

ZOOM IN

The question:

Coming Soon...? A reappraisal of the legal and ethical implications of Autonomous Weapons Systems (AWS) ahead of the first meeting of the CCW Group of Governmental Experts on Lethal AWS

*Introduced by Elena Carpanelli and Nicole Lazzerini **

The emergence of a new generation of tech-devices, featuring forms of Artificial Intelligence (AI), appears more and more a ‘future present’, rather than science or cinematographic fiction. Several automated and algorithmic decision-making systems are already involved in our daily routine and scientific efforts have turned towards creating increasingly sophisticated systems capable of operating with a minimum of or indeed even no meaningful human control. Whilst the use of machines with greater automation, possibly some degree of decision-making capacity, and lower – or no – human control may have positive effects, they also pose dangers for individuals, groups, and society as a whole. AI systems therefore raise complex legal and ethical issues, bringing into question the adequacy of the existing normative framework to accommodate them and making the call for regulatory action *vis-à-vis* evolving technological applications an emerging trend in international, regional and domestic *fora*. Recently, for instance, the European Parliament invited the European Commission to make a proposal for a Directive on civil law rules on robotics.¹

Some AI tools even trigger the preliminary question about whether their use should be permitted at all. This is notably the case with auton-

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¹ European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)).

onomous weapons systems (AWS) capable of targeting individuals without human intervention. By an open letter released in August 2017 and addressed to the United Nations, experts in robotics and AI technology have indeed confirmed that the deployment of similar weapons may become a practical reality within years and contextually warned about the risks posed by them.² In the words of those experts, ‘once the Pandora’s box is opened, it will be hard to close it’: a circumstance that may potentially lead to a concerning third revolution in warfare.³

The overall debate over the need to regulate (and even outlaw) the use of AWS in the course of armed conflicts or for domestic law-enforcement activities relies broadly on arguments that challenge the (in)compatibility of these technologies with the current international legal framework. The potential use of AWS raises, in fact, all but simple questions such as: can AWS be operated in compliance with the international humanitarian law principles of distinction, military necessity and proportionality? Who should be held accountable for crimes perpetrated by AWS? Does the so-called ‘Martens clause’ constitute a legal bar to the deployment of similar technologies? Could the availability of AWS increase the likelihood of a violation of Article 2(4) of the UN Charter? What obligations do human rights norms impose on States with respect to the use of AWS in law enforcement activities? Do such technologies potentially encroach upon rights others than the right to life? At the same time, ethical questions underpin the debate on AWS deployment. One could wonder, for instance, whether and how AI systems could engage in moral reasoning, especially when they can negatively affect human life, and how responsibility should be allocated in case of harmful conduct originating from AI systems.

The thorny issues that the use of AWS may raise under international law have already nurtured a rich doctrinal debate. At this stage, a reappraisal of the subject appears, however, particularly well needed and timed in view of the upcoming first meeting of the Convention on Certain Conventional Weapons (CCW) Group of Governmental Experts on lethal AWS, which is scheduled to take place in Geneva from 13 to 17 November 2017. It is indeed expected that the Group will be able

² See <<https://futureoflife.org/ai-open-letter/>>.

³ *ibid.*



eventually to make recommendations and explore feasible options for addressing lethal AWS. Moreover, specific aspects of this complex and intriguing subject remain largely unexplored.

Against this background, and as a follow up to last June's young scholars' workshop on the challenges posed by new technologies to International and European Union Law, jointly promoted with CSEIA,⁴ QIL has decided to devote the present Zoom-in to an in-depth analysis of the legal and ethical implications of AWS. Accordingly, it has invited three distinguished scholars – two public international lawyers and a legal theorist – to get involved in the debate by examining the overall topic through different lenses. Taking the move from the ongoing Campaign 'Stop Killer Robots',⁵ Daniele Amoroso focuses on the virtues and vices of the arguments raised against or in favour of a global ban to AWS, whereas Andrea Spagnolo explores the human rights implications of the use of AWS in law-enforcement operations. The unavoidable ethical dimension of the topic is at the heart of the essay by Ozlem Ulgen, which analyzes the moral questions surfacing from the use of AI applications from the perspective of Kantian ethics.

Each contribution builds on the existing debate, exploring concrete applications, legal arguments or philosophical implications that, so far, have remained mainly on the side-line. In so doing, the three Authors provide some original insights and add fuel to the ongoing broader discussion on AI.

⁴ Center for Studies in European and International Affairs (see the website <www.cseiaparma.it/>).

⁵ See <www.stopkillerrobots.org/>.