



Convention on Certain Conventional Weapons (CCW)
Meeting of Experts on Lethal Autonomous Weapons Systems (LAWS)
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NON PAPER
LEGAL FRAMEWORK FOR ANY POTENTIAL DEVELOPMENT AND
OPERATIONAL USE OF A FUTURE LETHAL AUTONOMOUS WEAPONS
SYSTEM (LAWS).

The existing rules of international humanitarian law (IHL) are applicable to LAWS and require States to ensure their compliance with IHL before developing or employing them. In accordance with its international commitments, France would not envisage developing or employing lethal autonomous weapons systems (LAWS) unless these systems demonstrated their full compliance with international law.

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- The fact that Article 36 of the first Additional Protocol to the Geneva Conventions of 12 August 1949 (Protocol I) places States Parties under the obligation to determine whether new weapons, means or methods of warfare comply with IHL demonstrates the **continuity of application of IHL to the development and use of new technologies.**¹
- **France considers that LAWS would fall into the category of the “weapon, means or method of warfare” referred to in Article 36.** It must therefore ensure that they comply with IHL before developing or using them.
- However, Article 36 of Protocol I does not require States to anticipate or study possible misuses of the weapon in question, as almost all weapons can lead to prohibited misuses. **The only question is whether the normal or planned use of a weapon is prohibited in some or all circumstances.**
- Although Protocol I does not specify how to determine the legality of a new weapon or a new method of warfare, it is the responsibility of States Parties to adopt internal control measures to enforce this obligation. France examines the legality of options under consideration for weapons programmes starting from the “exploration” phase that immediately follows the assessment of needs.

¹ According to that Article, “*In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.*”

- It seems today that the principal obstacle to the compliance of lethal autonomous weapons systems with IHL lies in their technological capabilities, most particularly as regards complex missions and environments (such as urban areas). **The fact itself that a machine, not a human being, selects the target, decides to open fire, or carries out an attack does not necessarily entail a violation of international humanitarian law.**
- **To comply with IHL, a LAWS should be capable of apprehending and respecting the principles of the conduct of hostilities. At present, discussions on the ability of autonomous systems to respect these principles are theoretical** and the scientific community (robotics experts and cognitive scientists) disagrees about ways to address this issue. Doubts have therefore been raised about the possibility of coding the rules and notions relating to the principle of distinction into a program, such as direct participation in hostilities, which themselves have already given rise to heated discussions. It is difficult to imagine an autonomous weapons system with sensors and a capacity of judgment and detection of human intentions that would enable it to apply these rules. The principle of proportionality also seems difficult to programme given that no matrix exists for defining proportionality thresholds.
- **Yet it would be a mistake to conclude categorically that such autonomous weapons systems cannot be designed and used so as to comply with the general principles of the law governing the use of weapons in armed conflict.**
 - Firstly, before an autonomous weapons system – like any other weapons system – is used in a military operation, **commanders and those using the weapon will continue to exercise their judgment about a number of factors** such as the likely presence of civilians and likelihood of their suffering unintentional damage; the expected military advantage; the specific characteristics and conditions of the environment where the system will be deployed; and the weapon’s safety characteristics, capabilities and limitations. Thus, the question whether legal requirements are met in a given situation will not depend solely on the system’s own programming and technical capabilities, but also on human judgment.
 - **Moreover, the assumption cannot be dismissed that, in certain circumstances, autonomous systems might better respect IHL principles than humans.** Indeed, the use of autonomous weapons systems could reduce risks for civilians by making more accurate targeting decisions by means of faster calculation of available information and more controlled firing decisions due to the absence of negative feelings like fear, panic and a desire for vengeance.
- **While the autonomous nature of LAWS makes it trickier to establish the responsibility of people having participated in their implementation, it does not remove the share of responsibility that could be ascribed to each of those persons in the conduct of hostilities.** The responsibility of political and military decision-makers, manufacturers, programmers and operators can always be sought in the event of violations of international humanitarian law by such systems. At this stage, there is no way to define the contours of each actor’s responsibility with certainty, as it will hinge on their role in the design and use of LAWS.

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The current position of **France's prospective analysis considers that the development and use of lethal autonomous weapons systems cannot be regarded as intrinsically contrary to international humanitarian law (IHL). Any preventive prohibition of the development of any potential LAWS would therefore appear premature.**