



CCW REPORT

Civil society perspectives on the CCW Group of Governmental
Experts on lethal autonomous weapon systems
13–17 November 2017



Reaching Critical Will

17 November 2017
Vol. 5, No. 5

IN THIS ISSUE

- 1 | In pursuit of the unizonk
- 6 | Side event flyer: Examining incendiary weapons and the adequacy of CCW Protocol III

The CCW Report is produced by the Reaching Critical Will programme of the Women's International League for Peace and Freedom (WILPF). WILPF is a steering group member of the Campaign to Stop Killer Robots.

The views expressed in this publication are not necessarily those of WILPF or the Campaign.

Editor: Ray Acheson

www.reachingcriticalwill.org
info@reachingcriticalwill.org



IN PURSUIT OF THE UNIZONK

Ray Acheson | Reaching Critical Will of Women's International League for Peace and Freedom

Day four of the group of governmental experts (GGE) was more forward looking than previous discussions this week, as states expanded upon what they hope to do in relation to autonomous weapons (AWS) in the Convention on Conventional Weapons (CCW) context next year. The Chair also tabled the first draft of the GGE report, which states offered preliminary reactions to during the afternoon session. In short, it looks like the current mandate for this GGE will be rolled over to 2018, setting us up for another two weeks of work next year (as long as states fulfill their financial obligations). This is a bit frustrating for the majority of states and civil society, which wanted to see a mandate for concrete outcomes next year. But the scope is there to pursue such outcomes if the political will is also there; this is where the future starts to look a bit muddled.

The vast majority of CCW high contracting parties participating in this meeting do want concrete action. The majority of those want a legally binding instrument, while others prefer—at least for now—a political declaration or other voluntary arrangements. It's very positive that the majority want to respond in some way to the challenges posed by AWS—as New Zealand said, it's clear from the past four years of discussion that a response is needed and must not be delayed.

But there are still some that don't yet want to move from discussions to action. In the context of "the way forward" discussion, China, Japan, Latvia, Republic of Korea, Russia, and United States made it clear that they do not want to consider tangible outcomes at this time. They also all asserted, in one way or another, that we don't even yet know what we're talking about. The past week of discussions have indicated "this is still early days for this subject," argued Russia. Japan said more discussion is needed to build common understandings; Republic of Korea said we need a "more secure grasp on

things" Latvia warned against taking action when we don't know what we're taking action on; the US said we cannot even yet try to define AWS; and China suggested that some people talking about unicorns while others talk about zebras and donkeys.

It is true that we do not yet have a legal definition of AWS that might be acceptable for a legally binding instrument. For any sort of prohibition or legal regulation, a description on meaningful human control and the characteristics of an autonomous weapon system will be needed. But, as Peru said, this just isn't that complicated. For right now, while states have yet to work out elements for a declaration or a legal instrument, we can work off a pretty basic understanding, which really emerged from the early days of these discussions in the CCW. That is, an autonomous weapon system is one that would operate without human control over the selection and engagement of targets. This minimalist definition could serve us to move to the next stage of action, at which point more nuanced and detailed understandings of the concepts involved can be articulated. But to say that we don't know what we are talking about is a massive overstatement, and one that seems like it must be meant to obfuscate and delay multilateral progress on responding to the developments in these technologies.

We do not need to find a unizonk to begin concrete work. That is, while some may prefer talking about these technologies as if they are mythical creatures, the rest of us are ready to respond to what does exist and what we can see and anticipate in development. (Interesting, zonkeys—a hybrid of a zonkey and donkey—do in fact exist.)



zonkey



unizonk

In pursuit of the unizonk, continued

The way ahead

The Non-Aligned Movement (NAM), Algeria, Argentina, Brazil, Chile, Costa Rica, Cuba, Nicaragua, Pakistan, Palestine, Panama, Peru, Sri Lanka, and Uganda reiterated their support for the negotiation of a **legally binding instrument** on AWS. NAM said the 2018 GGE should elaborate elements for this instrument, which should ban or restrict AWS.

At least 22 states currently support such an instrument to be a **prohibition** on the development and use of these systems, with Brazil and Uganda being the most recent to explicitly state their support for this approach. Panama emphasised the importance of banning these weapon systems before they are developed, before powerful interests created by their development may hinder our ability to control them later. Uganda argued that any attempt to avoid a prohibition or moratorium will lead to the development and testing of these weapons, and questioned where these weapons are most likely to be tested, given the way the world operates today.

Cuba said the instrument should prohibit AWS and regulate semi-autonomous weapons.

Australia, Republic of Korea, and United States said it is premature to prohibit AWS.

Pending the conclusion of a legally binding instrument, the NAM, Chile, Nicaragua, Panama, and Peru suggested that all CCW high contracting parties should commit to a **moratorium** not to develop or use AWS.

Belgium, Italy, Latvia, Netherlands, Poland, Spain, and Switzerland supported the development of a **political declaration**, though notions of what such a declaration should contain and what its objective could be varied.

Belgium and Spain suggested a declaration could lead to a draft code of conduct.

Among those supporting a prohibition, Argentina, Brazil, and Chile supported the possibility of a political declaration as an interim step. Chile emphasised that while it would not rule out a declaration, it should be a solid effort that reflects the political will of most states to do more, and should include a commitment to establish a preventative moratorium.

Argentina said it could support a “preventative and gradual approach” in the short- and medium-term, such as a political declaration, as long as the spirit of such a document would be the starting point for the development of a legally binding instrument.

In the medium-term, Argentina also suggested working on a matrix of procedures pursuant to

national weapon reviews, with an aim of drafting a list of minimum common elements that would make it possible to achieve an acceptable basis for a future multilateral treaty.

The NAM said a political declaration or other voluntary measures could not substitute for a legally binding instrument. Panama argued that a declaration or a code of conduct are insufficient and may give rise to gaps and shortcomings. China said it does not support a political declaration or a code of conduct. Russia said it did not support any concrete outputs, even of an interim nature, particularly not a political declaration.

Latvia and Poland supported the French-German proposal for a **technical group of experts**, suggesting such a group should report to GGE, and keep pace with technological advancements to build states’ knowledge of these systems.

A number of delegations supported the advancement of work towards a **definition** or **characterisation** of AWS.

Austria, Estonia, Ireland, Poland, Netherlands, New Zealand, Switzerland, Uganda, United Kingdom, and the ICRC said the GGE should discuss the concept of **meaningful human control** and **human-machine interfaces**.

Switzerland suggested examining the quality of human-machine interaction, identifying what is important about human control or human judgment, and what type of control is needed when, and where, and how such control can be meaningful.

Panama called on the GGE to define human intervention in the selection and use of lethal force, which would lead to consideration of concepts like meaningful human control, predictability, and reliability.

Japan said it agrees with the US that states will not develop weapons they cannot control and that AWS without human interaction “are not attractive”. Human control should be retained directly or indirectly, “because a military commander should comply with IHL and should avoid collateral damage and has to avoid friendly fire.”

Switzerland said states should also work towards a shared understanding of the characteristics of AWS and achieve a preliminary working definition. New Zealand, Panama, Sri Lanka, and Uganda agreed that a working definition is vital starting point for further concrete work. China said it should be the focus of future CCW work on this issue. Latvia argued that “constructive ambiguity on definitions provides imaginary satisfaction in conversation, but then we have to pay the price for decades,” thus

continued on next page



In pursuit of the unizonk, continued

states should identify common characteristics soon. Cuba said any working definition must also include a definition of semi-autonomous weapon systems.

Poland said it is instrumental to reach agreement on key characteristics of AWS in 2018, noting that it shares the US view that these should be built around how AWS will be used and what will be their ultimate effects, rather than around technical features only. Poland also suggested the GGE should outline elements of autonomy to determine what is allowed and what is not. Ireland and Mexico agreed more work is needed on outlining autonomy, though Mexico also said discussions shouldn't be limited to lethality or level of autonomy, but their (in)ability to comply with international humanitarian law (IHL). Ireland said states need to also clarify what additional measures might be required to ensure AWS could comply with IHL. Argentina urged substantive discussion to define key elements to identify AWS, including compliance with IHL and international human rights law (IHRL).

Brazil said it can't support any definition of AWS that gives a blanket waiver to existing technology. Nicaragua said it's not a fact that AWS do not yet exist. Ireland said it was premature to exclude existing systems until we have a working definition. New Zealand said to work out why and what systems might not be acceptable, we need to be informed about current systems. It noted that a discussion of those systems should take place even if we recognise they would not be affected by future policy, legal, and regulatory responses.

The US said we can't define AWS yet but should develop common understandings of characteristics. The UK agreed with exploring characteristics.

Some states continued outlining their definitions of AWS. Panama understands AWS are those weapons that once activated are autonomous in their critical functions. It argued that a general definition would be the best option. Belgium also outlined its definition as weapons autonomous from any human supervision when it comes to identifying targets, intentionality with lethal consequences, and self-programming.

Switzerland suggested that the GGE should look at systems with increasing autonomy, against the background of existing legal framework, and **identify practical ways to ensure compliance with the law**. For the Swiss, this includes practical work on weapon reviews and further work on the general consensus that states and human beings remain accountable. Such work, it noted, would not necessarily preclude whether further regulatory work is necessary.

Canada and Estonia agreed legal reviews should be enhanced as an implementation mechanism for IHL. Estonia supported discussion on best practices, especially in relation to technologically complex weapon systems.

Austria suggested holding a focused debate on critical aspects to identify where LAWS might be crossing lines. As future developments can be exhaustively foreseen, it said, focusing on critical lines that must not be crossed is a straightforward approach that will enable us to make progress. In this regard, three critical elements include compliance with the international legal system, regardless of the level of autonomy; the maintenance of meaningful human control; clear conceptualisation of LAWS and understanding of necessary human control required to ensure IHL compliance; and establishing agreement about whether current IHL is sufficient or if new legal framework is needed to address concerns.

Canada, New Zealand, Nicaragua also agreed the GGE should focus on the application of and compliance with IHL and IHRL.

Argentina suggested the CCW continue to strengthen **synergies** with other UN bodies and the private sector. Panama supported this suggestion. Canada urged states to look at the **gender dimensions** of AWS, including the representation of women experts in panels and on delegations.

Poland said states need to address the **dual use nature** of the technology and **proliferation** risks. Panama also suggested the GGE look at proliferation issues, as well as those related to human rights and security.

In relation to the nature of next year's GGE, Japan, Latvia, Republic of Korea, and Russia said more **discussion** is needed in order to get a better grasp on the subject. On the other hand, Algeria, Austria, Brazil, Chile, Cuba, Kazakhstan, New Zealand, Pakistan, Sierra Leone, Sri Lanka, Switzerland, and Uganda encouraged the GGE to turn to **concrete action and policy-oriented discussions**, moving away from experts panels. Switzerland emphasised it is important for the CCW to demonstrate that it is able to change gears, from discussions to developing practical measures, in order to live up to expectations and underscore that it is the appropriate forum to deal with AWS. Uganda asked why states were not listening to panelists, arguing that we now have enough information to ban these weapons.

In terms of **length** of a GGE in 2018, Canada, Poland, and the United Kingdom supported two weeks, while Ireland, Latvia, New Zealand, and Switzerland said two weeks should be the minimum. Sierra Leone asked if two weeks is enough, making a strong call for states to focus on getting something out of the 2018 meetings before it's too late to do anything about the development of these weapons.

The NAM said discussions must always be held in open, inclusive, transparent forum.

continued on next page



In pursuit of the unison, continued

For the **report of the current GGE**, Switzerland urged that it anchor the substantive points of shared understandings as conclusions and recommendations. It noted that this is important to give direction to next year's GGE. Specifically, Switzerland suggested that these conclusions and recommendations should identify a number of elements where there is shared understanding, building on previous work; and build on the fact that discussions have indicated the interest in developing concrete outcomes, the form and approach of which can be discussed in greater depth next year.

Brazil said the report should reflect that the clear majority of states support a legally binding instrument on AWS, including prohibitions and regulations.

Report of the GGE

In the afternoon, states gave some preliminary reflections on the draft of the GGE's report.

Paragraphs 7–8

China objected to non-governmental organisations (NGOs) and academic institutions being listed by name and being listed as having participated in the GGE, rather than as observers. The Chair said this is consistent with past practice. The vast majority of other states taking the floor supported keeping the civil society reference as it is in the draft, including Austria, Brazil, Chile, Ireland, Italy, New Zealand, and Switzerland. Ireland emphasised that civil society's participation is one of the strengths of this framework and that NGOs bring considerable added value to the process. Italy echoed this.

Paragraph 15

A few states, including Mexico and Pakistan, suggested that the summary of discussions indicated here should be specified as being under the Chair's own authority. The Chair said he wanted states to see the summary first before taking a decision on such wording.

Paragraph 16

China said it did not think there is consensus on the conclusions contained in paragraph 16, but would go along with it if other states are fine with it. Cuba said the conclusions could be more general. Chile, Netherlands, and Switzerland said they would have liked more ambition, with Netherlands saying they would like a mention of concrete steps. But they said this review mostly reflects the discussion and is largely balanced. Ireland appreciated the care taken in this section, though it would have liked a strong reference to issues such as a working definition and the need for a detailed examination of challenges that AWS would have to meet in order to comply with IHL.

Brazil said two key elements missing here are the majority support for the ultimate objective of a legally binding instrument including prohibitions and regulations of AWS, as well as the proposed political declaration.

Egypt said it would prefer to change all sentences that begin with "related to LAWS" with "in the area of LAWS" to match the phraseology in the mandate.

Japan said it is comfortable with this draft but is also open to any proposals that are appropriate and acceptable to all.

Russia said the document is well balanced and advised against picking it apart.

Kazakhstan suggested this paragraph should indicate that the Group "concludes" rather than "affirms," but the Chair said he wanted to be careful from a legal standpoint about suggesting they have concluded anything.

i. France said the description of the relevance of the CCW is "very appropriate".

ii. China did not think there is consensus on the way the application of IHL is framed, arguing that IHL may prevent the AWS. It called for the deletion of this paragraph. Switzerland said it is essential to retain this paragraph, and argued that eliminating it would raise questions about whether or not IHL applies to some weapons. It also clarified that the current formulation does not legitimise any type of weapon but on the contrary undermines that all weapons are constrained by IHL. Austria, Brazil, Chile, Ireland, Italy, Mexico, Netherlands, and New Zealand agreed it is crucial to retain in its original phrasing.

To address its concerns, China suggested restating the reference to IHL as: "The Group affirms that potential development and use of such weapons should fully comply with IHL," and adding "in the context of LAWS the international community should look further into the sufficiency of existing IHL."

On this first sentence suggested by China, New Zealand preferred the original language, but said that if this formulation is used, it needs to say "must" rather than "should".

On the second sentence suggested by China, the United States said this suggests a narrower focus on evolving law and principles, which would be premature at this point in absence of many concrete pathways.

France agreed to retain the reference to the applicability of IHL but suggested the deletion of the reference to whether or not AWS exist today. China,

continued on next page



In pursuit of the unizonk, continued

Italy, and Spain supported this. Brazil and Egypt did not accept this, and also objected to the use of the word “potential” in reference to systems, because some existing systems may need to be considered. The Chair said by taking away the word “potential” then you are implying there is deployment and he was trying to avoid going into that question. Russia objected to deletion of the word “potential”.

iii. China said “used” should be replaced with “misused”. Switzerland said the original phrasing is essential.

Netherlands suggested “more focused and precise legal text” for first two sentences, to read: “The responsibility for deployment of any weapon system remain with states. States are obliged to take adequate steps to ensure that the deployment of LAWS does not lead to potential or actual violations of international law.” The last sentence is essential and should be retained.

France said states’ responsibility is not subject to interpretation, so this language should be in conformity with letter of the law. It said it will come back with legal expertise.

Brazil is bothered by the phrase “human involvement,” arguing this prejudices the conversation over the best term in relation to human control. The Chair said he was trying to avoid using any of the suggested terms in order to not prejudice that conversation.

iv. France said the reference to retaining the right to “peaceful uses” should be deleted because that goes without saying. Brazil supported the retention of this phrase.

Egypt said technology is driven not just by industry but also militaries and suggested deleting this sentence.

v. China said “military application” should be replaced with “humanitarian implications”.

France said the Swiss formulation for dealing with the challenges to AWS is probably the best one.

vi. France said characterisation is a major issue that we need to advance with a working definition, but questioned the wording “characterisation of scope of systems under consideration,” suggesting instead to use the phrase “characterisation of emerging technology in domain of LAWS”. Austria, Brazil, Ireland, and New Zealand supported the original language here.

vii. China suggested deleting this paragraph, arguing that the in-depth description of human-machine interaction prejudices future discussions on this issue. France suggested deleting the last two sen-

tences of this section, or moving them to the Chair’s summary, because it sees them as too detailed and premature. Austria, Brazil, and Ireland objected to moving these to the summary and wants them retained as is.

viii. Switzerland suggested that given the strong voices willing to move forward to respond to the challenges of AWS, language should be added in reference to continuing the discussion on possible pathways “for addressing the challenges posed by LAWS in accordance with the principles and purposes of the CCW...”. Austria, Brazil, Ireland, Netherlands, New Zealand... supported this proposal.

Egypt said “pathways” should be changed to “options” as in the mandate.

Egypt, Italy, and France said this subparagraph should more actively welcome working proposals and documents in mentioning proposals. The Chair said he didn’t want to get into referencing specific documents.

Paragraph 17

China suggested adding “subject to the financial situation of the CCW” to the indication of the length of the next GGE. The Chair said this could be indicated in a footnote.

Cuba, Egypt, and Pakistan said reference should be made to the recommendations of the 2016 experts group, in particular paragraph 4 of the report from that meeting, which outlines key issues for consideration in the GGE. The Chair said the document does that by referring to Decision 1 of the Fifth CCW Review Conference. The US suggested to clarify that the intention is to carry the existing mandate forward, it could say that it has been “reestablished in accordance with decision 1”.

Pakistan argued that by only going into certain issues in paragraph 16, it seems like paragraph 17 then would not be reflective of the 11 questions contained in paragraph 4 of the 2016 document. The Chair said there are various elements from those questions reflected in paragraph 16 of this report and that we are not renegotiating the mandate here but just rolling it over.

France and Italy said paragraph 17 is acceptable.

The Chair will issue revisions and a summary of discussions on Friday. •





SIDE EVENT

Examining Incendiary Weapons and the Adequacy of CCW Protocol III

Monday, 20 November 2017

13:15-14:45 p.m.

Conference Room XXIV
United Nations Geneva

Sandwiches will be provided

Speakers:

- Bonnie Docherty, Senior Researcher, Human Rights Watch
- Lou Maresca, Senior Legal Adviser, International Committee of the Red Cross
- Reto Wollenmann, Deputy Head Arms Control, Disarmament and Non-proliferation Section, Swiss Federal Department of Foreign Affairs

Moderator: Maya Brehm, Advisor, Article 36

This side event will offer civil society, ICRC, and government perspectives on incendiary weapons and CCW Protocol III. The event seeks to promote discussion of the issue at the upcoming CCW Meeting of States Parties, which has explicitly listed Protocol III on its agenda for the first time in 37 years.

Panelists will examine the dangers and recent use of incendiary weapons as well as the adequacy of the existing protocol. They will also address the calls to revisit the protocol in order to improve humanitarian protections.

A new report by Human Rights Watch and the Harvard Law School International Human Rights Clinic will be released at the event.