



CCW REPORT

Civil society perspectives on the CCW Group of Governmental
Experts on lethal autonomous weapon systems
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The views expressed in this publication are not necessarily those of WILPF or the Campaign.

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TWO SIDES, ONE COIN

Allison Pytlak | *Reaching Critical Will of the Women's International League for Peace and Freedom*

The Group of Governmental Experts (GGE) on Lethal Autonomous Weapons (LAWs) had a strong start to its resumption of discussions on Monday. Participation was active and regionally diverse. Many states came prepared with thorough and detailed interventions. Since the GGE last met in November 2017 a number of working papers have been submitted to inform discussions this week.

As is often said in the context of developing new agreements however—the devil is in the detail and some details expressed today indicate that there are some, potentially significant, differences in perspective that will need to be reconciled. These touch on outcomes for the GGE as well as understandings of key concepts including the importance of whether, or not, to arrive at shared understandings. Indeed, this is an issue area where it is easy to go down technical rabbit holes and lose sight of the way forward, or overcomplicate the discussion. Some of these divisions mirror dynamics in other disarmament and arms control fora, with respect to states that have larger or more sophisticated military capabilities, versus those who do not and are most impacted by arms and conflict. As Human Rights Watch stated today, it is noticeable that some of those preaching caution are the ones rushing to develop increasingly autonomous technology.

Developments over the last few years have shown the strength and power that “smaller” states possess when they work together with common vision. This can also be true for moving forward to meaningfully and effectively prevent the development of autonomous weapon systems. A unifying reminder from Monday's discussions was the point made by civil society, in that calling for meaningful human control and calling for a prohibition are really two sides of the same coin.

Ambassador Amandeep Singh Gill of India, who chairs the Group, opened by reminding delegates of the agreed outcomes

from the previous session, including the applicability of international humanitarian law (IHL) to the issue of autonomous weapons, among other points. A statement from Ms. Izumi Nakamitsu, High Representative for Disarmament, reiterated that there are existing areas of convergence. She encouraged states to keep going, by narrowing in on these areas with a view to making real progress.

General exchange of views

With very few exceptions, most states reiterated their support for furthering progress on addressing autonomous weapons. Among that group, the majority expressed support for establishing “working definitions”, “shared understandings” or similar on which to premise discussions, with some noting that doing so should not pre-judge any final outcomes.

There are different views on what the outcome of GGE discussion should be, and it is expected that more states will speak to this later in the week in greater depth. Brazil outlined that it sees distinct groupings of states emerging, including one with countries that support the development of a binding instrument and another with those that appreciate deepened discussion on the issue but do not accept that LAWs exist, or will ever exist.

Austria and the African Group added their voices to the list of states that support a legally binding prohibition, or ban, on autonomous weapons. The Non-Aligned Movement (NAM), Costa Rica, Sri Lanka, among others, reiterated that they continue to view this as the best approach while Pakistan, Chile, NAM, and Egypt suggested that states should put into place national moratoria on development of autonomous weapons.

The joint French-German proposal to establish a political declaration, put forward during the GGE in November 2017 and further articulated on Monday, has gained

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support from Belgium, Bulgaria, and Luxembourg. Italy said it takes interest in the proposal but remains open to other suggestions. Spain said that the proposal warrants attention, and further suggested a code of conduct to accompany a political declaration. Argentina proposed a list of best practices in addition to a political declaration, which it views as a “short-term option”.

While also underscoring the importance of improving compliance with international law in the area of autonomous weapon systems, Switzerland identified several possible elements for a political declaration: a working definition of autonomous weapons; a shared understanding of what autonomy means in the targeting cycle; a commitment to retain a necessary level of human control; a re-affirmation of commitment to IHL; and a reaffirmation of obligations to review new weapons, among other points.

Australia, Bulgaria, and Belgium emphasised the importance of Article 36 reviews. The UK said it does not support a preemptive ban and feels that these reviews are sufficient to determine the legality of new weapons. It encourages all states to share their policies on weapons reviews; the European Union (EU) urged sharing national experiences. Pakistan said Article 36 reviews are insufficient.

Latvia would favour a gradual or “step-by-step progression” to achieve progress within CCW.

Russia questioned the value in continuing to discuss autonomous weapons, given the highly speculative nature of the debate but also cited the lack of a working definition as an obstacle. The United States does not support the negotiation of a politically or legally binding document. It feels that existing international humanitarian law is sufficient to address related humanitarian concerns posed by autonomous weapons.

Mines Action Canada, Chile, Panama, and Egypt referenced the process to preventively ban blinding laser weapons as a good model for addressing autonomous weapons.

South Africa understands the calls to establish a working definition but would not like the process of arriving at one to hinder overall progress.

With statements that sometimes sound vaguely reminiscent of discussions about “peaceful uses” in the context of the nuclear Non-Proliferation Treaty, several states made clear that discussions at the GGE should not attempt to curtail civilian uses of technology, including around artificial intelligence, automation, or autonomy. The Republic of Korea, Sri Lanka, and India made specific reference to the role

and potential of technology toward achieving the Sustainable Development Goals (SDGs.)

The European Union, Ireland, and Canada emphasised the importance of gender diversity in all discussions on disarmament including at this GGE, which is heavily male dominated.

There was a strong sense that many states appreciate the inclusive nature of the GGE discussions and feel it has benefitted from the inputs of experts across many sectors. PAX spoke to the role of technology companies and the financial sector in holding states accountable for how autonomous weapons, and other technology, is both financed and developed.

Already in the general debate, states began to identify what they see as important characteristics or elements to be included in a future working definition. The central role and applicability of IHL was reinforced in virtually every statement delivered. Compliance with human rights law was mentioned by Brazil, Canada, Chile, Cuba, Estonia, and Panama. The African Group, Panama, Mexico and Greece referred to the Marten’s Clause.

An emerging point of tension that will most likely come into greater focus during further sessions is one of scope: should a future instrument (regardless of its form) include only “lethal” autonomous weapons? Semi- or fully autonomous weapons? Existing or only new weapons? Greece, as one example, stressed that GGE discussions focus on “lethal” weapons, described as those with the ability to cause death and should not include weapons that are defensive in nature, such as those that intercept incoming missiles. The Russian Federation wishes to exclude existing weapon systems with a high degree of autonomy. Cuba spoke in favour of including semi-autonomous weapons, specifically drones. Sweden does not support including remotely piloted weapons as they are not within the scope of the GGE.

The concept of “human control” was prevalent in many statements, either urging that it be retained, attempting to identify at what threshold that should happen, or presenting views of the subject. Cuba stated that it should be present in decisions relating to target selection and engagement. Mexico said it must be present at all stages of the weapon cycle (development through deployment). The African Group noted that this term has not yet been defined and that the label matters less than what meaning is given to it. Republic of Korea urged focusing on the appropriateness of human machine interaction rather than the scope of human control. Panama urged that any working definition on autonomous weap-

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Two sides, continued

ons be focused on human control and believes that the definitions proposed by Harvard, Human Rights Watch and the International Committee of the Red Cross are a good basis. The International Committee on Robot Arms Control urged states to ask what the legally required level of human control is at every touch point in the development process. Estonia agrees with the “sentiment” that human control and judgment are essential, but doesn’t consider meaningful human control to be new idea of international law. The Holy See stated that the delegation of powers to autonomous systems “puts us on the path of negation, oblivion and contempt for the essential characteristics unique to the human persons”. •

The above is a summary and not intended to be exhaustive of all statements delivered. Statements made during Monday’s thematic debate on characterisation will be included in the next edition of the CCW Report, as part of a summary of that cluster.

SIDE EVENT REPORT: DEFINING LETHAL AUTONOMOUS WEAPON SYSTEMS

Lenka Filipova | Women’s International League for Peace and Freedom

There was a high level of participation at side event briefing organised by the Campaign to Stop Killer Robots on the opening, which explored various aspects of this meeting’s emphasis on characteristics and definitions.

Following a welcome and introduction by Miriam Struyk of PAX, the first panelist was Allison Pytlak, of the Women’s International League for Peace and Freedom. She explained that like cyber security, the discussion about autonomous weapons is complicated because it also deals with weapons that are largely intangible, or concepts and scenarios that are often hypothetical, making it difficult to develop shared definitions. This has hampered the development of international legal norms for behaviour in cyberspace. She encouraged states to focus not on trying to define the actual weapons, but to think more broadly and conceptually about use, intent, or thresholds.

Dr. Peter Asaro with the International Committee for Robot Arms Control and The New School, demystified the concept of artificial intelligence and argued that there are dangers in ascribing too much importance to this concept in the discussion of autonomous weapons. While there is overlap, there are also important differences. Dr. Asaro noted that the real challenge still lies ahead of us—to define who is legally and morally responsible for taking the human life and who is in charge of regulating these weapons, stating that, since we do not know how to automate mortality, we must

we must retain the human element within autonomous weapons systems.

Mr. Richard Moyes of Article 36, a British NGO, provided guidance for states on how to possibly conceptualise definitions and understandings of what autonomous weapons are. He explained two models, one in which autonomous weapons are a broad category with a small portion of weapons that are problematic; and a second model in which they are all broadly problematic. Mr. Moyes also pushed back on the use of the word “lethal”.

Mr. Johan H. Andresen spoke from his experience as chair of the Norwegian Pension Fund’s Council of Ethics, which is the largest pension fund in the world. He detailed how important it is to avoid investing in companies that are unethical, including for reasons of weapons production, and have excluded companies that produce cluster munitions or critical components of nuclear weapons as well as how they make these assessments. The outcomes of the Group of Governmental Experts (GGE) will be of interest to their future policy.

Questions from the audience included the potential inclusion of semi-autonomous weapons, such as drones, in the discussion at the GGE this week, as well as if developing national policy is helpful, given the rapid pace of technology and slow pace of developing international laws or norms. •



THE MARTENS CLAUSE: INCORPORATING ETHICS INTO LAW*Bonnie Docherty, Annie Madding, and Paras Shah | Harvard Law School International Human Rights Clinic*

The Martens Clause, a well-established provision of international humanitarian law, integrates ethical considerations into the legal debate over lethal autonomous weapon systems. The Clause mandates that when existing treaties do not specifically address a situation, civilians and combatants remain protected by custom, the principles of humanity, and the dictates of public conscience. While an ethical assessment of lethal autonomous weapons systems (also known as fully autonomous weapons) is important in its own right, the Martens Clause gives it a legal frame due to the absence of specific law on the weapons.

Having expressed many ethical concerns about lethal autonomous weapons systems over the past five years, states parties to the Convention on Conventional Weapons (CCW) should ensure that ethics remain central to their discussions, which have shifted to a formal Group of Governmental Experts (GGE). In their statements this week, states should elaborate on how lethal autonomous weapons systems challenge basic ethical norms, including those embodied in the principles of humanity and dictates of public conscience. In so doing, they will clarify why maintaining meaningful human control over the use of lethal force is both a legal and ethical imperative.

The Martens Clause serves a gap-filling function. As the ICRC stated in its April 2018 working paper, the Clause acts as “a safety net for humanity,” rebutting the contention that anything not explicitly addressed in a treaty is permissible. As a result, the Martens Clause is a particularly important tool for assessing emerging technologies, such as lethal autonomous weapon systems, which are not explicitly regulated by existing law.

The Martens Clause originated in the 1899 Hague Convention, which governs the conduct of war. More recently, the Clause appears in the 1977 Additional Protocol I to the Geneva Conventions, illustrating its role in protecting civilians in armed conflict. In addition, almost every modern disarmament treaty, including the CCW, references the Martens Clause.

The principles of humanity encompass humane treatment and respect for the value of human life and dignity. For instance, to comport with the principles of humanity, a machine needs to appreciate the ethical consequences of taking human life, an act which requires genuine empathy and compassion. Delegating life-and-death decisions to a machine without such characteristics contravenes those principles.

The dictates of public conscience refer to moral

guidelines based on an understanding of what is right and wrong. Opinion polls and statements from thought leaders and governments provide evidence of the public conscience. The widespread objections to lethal autonomous weapons systems expressed by states, experts, and the general public indicate that the weapons raise concerns under this part of the Martens Clause, too.

During this week’s GGE, states should reiterate and elaborate on their ethical concerns about lethal autonomous weapons systems. By explicitly invoking the Martens Clause, states can underscore the link between law and ethics and highlight the need for a specific treaty that removes any doubt about the acceptability of lethal autonomous weapons systems. States should call for an obligation to maintain meaningful human control over the use of force and a preemptive ban on the development, production, and use of weapons that lack such control. •

