind its design, manufacturing, programming or deployment and, ultimately, to the user State. In this regard, the user State has a particular responsibility to test and verify in advance the weapons it intends to use to ensure that they are predictable and reliable and not likely to entail violations of international humanitarian law through error, malfunction or poor design, and to verify the contexts in which their use is possible in accordance with the law.

11. The Assembly notes that questions concerning the compatibility of LAWS with international humanitarian law and human rights are being discussed by States 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 (Convention on Certain Conventional Weapons, CCW), which have set up a Group of Governmental Experts (GGE). Working on the basis of the "11 Guiding Principles on LAWS"

adopted in 2019 and the Final Declaration of the 6th Review Conference of the States Parties to the CCW in December 2021, that group continues to seek a consensus on the future regulation of this emerging technology.

12. At its July 2022 session, the GGE adopted a statement to the effect that it had reached agreement that the right of parties to an armed conflict to choose the methods and means of warfare was not unlimited and that international humanitarian law was also applicable to LAWS. Any violation of international law, including a violation involving a lethal autonomous weapons system, incurred the responsibility under international law of the State concerned. The group further proposed extending its work into 2023.

13. The Assembly notes that a group of European States has proposed a two-tier approach to the GGE:

13.1. first, the States Parties to the CCW should recognise that LAWS which cannot be used in conformity with international law, including international humanitarian law, are *de facto* banned; and that, consequently, LAWS operating completely outside any human control and a responsible chain of command are unlawful;

13.2. second, agreement should be reached on the international regulation of other weapons systems presenting elements of autonomy in order to guarantee conformity with international humanitarian law by:

13.2.1. ensuring appropriate human control throughout the life cycle of the system in question;

13.2.2. maintaining human responsibility and the obligation of accountability at any time, in all circumstances and throughout the life cycle, as the basis of the responsibility of the State and that of the individual. This responsibility and this obligation of accountability may never be transferred to machines;

13.2.3. implementing suitable measures to mitigate the risks and appropriate guarantees regarding security and safety.

14. The Assembly supports this two-tier approach and considers that the emergence of LAWS requires clear regulation of this technology to ensure respect for international humanitarian law and human rights and that the appropriate forum to agree on the future regulation of LAWS is the Conference of States Parties to the CCW and its GGE.

15. As to the legal form of such regulation, the goal should be a binding text in the form of a protocol to the CCW or even a specific international convention.

16. Pending the emergence of the broad consensus needed to draw up such an instrument, a non-binding instrument should be prepared in the form of a code of conduct. This instrument, which might be updated on a regular basis, could codify the guiding principles that are already broadly recognised and highlight the good practices adopted by given States Parties to the CCW.

17. The Assembly therefore calls on Council of Europe member States as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly to take a constructive role in the work in progress within the CCW and its GGE with a view to regulating the emergence of LAWS and to support the two-tier approach mentioned above.

18. Should no consensus emerge within a reasonable period of time for the drafting of a code of conduct and subsequently for the preparation and negotiation of an international agreement within the meaning of paragraphs 14 and 15, or should such steps appear to have no chance of success, the Assembly invites Council of Europe member States as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly to consider initiating such work at the Council of Europe level.