



Possible recommendations in relation to the clarification, consideration and development of aspects of the normative and operational framework on emerging technologies in the area of lethal autonomous weapons systems

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Preamble

The recommendations submitted by the Netherlands below serve to provide an overview of the possible consensus recommendations in relation to the clarification, consideration and development of aspects of the normative and operational framework on emerging technologies in the area of lethal autonomous weapons systems (LAWS). The recommendations are not exhaustive and the paper should be regarded as a working document, intended to contribute to the debate within the GGE LAWS, as our interpretation may further develop as and the debate regarding LAWS progresses, throughout the GGE LAWS in 2021. The recommendations have been categorised under: 1) application of international humanitarian law; 2) human responsibility; 3) human-machine interaction; and 4) weapons reviews.

Proposals by the Netherlands¹

A. Application of international humanitarian law

- The High Contracting Parties, at their Sixth Review Conference, confirm that international humanitarian law continues to apply fully to all weapons systems, including the study, development, acquisition or adoption and use of emerging technologies in the area of lethal autonomous weapons systems.
- The normative framework that applies to LAWS incorporates not only the entire body of international humanitarian law (IHL) but also includes other relevant areas of international law, including international human rights law.
- The High Contracting Parties, at their Sixth Review Conference, confirm that Meaningful Human Control throughout the entire lifecycle of a lethal autonomous weapon system, including the various stages of the targeting cycle, is necessary to ensure compliance with international law.

B. Human responsibility

- The High Contracting Parties, at their Sixth Review Conference, confirm that accountability in connection with the development, deployment and decision-making concerning the use of LAWS must be retained by humans and cannot be transferred to machines.

¹ The proposals by the Netherlands are largely based on the commentary of the Netherlands to the Guiding Principles adopted by the CCW GGE submitted in 2020.

- The High Contracting Parties, at their Sixth Review Conference, confirm that human-machine interaction and meaningful human control are vital to ensure humans remain accountable for decisions about the use of force and to ensure compliance with IHL.
- The High Contracting Parties, at their Sixth Review Conference, confirm that the decision to deploy the weapon system, taken in the framework of the targeting process, remains with humans. The targeting process guides decisions about the selection and engagement of targets.

C. Human-machine interaction

- The High Contracting Parties, at their Sixth Review Conference, confirm that the design and use of LAWS should allow commanders and operators to exercise of Meaningful Human Control and judgement over the use of force in order to comply with IHL.
- The High Contracting Parties, at their Sixth Review Conference, confirm that a lethal autonomous weapons system may only be deployed under Meaningful Human Control, whereby humans make informed, conscious choices regarding the use of weapons, on the basis of their assessment of the information from all sources which is available to them at the relevant time.
- The High Contracting Parties, at their Sixth Review Conference, confirm that Meaningful Human Control is operationalized at various command levels and by means of a wide variety of tasks, procedures and decisions. The necessary type and degree of control is context-specific and may vary according to the specific environment in which the weapon is deployed as well as the type of weapon system itself.
- In guaranteeing Meaningful Human Control, the High Contract Parties confirm that the following elements are necessary:
 - a) Humans make informed, conscious decisions about the use of weapons;
 - b) Humans have sufficient information to ensure that force is used in accordance with the requirements of international law, given what they know about the target, the weapon, and the context in which the weapon is deployed;
 - c) The weapon is designed and tested in a realistic operational environment, and humans are properly trained, to ensure that the weapon is deployed in a judicious manner.
- The High Contracting Parties, at their Sixth Review Conference, acknowledge that the introduction of a weapon with autonomous functions under Meaningful Human Control does not negate the human element throughout the targeting process or other processes as it only modifies the way in which humans, occupying different roles, together exercise sufficient levels of human control.

D. Weapon reviews

- High Contracting Parties, at their Sixth Review Conference, confirm that in the study, development, acquisition, or adoption of a new weapon, means or method of warfare, States are under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by international law;
- High Contracting Parties shall conduct legal weapons reviews to ensure they fulfil their existing legal obligations;
- Armed forces must implement this determination by adopting a legal review process for all new weapons, means and methods of warfare as well as for all modifications to existing weapons, means and methods of warfare;
- Legal reviews, such as those in accordance with Article 36 of Additional Protocol I to the Geneva Conventions (API), provide a suitable framework to determine whether a new weapons system, means or method of warfare can be used in compliance with international law;
- The High Contracting Parties, at their Sixth Review Conference, recommend that the High Contracting Parties share information regarding the modus operandi and underlying principles of legal weapons reviews, including national Article 36 API procedures;