BRAZIL’S SUBMISSION ON AUTONOMOUS WEAPON SYSTEMS
IN RESPONSE TO THE REQUEST PURSUANT TO RESOLUTION 78/241

The following is Brazil’s submission in response to the request by the Secretariat pursuant to resolution 78/241 “Lethal autonomous weapon systems”, adopted by the General Assembly on 22 December 2023.

In the sections below, Brazil outlines its perceptions on the issues referred to in resolution 78/241 and on the elements that should underpin the negotiation of a legally binding instrument on AWS.

HUMANITARIAN AND LEGAL CHALLENGES

Existing international humanitarian law and all its principles already apply to the use of autonomous weapon systems, even if those are not explicitly mentioned in existing IHL instruments. As recognized by the International Court of Justice, IHL “applies to all forms of warfare and all kinds of weapons, those of the past, those of the present and those of the future”.

Notwithstanding this, the use of autonomous weapon systems in warfare poses novel and fundamental challenges from the point of view of IHL, especially from the point of view of the imperative need for meaningful human control and accountability.

Discussions on autonomous functions should prioritize those aspects that pose significant challenges to compliance with international law, particularly in terms of ensuring accountability, maintaining human dignity, and adhering to the principles of distinction, proportionality and precaution.

There is an implicit requirement for meaningful human control imbedded in IHL, notably vis-à-vis the principles of distinction, proportionality and military necessity. Similar requirements are also at the core of international human rights law.

HUMAN CONTROL AND ETHICAL PERSPECTIVES

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Brazil has a longstanding position in defense of the centrality of the concept of meaningful human control in the discussions about the use of AWS.

Firstly, this stems from the understanding that an autonomous system cannot be programmed to observe principles of *jus in bellum*, since such principles cannot be adequately converted into programming language and might not be upheld in uncertain conditions. Therefore, the use of force without meaningful human control should be considered a direct violation to the ethical standards that underpin IHL, including the Martens clause.

Secondly, the development, procurement, deployment and use of autonomous weapon systems must be subject to regulations that ensure that the responsibility for their use is attributable to States and individuals that operate them.

CHARACTERIZATION OF AWS

Brazil supports the definition of AWS proposed by the International Committee of the Red Cross (ICRC), quoted below, which centers on the ability of systems to autonomously select and engage targets:

> “Autonomous weapon system” means a weapon system that is designed to select and engage one or more targets without the need for human intervention after activation.

PROHIBITIONS

Meaningful human control is fundamental to ensure accountability, compliance with international humanitarian law, and the protection of human dignity in armed conflict. Therefore, absence of meaningful human control would render a system inherently incompatible with IHL.

Meaningful human control must be guaranteed through mechanisms or procedures that ensure that the human operator retain the ultimate decision-making power over the critical functions of autonomous weapon systems, particularly in targeting decisions and especially before the actual use of force.

In Brazil’s view, an AWS would be incompatible with IHL if it cannot be meaningfully controlled by humans. This includes AWS whose use:

- cannot be sufficiently understood, predicted, and explained by the user;
• cannot be directed at a specific military objective, in violation to the principle of distinction; or
• may cause disproportionate harm and superfluous injury or unnecessary suffering.

REGULATIONS

In addition to the prohibitions listed above, a legally binding instrument on AWS should include positive obligations, in the form of regulations, with a view to ensuring meaningful human control in the use of AWS over their critical functions, such as selection of targets and application of potentially lethal force, in line with IHL obligations and ethical requirements.

The legality of the use of AWS is not determined by its inherent features alone but significantly depends on their mode of use and functioning within specific contexts.

In order for the use of an AWS to be compatible with IHL, its human operator must be able to:

• impose adequate space and time limits for the operation of such systems, including with a view to avoiding concentrations of civilians or civilian objects;
• approve any decision on the use of force by determining the operational context through a sufficient level of situational awareness;
• be informed about the reliability and predictability of the systems in terms of the identification, selection, and engagement of targets;
• take the necessary precautions during the conduct of operations to ensure that an AWS is not able to change mission parameters without human validation;
• supervise the operational deployment of the AWS and be able to intervene where necessary, through verifiable deactivation or self-destruction.

SECURITY CONSIDERATIONS

Without prejudice to the need to prioritize the most pressing legal and ethical matters related to the design, deployment and use of AWS, an arms control perspective might be needed in order to deal with the security dimension of such systems.

The widespread deployment of AWS raises concerns regarding the possibility of such systems lowering the threshold for the outbreak of conflict, contributing to uncontrolled escalation and arms races, and being diverted to non-state actors, such as terrorist and criminal groups.
Concerns about the impact of AWS on international peace and security must not, however, serve as a basis for the establishment of undue restrictions on the transfer of technologies related to such systems.

LEGAL REVIEW

Article 36 of Additional Protocol I to the Geneva Conventions clearly determines an obligation to all States that are engaged in the study, development, acquisition or adoption of a new weapon, means or method of warfare to determine whether its employment would, in some or all circumstances, be prohibited by IHL.

Therefore, it should be in the interest of States and private companies to draw clear standards, in order to avoid exposure to legal risk as a consequence of violations of IHL committed with the use of AWS that they have developed, produced, acquired or deployed.

THE NEED FOR TECHNICAL STANDARDS

The efforts to lay out specific criteria to ensure compatibility of AWS with international law, including IHL and international human rights law, can also be greatly advanced by technical standardization.

One major step in that direction has been taken with the publication by the Institute of Electrical and Electronics Engineers (IEEE) of the first global ontological standard for ethically driven robotics and automation systems – IEEE STD 7007-2021.

The standard offers a common platform for the progress on the discussion on core concepts, such as control mechanisms, limits on targets, duration, and geographical scope of operations.

By addressing these topics through the standard's framework, States can establish a common approach for evaluating the development and use of AWS.

In 2024, Brazil tabled a working paper to the GGE further explaining the utility of IEEE STD 7007-2021 for discussions on AWS (CCW/GGE.1/2024/WP.1).

CONCLUSION AND WAY FORWARD
Brazil recognizes the urgent need for a normative legal framework for AWS that addresses humanitarian and ethical concerns. Brazil believes that this need can be met through the negotiation of a new protocol to the CCW, ensuring that the development and use of AWS adhere to established international humanitarian rules and principles.

The CCW GGE offers one unequivocal advantage that must not be squandered, which is the participation of all major stakeholders. Nevertheless, the advantage of inclusivity would be defeated by indefinite delays to the objective of regulating the issue of AWS.

The objective of achieving a legally binding instrument on AWS cannot ignore the need for effectiveness of its norms and its capacity to impact on actual behavior in the real world.

All avenues of negotiation should be explored to the fullest in order to achieve the best possible instrument, with the largest number of adherents, and with the earliest entry into force. Achieving this Pareto-optimal result should be the ultimate objective.