



**Doc. 14303**  
26 April 2017

## Technological convergence, artificial intelligence and human rights

### Committee Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Boriss CILEVIČS, Latvia, Socialist Group

### A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Culture, Science, Education and Media, Mr Jean-Yves Le Déaut (France, SOC), on his report, and supports by and large the proposed recommendation.
2. The committee proposes some amendments aimed at highlighting certain legal aspects of the recommendation. There is no doubt that, given the complexity and the rapidly evolving nature of emerging technologies, many more legal and human rights aspects ought to be thoroughly considered. The Parliamentary Assembly should continue looking into this issue in the not too distant future.
3. Furthermore, as rightly pointed out in the draft recommendation tabled by the Committee on Culture, Science, Education and Media, the committee underlines the pressing need for the Committee of Ministers to conclude its work on the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) by adopting the revised convention as soon as possible.

### B. Proposed amendments

#### *Amendment A (to the draft recommendation)*

After paragraph 3, insert the following paragraph:

*“The Assembly recalls the principle enshrined in Article 2 of the Convention on Human Rights and Biomedicine (ETS No. 164, ‘Oviedo Convention’) which affirms the primacy of the human being by stating that ‘the interests and welfare of the human being shall prevail over the sole interest of society or science’.”*

#### *Amendment B (to the draft recommendation)*

In paragraph 6.1, after the word “finalise”, insert the words “without further delay”.

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1. Reference to committee: [Doc. 13833](#), Reference 4145 of 28 September 2015. Reporting committee: Committee on Culture, Science, Education and Media. See [Doc. 14288](#). Opinion approved by the committee on 25 April 2017.



*Amendment C (to the draft recommendation)*

Before paragraph 8.1.1, insert the following paragraph:

*“the fact that responsibility and accountability lies with the human being, no matter the circumstances. References to ‘independent’ decision making by artificial intelligence systems cannot exempt the creators, owners and managers of these systems from accountability for human rights violations committed with the use of these systems, even in cases where the action that caused the damage was not directly ordered by a responsible human commander or operator;”*

*Amendment D (to the draft recommendation)*

After paragraph 8, insert the following paragraph:

*“The Assembly reiterates its call made in Resolution 2051 (2015) “Drones and targeted killings: the need to uphold human rights and international law” on all member States and observer States, as well as States whose parliaments have observer status with the Assembly, to refrain from any automated (robotic) procedures for selecting individuals for targeted killings or any sort of injury based on communication patterns or other data collected through mass surveillance techniques. This should be true not only for drones but also for other combat equipment with artificial intelligence systems, as well as other equipment and/or software which might potentially inflict damage on people, property, personal data or information databases, or interfere with privacy, freedom of expression, or the right to equality and non-discrimination.”*

### **C. Explanatory memorandum by Mr Boriss Cilevičs, rapporteur for opinion**

1. I would like to congratulate Mr Le Déaut on his report, which rightly highlights the challenges posed to human rights by the emerging technologies.
2. Let me stress from the outset that it is not easy to provide a legal point of view on the questions raised in the report. In fact, we lack the expertise to do so, since very little, if any, such expertise is available at present. What is described in the report may sound like science fiction. The technological (r)evolutions are of such a scale that they are overwhelming. Nevertheless, they are very real and it is of utmost importance that we seriously consider their possible consequences on human rights.
3. The peculiar feature of the “genuine” artificial intelligence systems that makes them different from “common” software is their ability to produce results not directly envisaged by instructions set by the programmer. This is done through “independent” accumulation, processing and taking account of new data. Therefore, artificial intelligence systems, in some sense, possess the ability to learn and take decisions on their own.
4. The subject matter is far too vast and complex to be adequately dealt with from a legal perspective in an opinion. I will therefore limit myself to a few comments. I suggest that we continue working on this issue more in depth in a future report.

#### **1. Accountability issues**

5. From the legal point of view, this report raises the issue of the subjectivity of the artificial intelligence system. The issue comprises two aspects. First, may it be considered an independent right-holder? This issue has been broadly discussed in science fiction, and so far remains an exclusive competence of the latter. However, another aspect, that of accountability, has already become topical in real life. Who bears the responsibility for damage inflicted by the artificial intelligence system, including violations of human rights?
6. The Parliamentary Assembly has already partly explored this issue. In particular, in its [Resolution 2051 \(2015\)](#) “Drones and targeted killings: the need to uphold human rights and international law”, the Assembly called on all member and observer States, as well as States whose parliaments have observer status with the Assembly, to refrain from “any automated (robotic) procedures for targeting individuals based on communication patterns or other data collected through mass surveillance techniques”.
7. In its recent resolution on Civil Law Rules on Robotics,<sup>2</sup> the European Parliament stresses that draft legislation is urgently needed to clarify liability issues, especially for self-driving cars. In this resolution, the European Parliament rightly states that, in such a context, “the legal responsibility arising from a robot’s

harmful action becomes a crucial issue". The European Parliament goes as far as asking the European Commission to "consider creating a specific legal status for robots in the long run, in order to establish who is liable if they cause damage".

8. In my view, however, it should be clear that accountability lies with the human person, no matter the circumstances. In any case, references to "independent" decision making by artificial intelligence systems cannot exempt the creators, owners and managers of these systems from accountability for human rights violations committed with the use of these systems, even in cases where the action that caused the damage was not directly ordered by a responsible human commander or operator.

## 2. Relevant Council of Europe instruments

9. Two Council of Europe conventions are of direct relevance to the issues at stake.

– *The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine – "Convention on Human Rights and Biomedicine" or "Oviedo Convention" (ETS No. 164 )*

10. The Oviedo Convention protects human rights in the biomedical field. It is a framework convention aimed at protecting the dignity and identity of all human beings and guaranteeing everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.

11. Very importantly, the Oviedo Convention affirms the primacy of the human being. Article 2 of the Oviedo Convention reads as follows: "The interests and welfare of the human being shall prevail over the sole interest of society or science." This is especially relevant in the field of care robots. As pointed out in Mr Le Déaut's report, this raises the question of the right to choose between human contact and assistance by a robot. Ultimately, if human contact were to be totally replaced – with the effect of potentially leading to complete deprivation of human contact – Article 3 of the European Convention on Human Rights (ETS No. 5) might be at stake.

– *The Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)*

12. Convention No. 108, opened for signature on 28 January 1981, was the first – and is today still the only – legally binding international instrument in the data protection field. Under this convention, the parties are required to take the necessary steps in their domestic legislation to apply the principles laid down in order to ensure respect in their territory for the fundamental human rights of all individuals with regard to the processing of personal data. Obviously there have been tremendous evolutions since 1981 in the field of new information and communication technologies, especially when it comes to the automatic processing of data. These evolutions bring new challenges for privacy.

13. Modernisation has therefore become necessary in order for Convention No. 108 to reflect new realities and to continue to provide adequate protection in the light of evolving and emerging technologies. In 2010, it was decided to undertake such a modernisation of the convention. The aim is to better address the challenges resulting from the use of new information and communication technologies, but also to strengthen the implementation of Convention No. 108.

14. The relevant intergovernmental committee (ad hoc committee on data protection – CAHDATA) finalised its work in June 2016. At that time, the Secretary General of the Council of Europe expressed the hope that the work would be concluded at the level of the Committee of Ministers by the end of 2016.<sup>3</sup> However, to date, the revised treaty has still not been adopted.

15. The Assembly should therefore strongly urge the Committee of Ministers to conclude its work on the modernisation of Convention No. 108 and to adopt the revised treaty without delay.

## 3. Amendments

**Amendment A** is self-explanatory.

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2. [European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics \(2015/2103\(INL\)\)](#); see also the [press release](#).

3. [www.coe.int/en/web/secretary-general/-/convention-108-from-a-european-reality-to-a-global-treaty-](http://www.coe.int/en/web/secretary-general/-/convention-108-from-a-european-reality-to-a-global-treaty-)

**Amendment B** is self-explanatory.

**Amendment C**

*Explanatory Note:*

This amendment aims at clearly stating that accountability, under any circumstances, lies with the human being.

**Amendment D**

*Explanatory Note:*

This amendment aims at reiterating the call made in Assembly [Resolution 2051 \(2015\)](#), as mentioned above, while widening this call by not only addressing drones (which were the specific topic of the 2015 report) but also other artificial intelligence systems which might potentially inflict damage and breach human rights.