

2019 GGE on LAWS

Possible options for addressing LAWS – Agenda Item 5 (e)

“Mr. Chair,

As our work progress, we reach the most sensitive and consequential point of our deliberations, namely, how to tap on the ammount of information and reflection we have gathered in order to address the grave concerns which have warranted the creation of this group?

There are several areas or convergence which have become increasingly evident in the recent discussions, particularly since the first GGE was established: (i) the centrality of the human element for considering and addressing autonomy; (ii) the need for all weapons systems, including those with autonomous features, to fully comply with international law in general and international humanitarian law in particular, including the Martens Clause; (iii) law is addressed only to humans or States, and the relevant legal obligations under international humanitarian law (IHL) – notably the rules of distinction, proportionality and precautions in attack – rest with those who plan, decide on, and carry out attacks and the States they serve; and (iv) weapons systems with autonomous features can only be lawfully employed if they are under a sufficient degree of human control, understood as translating the human judgement and assessment of the legal implications of any attack into the actual operations.

Like streams flowing towards each other to form a river, the emerging consensus on these issues point towards one inescapable conclusion, that human control, broadly understood, must be ensured over all weapons systems.

We are therefore left to ponder how to act on this conclusion, which is in fact an imperative. In the context of the objectives and purposes of the CCW, the most logic and straightforward answer is to translate that need into a legal obligation, in the form of a protocol, to be negotiated by the State Parties and adhered to insofar as the results of negotiations reflect the concerns and do not impinge upon the supreme interests of each sovereign State.

Under a rules based international order, there are really no disadvantages in establishing a legal instrument as it would establish the most meaningful form of regulation, negotiated on the basis of consensus, and freely adhered to by States. Certainly, its breadth, impact and general usefulness would depend on its content and how obligations are articulated and compliance assessed, but as everything in life, nothing is done until it is done. It is Brazil understanding that we have enough clarity to proceed to actual negotiations, where the scope of the instrument and regulatory details would be determined. As the rule of consensus safeguards all State Parties' interests, negotiations would certainly be thorough as well as difficult, and possibly long, but the end result would have to be satisfactory to all, which only later on would decide to be bound by it, or not. There is no basis, therefore, to arguments that a legally binding instrument would be deleterious to any State's interests, as each Party is doubly insured against entering into any grievous commitment.

But then again, we must ask ourselves, candidly: do we want a rules based international order. Or have we moved past that and now might makes right.

Lesser commitments or guidelines, as long as they are articulated in a similar vein, could be useful as stepping stones, but are neither necessary for preparing future negotiations nor the straightest road to them. Given the gravity of the issue at hand, such voluntary pledges or political commitments would remain, in our view, insufficient as long as they are not complemented by legal, unequivocal obligations. In this sense, Brazil would consider such initiatives to the extent that

they are understood as: a) part of a larger consensus and b) steps towards establishing a legal regulatory framework.

With regard to the implementation of existing legal requirements, Brazil certainly acknowledges the value of national implementation measures, including legal reviews, and sharing best practices. We can envision such measures as supporting a wider international regime on the use of autonomous technologies in weapons systems and favor their continued consideration as supplementary measures to effective international treatment.

The “Possible Guiding Principles” agreed in 2018 are a comprehensive set of general principles, assessments and considerations on the challenges of autonomy which can underpin a regulatory framework, and inform a negotiating process,. The main conclusions regarding human responsibility, accountability and the application of IHL are particularly relevant and fully convergent with the proposal of a legally binding instrument with human control at its core.

Brazil therefore reiterates its proposal, presented alongside Austria and Chile, of a negotiating mandate to ensure meaningful human control over critical functions of weapons systems with autotnomos. The proposal can be further refined and developed, but its main thrust, the concept of a positive obligation with regards to human control, seems to us to be, at this point, the most practical and promising proposal for addressing this issue.

I thank you.”