

*Contents*

Guidelines on Promoting Compliance with International Humanitarian Law .....	1
Policy Statement – Children and Armed Conflicts .....	8
Action Plan on Women, Peace and Security .....	11
Artificial Intelligence and Autonomous Lethal Weapons .....	15

*EU Guidelines on Promoting Compliance with International Humanitarian Law*

• Council of the European Union, *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*

<<https://www.consilium.europa.eu/media/40345/ihl-2019-report-june-update-en.pdf>>

The First Report on the *EU Guidelines on Promoting Compliance with International Humanitarian Law* (the Guidelines) was enacted on June 2019. The Report explains how the aforementioned Guidelines were implemented.

The Guidelines were adopted by the Council in 2005, and updated in 2009,<sup>2</sup> to

support and reinforce the Union's role in [the field of international humanitarian law (IHL)]. They provide both an overview of the main tools at the disposal of the EU for promoting respect for IHL and a summary of the main elements of IHL aimed at promoting awareness and understanding of its rules and principles, particularly amongst those working within and with the European Union itself.<sup>3</sup>

The Report under review provides an overview of the wide range of means by which the EU achieves compliance with IHL. It reviews its policy decisions, operational activities and cooperation with third states as well as regional and international actors. It is meant as an instrument “to help improving the coherence and effectiveness” of the EU's efforts in this field.<sup>4</sup>

It addresses several policy fields and in particular, it takes into account EU statements, conclusions and positions in international bodies, political dialogues and demarches, the cooperation with international organisations and other actors, support for international diplomatic initiatives to strengthen support for IHL and the cooperation with, and support for, the ICRC and other humanitarian actors. Furthermore it analyses action taken in specific sectors that are crucial to promote compliance with IHL, such as financial assistance, restrictive measures, arms exports and

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<sup>2</sup> European Union, *Updated EU Guidelines on Promoting Compliance with International Humanitarian Law*, 2009/C303/06, Annex 1.

<sup>3</sup> See Council of the European Union, *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law* <<https://www.consilium.europa.eu/media/40345/ihl-2019-report-june-update-en.pdf>> accessed 27 May 2020, p. 4.

<sup>4</sup> *Ibid.*, p. 33

arms controls, crisis management operations and training as well as international criminal tribunals and mechanisms.

The report makes reference in particular to the practice of the European Council, one of the main institutions of the EU, composed by the State representatives at a ministerial level. At the level of Foreign Ministers, the Foreign Affairs Council as the policy-making body on foreign policy regularly deliberates on situations of conflict around the world and underlines the need to respect IHL or calls upon parties to allow and facilitate access for humanitarian supplies and personnel to all people in need.

A similar practice is reported making reference to statements of other main EU institutions, such as the High Representative, the Commission, the European Parliament (EP) and, in particular, the Commissioner for Humanitarian Aid and Crisis Management.

The EP has adopted a number of resolutions actively addressing the issue of accountability and of respect for IHL. Notably, the resolution *Addressing human rights violations in the context of war crimes, and crimes against humanity, including genocide*, that deplores, among others, the widespread lack of respect for IHL in armed conflicts around the world, was adopted on 4 July 2017. Several other similar resolutions and/or recommendations were adopted as regards specific conflicts and situations, including in Yemen, Syria, Russia, Palestine and Libya.<sup>5</sup>

Such statements on matters of IHL were made also in the framework of international organisations and bodies of which the Union is an active member.

The EU also facilitated one of the key annual humanitarian resolutions adopted by the United Nations (UN) General Assembly (*Safety and Security of humanitarian personnel and protection of UN personnel*) on behalf of the EU and its Member States. The EU's contributions during the negotiations of the resolutions included the promotion of humanitarian principles and IHL, as agreed every year at the Foreign Affairs Council. In the framework of the UN, the EU also participated in the open debates of the UN Security Council, such as the one on the protection of civilians and medical care in armed conflict, where its statement equally underlines the Union's commitment to IHL.

Side-events organised by the EU in the margins of the opening of each UN General Assembly, during the so-called 'Ministerial Week' in September, drew attention on topics such as the consequences of IHL violations for civilians with a focus on humanitarian action, medical care, education and ending gender-based violence in emergencies.

In the UN Human Rights Council (HRC), the EU has intervened on numerous occasions to condemn violations and abuses of human rights and humanitarian law, supporting the inclusion of strong references to IHL in key HRC initiatives such as the resolutions on Syria, Yemen and Myanmar. These country-specific resolutions foresee the setup of special procedures (commissions of inquiry, fact-finding missions, investigations) to respond to situations of serious violations of IHL and international human rights law through investigations, collecting evidence, monitoring and/or reporting to the HRC.

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<sup>5</sup> A complete list is annexed to the Report. See <<https://www.consilium.europa.eu/media/40345/ihl-2019-report-june-update-en.pdf>> accessed 4 July 2020.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

According to the Guidelines,<sup>6</sup> when violations of IHL in specific conflicts are reported, the EU should consider initiating political dialogues or making demarches and issuing public statements, as appropriate, condemning such acts and demanding that the parties fulfil their obligations under IHL and undertake effective measures to prevent further violations.

In line with this provision, as a participant in international bodies the EU has an extensive network of dialogues and contacts with third States and other international actors and frequently uses these to promote respect for IHL and adherence to international legal instruments. For instance, the EU has continuously advocated for compliance with IHL in relation to the situation of the South Caucasus and the crisis in Georgia, including the regions of Abkhazia and South Ossetia, and the Nagorno-Karabakh conflict between Azerbaijan and Armenia.<sup>7</sup>

In relation to Ukraine, the EU Delegation raised IHL-related issues several times. For instance, the humanitarian situation in eastern Ukraine, including respect for IHL, is regularly discussed at various levels through the Union's bilateral political dialogue with Ukraine and in the framework of the Organization for Security and Co-operation in Europe (OSCE) Special Monitoring Mission to Ukraine.<sup>8</sup>

Respect for IHL, human rights and the rule of law has been recalled many times by the EU Special Representatives on the Middle East Peace Process, stressing in particular the protection of civilians and humanitarian access. The EU also maintains a continuous political dialogue with national authorities, regularly recalling Israel's responsibilities as an occupying power in the Palestinian territories.<sup>9</sup>

In Bosnia and Herzegovina, the EU is monitoring the implementation of remedies to violations of IHL, in particular concerning war crimes (support to the implementation of the *National War Crimes Strategy*<sup>10</sup>), wartime sexual violence cases (e.g. societal and economic stigmatisation of victims, uneven victim status within entities, reparations, access to justice for victims and support to witnesses), refugees and displaced persons (support to the *Sarajevo Process*<sup>11</sup> and the *Regional*

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<sup>6</sup> Paragraph 16(a).

<sup>7</sup> There is a longstanding involvement of the EU in this area, where it deployed also one of the EU main Common Security and Defence Policy civilian missions, named EU Monitoring MISSION (EUMM) Georgia. For more information see <<https://eumm.eu/>> accessed 30 November 2020.

<sup>8</sup> For an overview, see <<https://www.osce.org/special-monitoring-mission-to-ukraine/157261>> accessed 2 July 2020).

<sup>9</sup> See Bouris, Dimitris. *The European Union and Occupied Palestinian Territories: State-Building Without a State*. Routledge Advances in European Politics, 101. London: Routledge, Taylor & Francis Group, 2014; Persson, Anders. *The EU and the Israeli-Palestinian Conflict 1971-2013: In Pursuit of a Just Peace*. Lanham: Lexington Books, 2015; Youngs, Richard. *Europe in the New Middle East Opportunity or Exclusion?* First ed. Oxford Studies in Democratization. Oxford: Oxford University Press, 2014; Diez, Thomas, and Nathalie Tocci, eds. *The EU, Promoting Regional Integration, and Conflict Resolution*. Palgrave Studies in European Union Politics. Cham, Switzerland: Palgrave Macmillan, 2017.

<sup>10</sup> The National War Crimes Strategy text is available at <[http://www.nuhanovicfoundation.org/user/file/bosnian\\_national\\_war\\_crimes\\_strategy\\_18-12-08.pdf](http://www.nuhanovicfoundation.org/user/file/bosnian_national_war_crimes_strategy_18-12-08.pdf)>. For more information, see also OSCE, Processing of War Crimes at The State Level in Bosnia And Herzegovina at <<https://www.osce.org/files/f/documents/4/e/247221.pdf>> accessed 30 November 2020.

<sup>11</sup> See Campbell, Andrew H, ed. *Global Leadership Initiatives for Conflict Resolution and Peacebuilding*. A Volume in the Advances in Electronic Government, Digital Divide, and Regional Development (Aegddrd) Book Series. Hershey: Information Science Reference, 2018.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

*Housing Programme*<sup>12</sup>), as well as missing persons (cooperation with the International Commission on Missing Persons (ICMP)).

The EU is also partnering with other humanitarian actors, such as the ICRC to strengthen compliance with IHL and promoting its dissemination. For instance, the EU was the chair of the *ICRC Donor Support Group*<sup>13</sup> between June 2018 and June 2019. One of the focus areas of the chairmanship was “[h]ow to preserve International Humanitarian Law and the humanitarian principles in a counter-terrorism environment”.<sup>14</sup>

Financial support is provided by the EU to the activities of a range of other international actors including the Office for the Coordination of Humanitarian Affairs (OCHA), the OSCE, the UN High Commissioner for Refugees (UNHCR) as well as NGOs such as Geneva Call.

Funding for humanitarian purposes, namely addressing violence, coercion, deliberate deprivation and abuse of persons, groups and communities in the context of humanitarian crises, is in most cases considered an overarching priority in humanitarian implementation plans.<sup>15</sup>

In fact, financial aid for activities to promote compliance with IHL is deemed fundamental by the EU. According to the Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the EP and the European Commission on the European Consensus on Humanitarian Aid,<sup>16</sup> the EU will advocate strongly and consistently for the respect of international law, including IHL, human rights law and refugee law. Also, according to the European Instrument for Democracy and Human Rights (EIDHR), the EU will help establish democracy, the rule of law and the protection of human rights and basic freedoms.<sup>17</sup>

Strengthening the rule of law, promoting the independence of the judiciary, supporting national human rights institutions as well as promoting and strengthening the International Criminal Court (ICC),<sup>18</sup> *ad hoc* international criminal tribunals and the processes of transitional justice and truth and reconciliation mechanisms are among the top priorities.

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<sup>12</sup> See < <https://regionalhousingprogramme.org/mission-and-history/>> accessed 30 November 2020.

<sup>13</sup> The Donor Support Group is composed of governments, supranational organisations or international institutions that contribute a minimum of CHF 10 million per year.

<sup>14</sup> *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 15

<sup>15</sup> According to Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid <<https://op.europa.eu/en/publication-detail/-/publication/f9cfbf71-f3a8-434f-b310-4d2e8b15bf65>> accessed 2 July 2020, Preamble: “Whereas civilian operations to protect the victims of fighting or of comparable exceptional circumstances are governed by international humanitarian law and should accordingly be considered part of humanitarian action”.

<sup>16</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, 2008/C 25/01 <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A42008X0130%2801%29>> accessed 2 July 2020, Article 16.

<sup>17</sup> Regulation (EU) No 235/2014 of the European Parliament and the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, OJ L 77, pp. 85-94 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0235>> accessed 2 July 2020.

<sup>18</sup> The EU has provided over EUR 40 million to the ICC since its creation both in direct support and through support to civil society under global civil society campaigns within the European Instrument for Democracy and Human Rights (EIDHR). In particular, since 2012, the EU directly contributes to the ICC outreach activities with an annual budget of EUR 1 million. See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 30.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

Supporting international criminal tribunals and *ad hoc* national tribunals and measures to address the socio-economic impact on the civilian population of anti-personnel landmines, unexploded ordnance or explosive remnants of war are also envisaged in the *Instrument contributing to Stability and Peace* (IcSP).<sup>19</sup>

Following this trend, in the context of the Multiannual Financial Framework 2021-2027 the European Commission put forward a proposal for a regulation of the EP and of the Council establishing the *Neighbourhood, Development and International Cooperation Instrument*, which would merge most of the EU's external financing instruments, including the aforementioned EIDHR and the IcSP, into one regulation.<sup>20</sup>

An example of the assistance provided under the aforementioned instruments to fund activities relevant to promoting compliance with IHL is the funding of international criminal tribunals. Other specific projects in Iraq, Yemen, Libya, Afghanistan, the Democratic Republic of the Congo, Mali, Ukraine, Bosnia and Herzegovina, have also been funded through the EU's humanitarian aid budget. It is worth mentioning that in 2019 the EU also supported the ICMP to enable the use of DNA-assisted identification in the recovery of persons missing as a result of armed conflict.

The EU is also committed in preventing or responding to violations of IHL through restrictive measures and/or sanctions. In particular by taking restrictive measures (such as arms embargoes) in regard to situations of armed conflict, the EU seeks to prevent or stop the conditions in which violations of IHL can occur.<sup>21</sup>

For instance, some sanctions are related to the proliferation and use of chemical weapons or the Rohingya crisis and the widespread violations of human rights law and IHL committed by the Myanmar/Burma military and security forces.

A number of EU restrictive measures also make provision for the imposition of arms embargoes, in particular in relation to situations of armed conflict. In fact, the EU actively supports the implementation and universalisation of non-proliferation, disarmament and arms control conventions and agreements that are inspired by, and often entirely based on, the application of IHL.<sup>22</sup>

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<sup>19</sup> Regulation (EU) No 230/2014 of the European Parliament and the Council of 11 March 2014 establishing an instrument contributing to stability and peace, OJ L 77, pp. 1-10 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0230>> accessed 2 July 2020.

<sup>20</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, COM(2018) 460 final <<https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-460-F1-EN-MAIN-PART-1.PDF>> accessed 2 July 2020.

<sup>21</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 21:

EU restrictive measures themselves are implemented in accordance with international law. All EU legal instruments laying down financial restrictions, restrictions on admission and other restrictive measures allow for the application of appropriate exemptions and/or derogations in particular to take into account basic needs of targeted persons including humanitarian needs or international obligations where applicable. Furthermore, EU sanctions policy is based on a targeted approach, focusing on those who are responsible for the situation that is meant to be changed. The intention is to avoid as much as possible any negative effects on the civilian population.

<sup>22</sup> These treaties include the Nuclear Non-Proliferation Treaty, the Comprehensive Test Ban Treaty, the Chemical Weapons Convention, the Biological and Toxin Weapon Convention, the Arms Trade Treaty, the Anti-personnel Mine

In the view of the EU, the use of chemical weapons is unacceptable, constitutes a “breach of international law and may amount to a war crime or a crime against humanity. There can be no impunity and those responsible for such acts must be held accountable”.<sup>23</sup>

In so far as EU military operations are concerned, during the reporting period, the EU conducted three military operations with executive mandates and three non-executive military training missions within the framework of the Common Security and Defence Policy (CSDP).<sup>24</sup> It held: “All CSDP missions and operations are guided by and seek to advance respect for the principles of international law, including IHL, in accordance with the Treaty on European Union, and IHL elements are mainstreamed into the mission planning from the outset.”<sup>25</sup>

The training missions in Mali, Somalia and the Central African Republic all included IHL in their training programmes for the national armed forces of the respective country. The training programmes also addressed prevention of sexual violence, gender awareness, protection of civilians (including protection of children) and human rights.

Some civilian missions also include the mandate to “monitor, analyse and report on the situation, including eventual violations of human rights and international humanitarian law”.<sup>26</sup>

The civilian CSDP mission *European Union Rule of Law Mission in Kosovo* investigated, prosecuted and adjudicated war crimes in Kosovo until 14 June 2018, and then supported relevant Kosovar institutions in drafting a strategy for the prosecution of war crimes and other serious violations of IHL.

Finally, and as already explained above, the commitment of the EU regarding international criminal justice is worth mentioning. The EU has strongly supported the effective functioning of the ICC<sup>27</sup> and other criminal tribunals such as the *ad hoc* international tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon, and the International Residual Mechanism for Criminal Tribunals.

Support for, and cooperation with, the ICC are aimed in particular at achieving greater support and cooperation of States with the ICC and reinforcing national capacities in dealing with crimes under the Rome Statute, particularly in situation countries.

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Ban Convention, the Convention on Certain Conventional Weapons and the *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*.

<sup>23</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 24.

<sup>24</sup> *EU NAVFOR MED Operation Sophia, EU NAVFOR Atalanta, EUFOR Althea, EU Training Mission in the Central African Republic (EUTM CAR), EU Training Mission – Somalia (EUTM-Somalia) and EU military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)*. See <[https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations\\_en](https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations_en)> accessed 2 July 2020.

<sup>25</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 27.

<sup>26</sup> E.g. the civilian CSDP mission *European Union Monitoring Mission in Georgia (EUMM Georgia)*. See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 27.

<sup>27</sup> The EU's commitment to the ICC is set out in Council Decision 2011/168/CFSP and further operationalized in the Action Plan following up on this Decision. In addition, the *EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the ICC and the United States Regarding the Conditions to Surrender Persons to the Court* were adopted by the General Affairs and External Relations Council on 30 September 2002. See Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP, OJ L 76, 22.3.2011, p. 56-58 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0056:0058:EN:PDF>> last accessed 2 July 2020.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

Such support is also reflected in the EU's bilateral relations, for instance in the framework of accession negotiations<sup>28</sup> and through the action of EU Delegations, for instance by providing political and conflict-related guidance to visiting ICC teams, as well as assistance regarding logistical, organisational, and security matters in some countries, such as Georgia.

The EU also promotes the ratification and implementation of the Rome Statute of the ICC in its international agreements.<sup>29</sup>

Moreover, the EU has supported and financed the establishment and operation of the Kosovo Specialist Chambers and the Specialist Prosecutor's Office which were set up under Kosovar law.<sup>30</sup> It also promoted, politically and financially, accountability mechanisms in Syria by financing *inter alia* the International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic since 2011. The EU's financial contribution – through IcSP - amounts to EUR 1.5 million and has been operational since June 2018 until December 2019.<sup>31</sup>

Strengthening compliance with IHL remains at the core of the Union's wider actions at the international level. Advancing the Union's positions on IHL and international accountability is also one of the tasks of the EU Special Representative for Human Rights.<sup>32</sup> The mandate's existence testifies to the EU's determination to use both internal and foreign policy tools to promote respect for IHL.

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<sup>28</sup> Candidates or potential candidates who maintain bilateral agreements concerning the conditions for the surrender of persons to the ICC are reminded of the need to align with the EU position.

<sup>29</sup> See, e.g., Article 11 of the Cotonou Agreement or Article 7 of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part. It reads as follows:

1. The Parties shall cooperate to promote the investigation and prosecution of serious crimes of international concern, including through the International Criminal Court and, where appropriate, tribunals established in accordance with the relevant resolutions of the United Nations.
2. The Parties shall cooperate in promoting the objectives of the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998 (hereinafter referred to as 'the Statute'). To this end they shall:
  - (a) continue to promote the universality of the Statute, including, where appropriate, by sharing experiences in the adoption of measures required for its conclusion and implementation;
  - (b) safeguard the integrity of the Statute by protecting its core principles; and
  - (c) work together to further enhance the effectiveness of the International Criminal Court.

See also Partnership Agreement 2000/483/EC between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed at Cotonou on 23 June 2000, OJ L 317, pp. 3-353 <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=LEGISSUM:r12101>> accessed 2 July 2020.

See further Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, OJ L 216, pp. 4-22) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22018A0824%2801%29>> accessed 2 July 2020.

<sup>30</sup> They were established to prosecute and adjudicate criminal charges arising from the investigation into the allegations raised in a report entitled *Inhuman treatment of people and illicit trafficking in human organs in Kosovo* released on 12 December 2010 by the Special Rapporteur for the Committee on Legal Affairs and Human Rights of the Council of Europe. Text available at <<http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf>> accessed 2 July 2020.

<sup>31</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 31.

<sup>32</sup> For an overview of the Special Representative's mandate, see <<https://www.consilium.europa.eu/en/press/press-releases/2019/02/28/human-rights-eu-appoints-a-new-special-representative/>> accessed 2 July 2020.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

In sum, as it emerges from the Report, the EU has taken numerous measures to actively promote respect for IHL through the full range of means at its disposal, from policy decisions to operational activities, and in cooperation with third states as well as regional and international actors. Furthermore, efforts to achieve this aim are implemented at both the internal as well as the international level. Both policy and legal means are used to further this aim. So far, the EU's commitment to IHL appears to be implemented comprehensively. The Report under review highlights the Union's work in the field of IHL, showing how effective measures are put in place to implement the various areas covered by the Guidelines.

*Policy Statement – Children and Armed Conflict*

• Statement – United Nations Security Council: Open Debate on Children and Armed Conflict, New York, 2 August 2019

<[https://eeas.europa.eu/delegations/un-new-york\\_vi/66147/EU%20Statement%20%E2%80%93%20United%20Nations%20Security%20Council:%20Open%20debate%20on%20Children%20and%20Armed%20Conflict](https://eeas.europa.eu/delegations/un-new-york_vi/66147/EU%20Statement%20%E2%80%93%20United%20Nations%20Security%20Council:%20Open%20debate%20on%20Children%20and%20Armed%20Conflict)>

On 2 August 2019, Mr. Gerton van den Akker, *Chargé d'Affaires a.i.* of the Delegation of the EU to the UN, delivered a statement on behalf of the EU and its (at that time) 28 Member States at the Security Council open debate on children and armed conflict.

Furthermore, the Candidate Countries the Republic of North Macedonia, Montenegro, Serbia and Albania, the Stabilisation and Association Process and potential Candidate Country Bosnia and Herzegovina, as well as Ukraine, the Republic of Moldova, and Georgia aligned themselves with this statement.

As a premise, it should be recalled that children in situations of armed conflict are subjected to appalling violations and abuses of their human rights and to violations of IHL. They face an unacceptable risk of being killed, maimed, recruited and used as child soldiers, becoming the victim of sexual violence and abductions, and suffering as the result of attacks on schools and hospitals and the denial of humanitarian access.

Grave violations are also increasing, as the UN Secretary-General's *Annual Reports on Children and Armed Conflict* demonstrate. They evince a significant number of cases of killing and maiming and stress the relationship between these and combat in urban areas.

The EU recalled and welcomed the adoption of UN Security Council Resolution 2475 (2019), which addresses the specific needs of children with disabilities in situation of armed conflict, and of UN Security Council Resolution 2467 (2019), which acknowledges that women and girls are disproportionately affected by sexual violence in armed conflicts, and includes important new commitments on the protection of girls and boys from sexual violence, as well as children born of sexual violence.

Recalling UN Security Council Resolution 1882 (2009), which also designated rape and other forms of sexual violence against children in conflict situation as a grave breach, the EU regretted the high number of cases of this violation.

The Union acknowledged the fact that the UN system is equipped with a range of tools to protect children in conflict and acclaimed the work of UNICEF and other UN child protection staff

working in countries affected by conflict. At the same time it welcomed the signature of new action plans,<sup>33</sup> and the Secretary-General Special Representative for Children and Armed Conflict (SGSR)'s continued efforts to secure further agreements and to introduce commitments on prevention within them. The importance of maintaining a focus on implementation was stressed because the true measure of success is the impact on children in the countries concerned.

In addition, Mr. Gerton van den Akker stressed the importance of child and family-focused mental health and psycho-social support services. Exposure to conflict and violence in childhood or adolescence gravely disrupts the development of children and their communities.

To this aim, the UN Secretary-General's *Annual Report on Children and Armed Conflict* is deemed, also by the EU, as a fundamental tool as it provides verified and impartial information on such violations, collected through the monitoring and reporting mechanism.

The EU also welcomed the Security Council Working Group on Children and Armed Conflict's conclusions on Syria and the clear condemnation of the Syrian regime for its actions, as well as the adoption of conclusions on Myanmar.<sup>34</sup>

The EU Delegation made clear that it was delighted to co-sponsor, jointly with the African Union, the launch event of the *ACT to Protect Children Affected by Conflict* campaign, initiated by the SRSG. Such a campaign will be useful for raising awareness and strengthening efforts to end and prevent the six grave violations against children.<sup>35</sup> As recognised in UN Security Council Resolution 2427 (2018), regional and sub-regional organisations have a vital role to play; so the SRSG's continued engagement with a range of regional bodies was welcomed.

The following part of the statement focused on accountability, which is deemed an essential element of prevention as those responsible for grave violations must be brought to justice.

The EU reiterated its continued support for the ICC, welcoming the recent conviction of Mr. Bosco Ntaganda, who was found guilty of a range of crimes committed in the Democratic Republic of the Congo, including the conscription and enlistment of children and their use in hostilities.<sup>36</sup>

Recalling UN Security Council Resolution 2427 (2018), according to which children formerly recruited by armed groups, including those formerly associated with violent extremist groups, should be treated primarily as victims of violations of international law, the statement stressed that human rights must be fully respected in line with international law, including the Convention on the Rights of the Child (CRC). Nevertheless, it was deemed regrettable (and an issue of grave concern for the EU) that in some areas of the world minors and/or their parents are still prosecuted for alleged association with armed groups without the required due process standards and safeguards.

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<sup>33</sup> For an overview of relevant action plans, see <<https://childrenandarmedconflict.un.org/tag/action-plan/>> accessed 2 July 2020.

<sup>34</sup> Statement – United Nations Security Council: Open Debate on Children and Armed Conflict, New York, 2 August 2019, p. 2.

<sup>35</sup> They are: killing and maiming of children, recruitment and use of children by armed forces or armed groups, attacks on schools or hospitals, rape or other sexual violence against children, abduction of children, denial of humanitarian access to children. For more details, see UNICEF, Children under attack: Six grave violations against children in times of war. *How children have become frontline targets in armed conflicts*, see <<https://www.unicef.org/stories/children-under-attack-six-grave-violations-against-children-times-war>> accessed 30 November 2020.

<sup>36</sup> For the press release, see International Criminal Court, ICC Trial Chamber VI declares Bosco Ntaganda guilty of war crimes and crimes against humanity <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1466>> accessed 2 July 2020.

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

A further bullet point elaborated on the celebration of the 30<sup>th</sup> anniversary of the CRC, which enjoys almost universal ratification. The EU urged all States who have not yet done so to sign and ratify its Optional Protocol on the Involvement of Children in Armed Conflict. It has been ratified by all EU Member States, but a universal ratification would be more than desirable.

The children and armed conflict agenda remains a priority for the EU. In 2003, the EU adopted the *EU Guidelines on Children and Armed Conflict*,<sup>37</sup> which were later updated and supplemented by an implementation strategy. In fact, on 19 June 2008, the EU adopted a revised version of the Guidelines, taking also into account the *Paris principles and guidelines on children associated with armed forces or armed groups* and the *Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups*.<sup>38</sup> They complement the more general *EU Guidelines on the Promotion and Protection of the Rights of the Child*, adopted in December 2007. EU activities pursuant to the Guidelines aim at enhancing respect and implementation of child right standards around the world, with particular attention paid to combatting all forms of violence against children. In the recalled *EU Guidelines on Children and Armed Conflict*, children are recognized as victims with special needs as conflict deprives them of parents, care-givers, basic social services, health care and education. There are some twenty million displaced and refugee children, while others are held hostage, abducted or trafficked. Systems of birth registration and juvenile justice systems collapse and child soldiers may be forced to participate in conflicts.

Children may also have special short and long term post-conflict needs, such as participation in psycho-social rehabilitation, disarmament, demobilization and reintegration programmes to prevent future conflicts: “The impact of armed conflict on future generations may sow the seeds for conflicts to continue or to re-emerge”.<sup>39</sup>

Nowadays, the protection of human rights is a core component of EU Law. The EU seeks to promote and protect human rights, democracy and the rule of law worldwide. The obligation to protect human rights can be found in Article 6 of the Treaty on European Union (TEU), according to which the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, which has the same legal value as the Treaties. In addition, fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and as they result from the constitutional traditions common to the Member States constitute general principles of EU Law.<sup>40</sup>

Consequently, children possess rights under EU law and also under the CRC, its Optional Protocols and other international and regional human rights instruments.

In the *EU Guidelines on Children and Armed Conflict*, recalled in the statement, it is clearly affirmed that the EU is guided by relevant international and regional norms and standards on human

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<sup>37</sup> Text available at <[https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/docs/eu\\_guidelines\\_on\\_children\\_and\\_armed\\_conflict.pdf](https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/docs/eu_guidelines_on_children_and_armed_conflict.pdf)> accessed 2 July 2020.

<sup>38</sup> They are built on the seminal *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa* which were adopted in 1997. Text available at <[https://www.unicef.org/protection/57929\\_58012.html](https://www.unicef.org/protection/57929_58012.html)> accessed 2 July 2020.

<sup>39</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 1.

<sup>40</sup> See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007, 2007/C 306/01 <[https://europa.eu/european-union/law/treaties\\_enA](https://europa.eu/european-union/law/treaties_enA)> accessed 2 July 2020.

rights and humanitarian law including, *inter alia*, the CRC, its Optional Protocol on the Involvement of Children in Armed Conflict, its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the African Charter on the Rights and Welfare of the Child, and the International Labour Organization Convention concerning the Prohibition and Elimination of the Worst Forms of Child Labour. It recalled also the Third Geneva Convention relative to the Treatment of Prisoners of War and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War as well as their Additional Protocols I and II, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Rome Statute of the International Criminal Court, and relevant Security Council Resolutions.

Regular monitoring, reporting and assessments form the basis for the identification of situations where EU action is deemed necessary. Where EU-led crisis management operations are concerned, decision making will take place on a case-by-case basis, bearing in mind the potential mandate for the specific action and the means and capabilities at the disposal of the EU. The resulting reports should address, in particular, violations and abuses against children, recruitment and deployment of children by armed forces and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children as well as the measures taken to combat them by the respective parties. During the planning process of EU military operations, the question of protection of children should be adequately addressed:

In countries where the EU is engaged with crisis management operations, and bearing in mind the mandate of the operation and the means and capabilities at the disposal of the EU, the operational planning should take into account, as appropriate, the specific needs of children, bearing in mind the particular vulnerability of the girl child. In pursuit of the relevant UNSC resolutions, the EU will give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security.<sup>41</sup>

Respect for human rights features among the key objectives of the EU's Common Foreign and Security Policy (CFSP), which includes the CSDP.

The EU took action also by funding projects which provide vital assistance to children in a range of conflict situations and humanitarian contexts, such as those for the inclusion of children of disabilities in Lebanon and about fighting malnutrition in Chad.<sup>42</sup>

The EU is committed to supporting efforts to prevent recruitment and use of children, to secure the release of children recruited or used by an armed force or armed group and to ensure their comprehensive and successful reintegration through long-term interventions that follow a rights-based approach and incorporate a gender perspective. Education plays a crucial role in preventing recruitment and use of child soldiers and in reintegration efforts.

#### *Action Plan on Women, Peace and Security*

• Council of the European Union, *Action Plan on Women, Peace and Security (WPS) 2019-2024*

<sup>41</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 5.

<sup>42</sup> For more information, see <<https://ec.europa.eu/echo/>> accessed 30 November 2020.

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019  
CORRESPONDENTS' REPORTS

<https://data.consilium.europa.eu/doc/document/ST-11031-2019-INIT/en/pdf>

The *EU Action Plan on Women, Peace and Security (WPS) 2019-2024* (EU Action Plan) was adopted on 5 July 2019 as a tool to support the implementation of the EU strategic approach to WPS. This EU Action Plan complements and reinforces the existing *EU Gender Action Plan for 2016-2020*.

In December 2018, the Foreign Affairs Council adopted the first ever *Conclusions on Women, Peace and Security (WPS)* and welcomed, in its annex, the *EU Strategic Approach to WPS* (Strategic Approach).<sup>43</sup>

Following UN Security Council Resolution 1325 (2000) on Women, Peace and Security, the EU had already adopted a comprehensive integration strategy in 2008.<sup>44</sup>

The Strategic Approach, reaffirming the importance of the holistic implementation of the WPS agenda, recognises gender equality and women's empowerment as a prerequisite for dealing with prevention, management and resolution of conflict. The Council also recalled that the responsibility for implementing the WPS agenda lies with the EU Member States as well as with all relevant EU services and institutions.

The EU promotes gender equality, human rights, peace and security within and beyond its borders through its foreign policy as it is reflected in the Global Strategy for the European Union's Foreign and Security Policy.<sup>45</sup>

One of the five priorities of the Global Strategy is the integrated approach to conflicts and crises, according to which the EU will act promptly on prevention of conflict and respond decisively and responsibly to crises and conflicts. Gender mainstreaming and women's empowerment plays a crucial role in all EU external action, including conflict prevention, development assistance, humanitarian aid and conflict resolution.

The need to take action to engage, empower, protect and support women and girls is stressed throughout, with particular emphasis on achieving sustainable and lasting peace and security. This

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<sup>43</sup> The EU Strategic Approach to Women, Peace and Security (WPS) is annexed to the Foreign Affairs Council Conclusions on WPS adopted on 10 December 2018, Council document 15086/18 <https://www.consilium.europa.eu/en/press/press-releases/2018/12/10/women-peace-and-security-council-adopts-conclusions/> accessed 2 July 2020.

<sup>44</sup> Council of the European Union, *Comprehensive Strategy on Integrating UNSCR 1325 and 1820 on Women, Peace and Security* <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015671%202008%20REV%201> accessed 2 July 2020. See also European External Action Service (EEAS), Crisis Management and Planning Directorate (CMPD), *Report on the Baseline Study on Integrating Human Rights and Gender into the European Union's Common Security and Defence Policy*, EEAS(2016) 990 [https://eeas.europa.eu/headquarters/headquarters-homepage\\_it/28969/The%20Report%20of%20the%20Baseline%20Study%20on%20the%20Integration%20of%20Human%20Rights%20and%20Gender%20into%20CSDP](https://eeas.europa.eu/headquarters/headquarters-homepage_it/28969/The%20Report%20of%20the%20Baseline%20Study%20on%20the%20Integration%20of%20Human%20Rights%20and%20Gender%20into%20CSDP) accessed 2 July 2020; Louise Olsson and Karin Sundström, *European Union's Gender Policy for CSDP Missions: Contents and Gaps: An assessment of existing policy on 'Women, peace and security' with examples from EUPOL COPPS, EUMM Georgia, EULEX Kosovo and EUPOL RD Congo*, 2012, Folke Bernadotte Academy, Stockholm.

<sup>45</sup> A Global Strategy for the European Union's Foreign and Security Policy, Council document 10715/16 [https://eeas.europa.eu/topics/eu-global-strategy/17304/global-strategy-european-unions-foreign-and-security-policy\\_en](https://eeas.europa.eu/topics/eu-global-strategy/17304/global-strategy-european-unions-foreign-and-security-policy_en) accessed 2 July 2020.

is also part of the overall EU commitment to implement the *Agenda 2030 for Sustainable Development* and its Sustainable Development Goals across all EU policies.<sup>46</sup>

Based on the Strategic Approach and aimed at implementing it, the EU Action Plan identifies some objectives, as already defined in UN Security Council Resolution 1325 (2000), under the so-called pillars of prevention, protection, relief and recovery as well as the three overarching and cross-cutting principles of participation, gender mainstreaming and 'leading by example'. All these objectives are interlinked and mutually reinforcing.

Following the same structure of UN Security Council Resolution 1325 (2000), participation is mentioned as fundamental on the one side to increase women's leadership and participation in all areas related to peace and security within EU services and institutions and in the EU Member States (internal participation). On the other side participation shall also help to increase women's leadership and participation worldwide in all policy-making decisions and processes in all areas related to peace and security, including, *inter alia*, conflict prevention, conflict resolution, mediation, post-conflict rehabilitation, rule of law, disarmament, demobilisation and reintegration, security sector reform and peace building in both formal and informal decision-making and priority settings (external participation).

Gender mainstreaming plays a key role. A gender perspective, based on gender analysis, is integrated into the implementation of all objectives of this Action Plan.

'Leading by example' equally helps to further enhance the EU's political commitments and actions regarding the implementation of the WPS Agenda at local, national, regional and international levels.

In relation to armed conflicts, prevention is regarded to be of outmost importance. The EU plays an active role globally, regionally, nationally and locally in conflict prevention and in prevention, monitoring and reporting of conflict-related human rights' violations against women and girls and in the promotion of zero-tolerance and full accountability policies to help end impunity and bring perpetrators of such crimes to justice.

The EU supports legislative and institutional reforms as well as transitional justice processes that fully integrate the principle of non-discrimination and comply with international human rights standards.

Protection is decisive too during any armed conflict, when especially women and girls may be victims of conflict-related sexual offences. In this regard, the EU actively promotes the protection and safeguarding of women's and girls' rights as well as the increase in women's and girls' access to justice at local, national, regional and international levels through special emphasis on restorative justice and the rights of survivors and victims. It supports all efforts for the establishment or activation of institutional mechanisms to protect women and girls, as well as men and boys, in fragile environments and or conflict-affected contexts against all forms of sexual and gender-based violence.<sup>47</sup>

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<sup>47</sup> See also UN, *Report of the Secretary-General on Conflict-Related Sexual Violence* (S/2018/250), at <<https://www.un.org/sexualviolenceinconflict/wp-content/uploads/reports/sg-reports/SG-REPORT-2017-CRSV-SPREAD.pdf>> (last visited 2 July 2020).

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 22, 2019**  
**CORRESPONDENTS' REPORTS**

This is also in line with guidance by the UN Secretary-General in this regard,<sup>48</sup> who stressed that sexual exploitation and abuse by peace-keeping forces undermines the implementation of peacekeeping mandates, as well as the credibility of UN peacekeeping. A UN zero tolerance policy on all forms of sexual exploitation and abuse is affirmed too.<sup>49</sup>

With specific regard to post-conflict situations, the EU provides relief and recovery in conflict and post-conflict situations for women and girls.<sup>50</sup>

In the Action Plan accountability and reporting are deemed crucial too. The Action Plan implementation undergoes mid-term and final reporting reviews to ensure proper adherence to the accountability and reporting mechanisms. The final results of the mid-term and final reviews are presented to the High Representative/Vice-President of the Commission and the Council. Efforts are made to coordinate EU reporting on WPS with the EU Member States, other international and regional partner organisations, such as the UN, NATO, Council of Europe, African Union and OSCE. The inclusive participation of EU citizens, civil society and academia is welcomed too in order to ensure broad ownership and inclusion throughout the process and a more effective implementation of the Action Plan.

Within the EU framework, gender mainstreaming has a strong legal basis. It is not only a matter of policy but it is also a matter of implementation of legal obligations.

The TEU includes an obligation to protect human rights (Article 6). The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, which has the same legal value as the Treaties<sup>51</sup> Additionally, Article 23 of the TEU represents the basis for promoting the EU values and principles in the CFSP, which includes the CSDP, in whose framework EU military operations are conducted.

Thus, there is a connection between the human rights and gender equality provisions in EU law that are applicable within the EU and the basis to promote them in the EU's external action.

Furthermore, over the years, the EU has adopted important reference documents<sup>52</sup> on the promotion and protection of human rights and gender mainstreaming and developed a range of diplomatic and cooperation tools to support the worldwide advancement of human rights. Such an important issue represents a core value of the EU and is implemented in all external actions of the EU.

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<sup>48</sup> United Nations, Security Council *Resolution 2272 (2016)*, adopted on 11<sup>th</sup> March 2016, S/RES/2272/2016 at <[https://undocs.org/S/RES/2272\(2016\)](https://undocs.org/S/RES/2272(2016))> (last visited 2 July 2020).

<sup>49</sup> See UN, *Report of the Secretary-General on Conflict-Related Sexual Violence* (S/2018/250), above note 47.

<sup>50</sup> See Council of the European Union, *EU Action Plan on Women, Peace and Security (WPS) 2019-2024*, 5 July 2019 <<https://data.consilium.europa.eu/doc/document/ST-11031-2019-INIT/en/pdf>> (last visited 15 December 2020) at p. 16.

<sup>51</sup> In addition, fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and as they result from the traditions common to the Member States constitute general principles of EU Law.

<sup>52</sup> See European External Action Service (EEAS), Crisis Management and Planning Directorate (CMPD), *Report on the Baseline Study on Integrating Human Rights and Gender into the European Union's Common Security and Defence Policy*, EEAS(2016) 990, Working Paper of the European External Action Service of 11.10.2016 <[https://eeas.europa.eu/sites/eeas/files/baseline\\_study\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/baseline_study_report.pdf)> (last visited 15 December 2020).

Furthermore, the EU is partnering with other international organisations, such as NATO, the UN and OSCE in the *Regional Acceleration of Resolution (RAR) 1325 (2000) Initiative*, which is aimed at implementing such resolution at a regional level.<sup>53</sup>

In sum, the EU is strongly committed to the issue of gender in relation to military operations and the related topic of women and armed conflicts.

### *Artificial Intelligence and Autonomous Lethal Weapons*

• European Commission, High-Level Expert Group on Artificial Intelligence, *Ethics Guidelines for Trustworthy AI*

<<https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>>

The use of Artificial Intelligence (AI) in relation to armed conflicts for military purposes is an increasing phenomenon.<sup>54</sup> The topic has been taken into consideration by the EU in the document *Ethics Guidelines for Trustworthy AI* (AI Guidelines), produced by the High-Level Expert Group on Artificial Intelligence (AI HLEG). AI HLEG is an independent expert group that was set up by the European Commission in June 2018 with the aim to produce guidelines to promote trustworthy AI, i.e. lawful, ethical and robust.

Such guidelines are relevant also in relation to lethal autonomous weapons (LAWS) based on AI systems, where the importance of the human component may be crucial to assess the lawfulness of their use under IHL.

According to the definition given by AI HLEG:

Artificial intelligence (AI) systems are software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behaviour by analysing how the environment is affected by their previous actions.

As a scientific discipline, AI includes several approaches and techniques, such as machine learning (of which deep learning and reinforcement learning are specific examples), machine reasoning (which includes planning, scheduling, knowledge representation and reasoning, search, and optimization), and robotics (which includes control, perception, sensors and actuators, as well as the integration of all other techniques into cyber-physical systems).<sup>55</sup>

The AI Guidelines are not a legally binding instrument, but, read together with other documents produced by EU institutions, may be useful to provide guidance on the position of the Union as regards LAWS.

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<sup>53</sup> See <[https://www.nato.int/cps/en/natohq/topics\\_91091.htm](https://www.nato.int/cps/en/natohq/topics_91091.htm)> (last visited 3 July 2020).

<sup>54</sup> See Cummings M. L., “*Artificial Intelligence and the Future of Warfare*”, Chatham House, 2017, at <<https://www.chathamhouse.org/sites/default/files/publications/research/2017-01-26-artificial-intelligence-future-warfare-cummings-final.pdf>> (last visited 3 July 2020).

<sup>55</sup> See *Ethics Guidelines for Trustworthy AI*, p. 38.

According to the AI Guidelines, trustworthy AI should be lawful, ethical and robust. Each of these three components should be met throughout the system's entire life cycle. In the experts' view, 'lawful' means that it should comply with all applicable laws and regulations; 'ethical' means that it should adhere to ethical principles and values; 'robust' refers to its reliability, both from a technical and social perspective since AI systems can cause unintentional harm. No component in itself is sufficient but all of them must be met at all times.

Recognising the positive impact that AI systems already have and will continue having, both commercially and societally, it is pointed out that there is a need to properly and proportionately handle the risks and other adverse impacts with which these technologies are associated.<sup>56</sup>

AI is described as a "technology that is both transformative and disruptive",<sup>57</sup> facilitated by the availability of enormous amounts of digital data and significant scientific and engineering innovation in AI methods and tools

and is apt to impact society and citizens in unpredictable ways. Building AI systems that are trustworthy implies the inclusion of processes and people behind the technology. Therefore, in Chapter I of the AI Guidelines, the fundamental rights and a corresponding set of ethical principles that are crucial in an AI-context are mentioned.

Chapter II contains a list of seven key requirements that AI systems should meet in order to be trustworthy. The requirements consist of human agency and oversight, technical robustness and safety, privacy and data governance, transparency, diversity/non-discrimination and fairness, environmental and societal well-being and accountability.

Finally, in Chapter III, a trustworthy AI assessment list is provided to operationalise these seven requirements.

For instance, it is suggested to adopt a trustworthy AI assessment list when developing, deploying or using AI systems, and adapt it to the specific use and situation in which the system is being applied. The AI Guidelines stress that they are a living instrument and, therefore, recommend to continuously identify and implement requirements, evaluate solutions, ensure improved outcomes throughout the AI system's lifecycle and involve stakeholders. They are to be reviewed and updated over time to ensure their continuous relevance as technology, social environments and knowledge evolve.

Last, but not least, the importance to take into account the natural environment and other living beings that are part of the human ecosystem as well as to adopt a sustainable approach enabling the flourishing of future generations to come is mentioned.<sup>58</sup>

This document has the ambition to enable a discussion about 'trustworthy AI for Europe' and also aims to foster research, reflection and discussion on an ethical framework for AI systems at a global level.

In so far as LAWS are concerned, several research projects on the application of AI to weapons are ongoing, ranging from missiles capable of selective targeting to machine-learning systems with cognitive skills to decide whom, when and where to fight without human intervention. "This raises fundamental ethical concerns, such as the fact that it could lead to an uncontrollable arms race on a

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<sup>56</sup> See *ibid.*, p. 2.

<sup>57</sup> See *ibid.*, p. 37.

<sup>58</sup> See *ibid.*, p. 39.

historically unprecedented level, and create military contexts in which human control is almost entirely relinquished and the risks of malfunction are not addressed.”<sup>59</sup> Core issues to address are the ethical and legal questions of human control, oversight, accountability and implementation of international human rights law, IHL and military strategies.

The EP passed a resolution on 12 September 2018<sup>60</sup> in which it demanded, by a large majority, a ban on weapons that were not subject to human control during their employment. Such resolution has no legally binding effect and the Member States can decide independently about a Common Position. The High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, also confirmed the need for common principles for the use of LAWS,<sup>61</sup> stressing that the operation must be carried out in accordance with the rules of IHL, and decisions on the use of lethal force should always be taken by human beings and not by machines.

In March 2019, during the final round of inter-institutional negotiations on the regulation establishing the European Defence Fund, talks between the EP, the Council, and the European Commission led to language that excludes “[a]ctions for the development of lethal autonomous weapons without the possibility for meaningful human control over the selection and engagement decisions when carrying out strikes against humans”.<sup>62</sup>

According to this language, LAWS are non-eligible for funding,<sup>63</sup> which corresponds with the EP’s call for banning such technology.

The Guidelines are subject of an ongoing debate. One of their most relevant features is the human-centric approach to AI. It strives to ensure that

human values are central to the way in which AI systems are developed, deployed, used and monitored, by ensuring respect for fundamental rights, including those set out in the Treaties of the European Union and Charter of Fundamental Rights of the European Union, all of which are united by reference to a common foundation rooted in respect for human dignity, in which the human being enjoy a unique and inalienable moral status.<sup>64</sup>

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<sup>59</sup> See *ibid.*, p. 34.

<sup>60</sup> See European Parliament, *European Parliament Resolution of 12 September 2018 on Autonomous Weapon Systems*, 2018/2752 (RSP) <[https://www.europarl.europa.eu/doceo/document/TA-8-2018-0341\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0341_EN.html)> accessed 2 July 2020.

<sup>61</sup> See European External Action Service, *Autonomous Weapons Must Remain under Human Control, Mogherini Says at European Parliament* <[https://eeas.europa.eu/headquarters/headquarters-homepage\\_tg/50465/Autonomous%20weapons%20must%20remain%20under%20human%20control,%20Mogherini%20says%20at%20European%20Parliament](https://eeas.europa.eu/headquarters/headquarters-homepage_tg/50465/Autonomous%20weapons%20must%20remain%20under%20human%20control,%20Mogherini%20says%20at%20European%20Parliament)> accessed 2 July 2020.

<sup>62</sup> On the European Defence Fund, see <[https://ec.europa.eu/commission/news/european-defence-fund-2019-mar-19\\_en](https://ec.europa.eu/commission/news/european-defence-fund-2019-mar-19_en)> accessed 2 July 2020. See also Anja Dahlmann and Marcel Dickow, *Preventive Regulation of Autonomous Weapon Systems Need for Action by Germany at Various Levels*, SWP Research Paper 2019/RP 03 <[https://www.swp-berlin.org/fileadmin/contents/products/research\\_papers/2019RP03\\_dnn\\_dkw.pdf](https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2019RP03_dnn_dkw.pdf)> accessed 2 July 2020.

<sup>63</sup> See <<https://www.stopkillerrobots.org/2019/02/no-killer-robots-for-european-defence-fund/>> accessed 2 July 2020.

<sup>64</sup> See *Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, above n. 3, p. 39.