

Kingdom of the Netherlands

Submission in accordance with resolution 78/241 on autonomous weapons systems

The Kingdom of the Netherlands welcomes the opportunity to submit its views, in accordance with resolution 78/241, on ways to address the challenges and concerns that autonomous weapons systems (AWS) raise.

In June 2022, the Minister of Foreign Affairs and the Minister of Defence presented a letter to the House of Representatives with the government's response to an advisory report by the Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law about autonomous weapons systems.¹ This response constitutes the basis for the government's policy position on autonomous weapons systems. The Netherlands Ministry of Defence is currently drafting additional internal policies on this theme.

In the interests of national and international security, the Netherlands continues to closely monitor the rapid developments in the field of AWS and the use of artificial intelligence (AI) in the military domain and will continue to promote responsible design, development and use of AWS at the national and international level. The Netherlands emphasizes the importance of further specifying existing legal frameworks. The starting point is that AWS must be designed, developed and used in accordance with international law and that a certain level of human judgment and control must be retained throughout different stages of the weapons system's life-cycle to ensure compliance. AWS that cannot be designed, developed or used in accordance with international law, in particular international humanitarian law (IHL), must be explicitly prohibited through a legally binding instrument, preferably by adding a new protocol to the Convention on Certain Conventional Weapons (CCW). Other types of AWS require further regulation.

After the publication of the renewed policy position in 2022, the Netherlands continuously presented its policy position and engaged actively and constructively during discussions on AWS in various international fora. The main international forum to discuss the regulation of AWS remains the Group of Governmental Experts on Lethal Autonomous Weapons systems (GGE LAWS), established under the CCW. The Netherlands is committed to make progress within the CCW framework because all relevant actors in the field of AWS are represented and recent years have shown that progress is possible despite the at times challenging dynamics within the GGE LAWS.

Since 2022 The Netherlands has also taken steps to further develop its national policy position. Below are some key issues taken from the national

¹ For the report, see [38. AWS: the importance of regulation and investment | Advisory report | Advisory Committee on Public International Law \(advisorycommitteeinternationallaw.nl\)](#)

policy position and further considerations that may be considered to address the challenges and concerns that AWS raise.

Characterisation

The Netherlands recognizes the need for a general characterization of AWS to effectively regulate the design, development and use of these systems. At present, there is no international consensus on a definition or characterization of an 'autonomous weapons system'. A general characterization would provide a necessary delineation of the topic without prejudging whether or not an AWS can be used in line with international law. A more detailed definition of certain systems can be further specified when formulating prohibitions of certain types of AWS.

On a national level, the Netherlands uses the following general characterization of an AWS: "a weapons systems that is able to, after being activated, select and apply force against a target without further human intervention." If there is a need for human input after activation of the weapons systems in order for this system to select and apply force against a target, but this human input is merely nominal, this weapons system is still considered to be an AWS.

Within this broad category of AWS, the Netherlands differentiates between AWS with the ability to change the task, assignment or goal, including applicable rules of engagement, that was delegated to the system, without human approval, and AWS without this ability. The first subcategory constitutes of weapons systems that are inherently unpredictable and would operate outside of a responsible chain of command. Such systems could potentially be subject to a future prohibition.

Application of IHL

Existing rules and principles of international law, in particular IHL, continue to apply to the design, development and use of AWS. Due to their autonomous features, these systems can pose specific challenges in the application of IHL rules and principles, for instance because of the lower level of human judgement and control with regard to the use of force. Therefore, it is necessary to specify these existing international norms. With regard to the design, development and use of AWS, specifying how IHL rules and principles apply, in particular those of distinction, precautions and proportionality, is of particular interest. To comply with these rules and principles, it is important to ensure a certain level of human judgement and control with regard to the design, development and use of AWS. The necessary level of human judgement and control depends on different factors such as the context of use and weapons systems parameters. Specifying existing norms should help States comply with their obligations.

With regard to AWS that cannot be designed, developed or used in accordance with IHL, an explicit prohibition should be adopted. In order for this prohibition to be effective, and to ensure effective implementation and enforcement, a new international legally binding instrument, such as a new protocol to the CCW, should clearly delineate the types of AWS to which this prohibition applies. Different categories could include:

- AWS that are designed to apply force against civilians or civilian objects;

- AWS that are inherently indiscriminate or cause superfluous injury or unnecessary suffering;
- AWS that are designed in such a way that a human cannot reasonably predict and control the effects that the use of the system brings about in the circumstances of their use.
 - This category could include, inter alia, AWS designed with the ability to change the task, assignment or goal, including applicable rules of engagement, that was delegated to the system, without human approval.

To ensure that an AWS is designed, developed and used in accordance with international law, in particular IHL, different types of measures should be put in place. These measures regulate the necessary level of human judgement and control for AWS to comply with international law, in particular the IHL obligations of distinction, precautions and proportionality. There is, however, no one-size-fits-all set of measures. Which measures must be taken depends, inter alia, on the characteristics of the AWS, characteristics of the operational environment in which the AWS is used, and characteristics of the user of the AWS.² Measures to ensure the necessary level of human judgment and control could include:

- Imposing (a) limits on the types and number of targets the AWS can engage and (b) temporal and spatial limits;
- Maintaining situational awareness by humans over the geographical area in which an AWS is deployed;
- Creating an intuitive interface through which the human-machine interaction takes place;
- Installing extensive procedures to ensure AWS are tested, evaluated, validated and verified (TEVV);
- Carry out extensive legal reviews of the AWS;
- Ensure appropriate training for all humans that interact with the weapons system.

States should discuss further which measures must be put in place to retain the necessary level of human judgment and control in order to comply with international law, in particular IHL.

Responsibility

The Netherlands underlines the importance of allocating responsibility in a clear manner when it comes to the design, development and use of AWS. In the context of state responsibility, States can be held responsible on the basis of international law for unlawful actions of weapons systems with autonomous features that they use. Where appropriate, individuals or legal entities that have played a role in the life cycle of an autonomous weapons system may be subject to civil liability in accordance with national law, or to criminal prosecution. The responsibility for prosecuting possible international crimes falls primarily to the national legal system, with prosecution by the International Criminal Court acting as a backstop.

International Human Rights Law

² SIPRI & ICRC, 2020, Operationalizing Human Control, p. 26.

The Netherlands underlines that the protection offered by the legal regime of international human rights law does generally not cease in case of armed conflict. In the GGE LAWS, the Netherlands consistently highlighted the importance of human rights as a relevant legal regime for the design, development and use of AWS. The Netherlands notes that the legal regime of human rights imposes stricter requirements on the use of force for law enforcement purposes than the legal regime of international humanitarian law does for combat operations. Although the applicability of international human rights law to the design, development and use of AWS and the use of artificial intelligence in the military domain has so far not been addressed in detail during the discussions in the GGE LAWS, the Netherlands recognizes the importance of addressing this topic in relevant international fora.

Other measures

The use of AWS brings certain risks, such as humanitarian, ethical and security risks. Although the current effort to discuss the regulation of AWS at an international level should primarily focus on the application of international law, in particular IHL, it remains important to clearly identify risks and potential risk mitigation measures.

Broader discussion on AI in the military domain

The Netherlands welcomes the different international initiatives with regard to the governance of the application of AI in the military domain. Since AI is an important enabler of autonomous functions in weapons systems, there are clear parallels between this broader discussion on AI in the military domain and the discussion about the (international) regulation of AWS. The Netherlands regards the international discussions on both topics as complementary and mutually beneficial.

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