



CCW REPORT

Civil society perspectives on the Fifth Review Conference of
the Convention on Certain Conventional Weapons (CCW)
12–16 December 2016



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EDITORIAL: THE EVOLUTIONARY IMPERATIVE OF THE CCW

Ray Acheson | Women's International League for Peace and Freedom

The good news is that during the opening general discussion at the Fifth CCW Review Conference, states indicated concern with the humanitarian harm caused by a number of weapons covered by the treaty, or by the development of future weapons. This included specific reference to conflicts in Syria, Libya, Ukraine, and elsewhere, making a rare connection between "debate" in the CCW and reality. The bad news is that there seems to be limited agreement on how to deal with these problems. In the meantime, casualties are mounting and damage to cities, towns, and communities is increasing. Aleppo was subjected to "doomsday bombardment" on Sunday night and Monday, with non-stop artillery shelling described by one resident as "slaughter on air". The remaining humanitarian volunteers operating in Aleppo have written an appeal for safe passage, noting that they "are with 100,000 civilians trapped in an area of five square metres with non-stop bombs, shells and advancements on the ground. In one building more than 500 people are sheltering. People have been underground for days."

Despite this, the use of **explosive weapons in populated areas** received scant attention during the CCW's general debate. Austria, which is leading international efforts towards the development of a political commitment to prevent humanitarian harm from the use of explosive weapons in populated areas, noted that this issue urgently needs increased attention. Ireland highlighted the need to study secondary and tertiary consequences of explosive weapon use, and gendered impacts. WILPF has conducted a study into the gendered impacts of the use of explosive weapons in populated areas, and as a member of the International Network on Explosive Weapons calls for states to end this practice, which inevitably violates international humanitarian law (IHL) and human rights.

We are seeing the destruction caused by massive explosive violence not just in

Syria but also in Yemen, where the Saudi-led bombing campaign has resulted in a humanitarian catastrophe. Several CCW states parties are profiting wildly from the conflict. The UK has climbed the ranks to number four international arms dealer due to its arms sales to Saudi Arabia since its bombardment of Yemen began. During the general debate, the UK delegation acknowledged that deliberately targeting civilians or killing civilians through the indiscriminate use of weapons constitute violations of IHL. But the UK government has denied "evidence" of IHL violations in Yemen, despite the reams of evidence produced by a UN panel of experts, the International Committee of the Red Cross, Médecins Sans Frontières, civil society organisations such as Human Rights Watch, and journalists to document and expose the effects of the Saudi-led bombing campaigns in Yemen.

At this time, it seems that states are more interested in dealing with the use of **improvised explosive devices (IEDs)**, in particular when used by non-state actors. Under Amended Protocol (AP) II on mines, booby-traps, and other devices, a group of experts has drafted a declaration on IEDs that it is recommending for adoption by this Review Conference. Among other things, the declaration indicates that the High Contracting Parties to AP II will take all necessary steps to "prevent the diversion of precursors and components that may be used for the manufacture of IEDs for committing terrorist acts or indiscriminate acts;" exchange information on measures to mitigate the threat of IEDs and IED attacks; raise awareness and explore synergies with international organisations and networks; pursue IED risk education campaigns; and provide financial and technical capacity building support.

IEDs wreck havoc around the world, killing civilians and damaging civilian infrastructure, and increasing destabilisation throughout affected communities. However, as the delegations of Ireland and New Zealand emphasised, it is imperative

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Editorial, continued

that efforts to mitigate harm from weapon systems focuses not on the user of a particular weapon type, but on its use and the harm caused by its use. IEDs are not used exclusively by non-state actors, or exclusively for “acts of terrorism”. States also use IEDs, most recently and graphically demonstrated by the Syrian government’s use of barrel bombs in populated areas.

Meanwhile, states remain divided over the best approach to address the horrific humanitarian harm resulting from the on-going use of **incendiary weapons**. During the general debate, a range of states, together with Human Rights Watch and WILPF, indicated support for a review of Protocol III on incendiary weapons to discuss strengthening its provisions. Russia, on the other hand, said it is still sceptical about the call to review Protocol III, arguing that “all the existing concerns can be lifted through a rigorous and unconditional implementation” of this protocol. But recent use of incendiary weapons in Syria, Iraq, and Yemen suggests that Protocol III is not sufficient to prevent human suffering from its use. As Human Rights Watch has found, “Attacks using these weapons in Syria have escalated since Russia began its joint operation with government forces at the end of September 2015. For at least a few weeks in mid-2016, incendiary weapons were used almost every day in attacks on opposition-held areas.”

Even when states acknowledge or express concern at civilian harm from incendiary weapons, it does not seem to necessarily curtail their use. For example, the US delegation expressed concern about incendiary weapon use but US forces have used white phosphorus munitions in Iraq. More is needed to protect against the painful burns, permanent disfigurement, and psychological harm caused by incendiary weapons. An outright prohibition of these excessively injurious weapons is necessary.

States expressed significantly more support for convening a Group of Governmental Experts on **lethal autonomous weapon systems** in 2017. The vast majority of states speaking on this subject indicated

their preference for more formal, intensive work on autonomous weapons. However, a few states remain hesitant to endorse this approach, indicating that they would participate in future discussions but appearing concerned about where such discussions might lead.

17 states so far (with the new additions of Argentina, Panama, and Peru from the general debate), and the Campaign to Stop Killer Robots, argue that these discussions should lead to the negotiation of a prohibition of fully autonomous weapons. Based on the ethical, legal, political, and technical issues raised by states and civil society here and at meetings of experts over the past three years, it is clear that human beings must retain meaningful human control over weapons and attacks. Most states that have participated in these meetings have supported this in one configuration or another, recognising the threat to human rights and international humanitarian law, as well as ethics, posed by autonomous machines able to select and engage targets without human intervention.

As the International Committee of the Red Cross noted during its general statement, the CCW is a living treaty designed to adapt as weapons technology evolves. It is imperative that states use this Review Conference to ensure it lives up to this promise. The basic premise of its provisions and protocols is, as New Zealand articulated, that parties to armed conflict do not have the unlimited right to choose methods and means of warfare. “Against this backdrop,” said the New Zealand delegation, “it is essential that this Conference presents an honest review of the past five years and, even more importantly, that it positions the CCW to be more effective and responsive in its protection of civilians and combatants over the coming period.” Civilians in Syria, Yemen, and elsewhere are losing their lives to weapons that should be regulated or prohibited under the CCW and other international instruments. This unacceptable state of affairs must end now. •

The Campaign to Stop Killer Robots has proposed that the CCW establish an open-ended Group of Governmental Experts that meets for at least four weeks in 2017. We have been informed that the decision is coming down to practical matters such as concerns over the cost. The UN has prepared three possible budgets for a CCW GGE of one to three weeks on lethal autonomous weapons systems in 2017:

- \$154,700 for a 5-day meeting;
- \$277,300 for 10-days of meetings; and
- \$401,800 for 15 days of meetings.

For comparison, the last CCW GGE was on cluster munitions and met for a total of 10 days over two sessions (12-16 April, 30 August-3 September) at a cost of \$424,000. In other words: the last GGE held by the CCW six years ago cost a third more than the GGE proposed on killer robots in 2017.



A BURNING ISSUE: THE NEED TO ACT AGAINST INCENDIARY WEAPONS

Bonnie Docherty | Human Rights Watch and Harvard Law School's International Human Rights Clinic

Countries should seize the opportunity this week to take concrete steps toward reducing the harm caused by one of the cruelest weapons in use—incendiary weapons. CCW states parties should recognize the shortcomings of Protocol III on incendiary weapons, and agree to set aside time in 2017 to review the protocol, with an eye to strengthening it.

Incendiary weapons cause excruciatingly painful burns and severe respiratory damage. Those who survive suffer from lifelong disabilities, permanent disfigurement, and psychological trauma and often face difficulties in reintegrating into society. The use of incendiary weapons in Syria has increased over the past year, causing civilian casualties and destruction of hospitals, homes, and other civilian objects.

Protocol III was adopted to minimize such civilian suffering, but it has failed to achieve that goal. The protocol should be strengthened in two ways. First, the definition should be broadened to cover all munitions with incendiary effects, including white phosphorus. The current definition covers only weapons that are “primarily designed” to set fires or burn people. Thus some argue it excludes multi-purpose weapons that cause the same horrific harm.

Second, the arbitrary distinction between air-delivered and ground-launched incendiary weapons should be eliminated. The use of all incendiary weapons in concentrations of civilians should be prohibited, regardless of the delivery mechanism.

Such amendments would bind states parties to stricter rules. They would also increase the stigma against the weapon, which can influence the actions of states and non-state armed groups.

An absolute ban on incendiary weapons would have the greatest humanitarian benefits.

Since the last Review Conference in 2011, states have frequently condemned or expressed concern about the use of incendiary weapons. Many have also called for revisiting or strengthening Protocol III.

On Monday, that trend continued. At least 24 states, plus the ICRC and several NGOs, addressed incendiary weapons in their general statements.

But this week's Review Conference is not just a platform for talk. The meeting is also tasked with setting the agenda for future work under CCW.

Human Rights Watch is calling on states parties to take three steps at the Review Conference:

- Agree to set aside time in 2017 to assess the adequacy of Protocol III.
- Adopt a Final Declaration that reflects concerns about incendiary weapons and calls on states parties to revisit and strengthen Protocol III.
- Condemn the use of incendiary weapons.

These straightforward steps will help promote the viability of CCW and demonstrate states' commitment to protecting civilians from weapons that cause horrific harm.

For more information on recent use of incendiary weapons, states positions, and recommendations for the CCW, see Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Time to Act against Incendiary Weapons*, December 2016, <https://www.hrw.org/news/2016/12/12/time-act-against-incendiary-weapons>.



Footage showing what Human Rights Watch arms experts have identified as RBK-500 ZAB-2.5SM incendiary bombs mounted on a Russian attack aircraft at a Russian air base in Syria, 18 June 2016 © 2016 Russia Today/YouTube

SIDE EVENT: CIVIL-MILITARY COOPERATION IN DEMINING*Josephine Roele | Women's International League for Peace and Freedom*

The delegations of Colombia and the Netherlands co-hosted a side event on civil-military cooperation in demining activities. In her opening remarks, Colombian Ambassador Ms. Beatriz Londoño Soto noted the Maputo Action Plan for the Mine Ban Treaty and prospects for civil-military cooperation in demining. The speakers that followed identified strategies and activities that used civil-military efforts in demining to good effect, as well as identifying areas for improvement. The side event split into two case study groups, one focused on demining activities in Iraq, and the other on past activities in Croatia.

Mr. Eddy Jolink, from the Ministry of Defence in the Netherlands, discussed the so-called "3D" approach—defence, diplomacy, and development—employed by the Netherlands in its operations in Afghanistan and Mali. Mr. Jolink highlighted the pitfalls and successes of this approach, where defence, diplomacy, and development complement one another in a comprehensive strategy for sustainable security. The major pitfalls can be grouped as the divergences of opinions and standpoints between each of the three sectors, whether that is to do with perception of the success of the demining operation, its achievements, the timeframe, the understood end-goals, and the areas of cross-over where the lines of defence, development, and diplomacy are blurred. Specific examples include military personnel carrying out demining activities that should be associated with peace and an absence of conflict, yet they are still uniformed and carrying arms.

On the other side of the argument, Mr. Jolink stated that defence, diplomacy, and development form a whole that is greater than the sum of its parts. The 3D approach can help to foster understanding, cooperation, and respect among the different actors, which learn from each other. To achieve this, the 3D strategy must focus on the following aspects: differentiated roles should be clear; there should be a common approach; and an agreed-upon timeframe for relevant activities. Mr. Jolink noted that this is harder to achieve this in contexts of insecurity, such as in Afghanistan.

Mr. Francisco González, of the Colombian permanent mission to the UN, and Ms. Giselle Gómez from the Colombian Ministry of Foreign Affairs, spoke from the context of the conflict in Colombia with the FARC (Revolutionary Armed Forces of Colombia). The cooperation between the FARC and the Colombian government was central to the de-escalation of the conflict, and included information provided by the FARC that allowed the government to plan demining interventions. In March 2015, a pilot project for the cleaning and decontamination of anti-per-

sonnel mines (APMs) was agreed upon, sponsored by the European Union, the United States, and the government of Norway. This programme, implemented by the Colombian National Interministerial Commission on APM Action (CINAMAP), also takes into account the socio-economic effect of mines on communities, and authorises various operators such as Halo Trust and Handicap International to participate in demining activities. Coordination between civil society and affected communities allows for the prioritisation of affected municipalities, and reparations and compensations for victims of mines and for those from contaminated territories.

The main points that came out of the discussion from the Croatian perspective, led by a Senior Advisor to the Ministry of Defence, were that a central demining authority is essential. Coordination between civilian institutions and the military was effective in providing assistance to local communities. The discussion on Iraq highlighted challenges such as non-state actors, impacts on the environment, and the need for enhanced mine risk education. Both discussions noted that the exchange of information is crucial, for example sharing best practices and establishing international cooperation. Ambassador Mr. Henk Cor van der Kwast closed the event with the observation that raising awareness of the risk of mines and of these activities is important, both at the state level and at the international level such as in the Convention on Certain Conventional Weapons, to develop and promote international cooperation. •



CAMPAIGN TO STOP KILLER ROBOTS

SIDE EVENTS

**Fully Autonomous Weapons: Why Existing Law,
Weapons Reviews & Best Practices Are Not Enough**

Wednesday, 14 December 2016

13:15-14:30

Conference Room XXIV

**The Way Forward: Why a Ban on Fully Autonomous
Weapons Is Needed Now**

Thursday, 15 December 2016

13:15-14:30

Conference Room XXIV



NEWS IN BRIEF

Allison Pytlak | *Women's International League for Peace and Freedom*

The following is a summary of the general debate and does not necessarily reflect all positions or statements.

Cross-cutting and other issues

- Nine governments referenced victim assistance, including a call from Costa Rica for disaggregated data collection including by age and gender.
- A small number of states provided updates on their mine action activities, including Cambodia, Cameroon, Estonia, Italy, Latvia, the Philippines, and Slovakia.
- Ireland noted the adoption of the 2030 Agenda on Sustainable Development and its relationship to disarmament. A few other statements described the impact of weapons on socioeconomic development.
- Regarding drones, Ireland stated that use must be in accordance with international humanitarian law (IHL) and international human rights law (IHRL), and welcomed the American declaration made in October 2016. Panama felt that it is time to take action on the use of armed drones, taking into account the recommendation of the Human Rights Council and a report from the UN Office of Disarmament Affairs.

Explosive weapons in populated areas (EWIPA)

- Austria stated that this is a humanitarian problem, which urgently needs intensified international attention.
- Canada emphasised that any future discussions should be cross-regional and ensure diversity with an emphasis on greater compliance with international humanitarian law (IHL) by all actors. Also looking ahead, Germany proposed an expert meeting within CCW to address EWIPA in an inclusive and transparent way.
- Mexico stated that technical, ethical, and legal discussion on EWIPA is needed.
- Moldova would consider the development of an international commitment to preventing EWIPA.
- The Holy See noted that the tragic experiences from all over the world show the dramatic and long-term humanitarian impact of EWIPA, raising serious moral and legal questions. More must be done to safeguard civilian infrastructures.
- The Netherlands welcomes international discussions on EWIPA focusing on concrete ways to limit impact and damage, using implementation as existing law as a basis.
- Ireland welcomes more discussion of secondary and tertiary effects, including gendered effects.

Improvised explosive devices (IEDs)

- There was general support and concern for the humanitarian impact of IEDs on civilians as well as soldiers.
- Ecuador, France, Germany, Moldova, and the European Union referenced a political declaration on IEDs that is tabled for adoption at this Conference.
- Support for continuing discussion on IEDs within the GGE was expressed by a number of states including but not limited to Argentina, Australia, China, Ecuador, Greece, Italy, the Republic of Korea, Sri Lanka, Sweden, and the European Union.
- Ireland said that it looks forward to common efforts to address the harm caused by IEDs in full compliance with principles of IHL.
- Ireland and New Zealand noted that responsibility for the harm from IEDs should not be limited to any particular user, with New Zealand noting its “disquiet” about the Review Conference’s focus on different types of users of weapons, rather than types of weapons.
- The US urged all states to abide by their commitments under the CCW with respect to IEDs.

Incendiary weapons

- Many states expressed concern about the use of incendiary weapons, including in Syria, and called for full implementation of Protocol III.
- Austria condemned any use of incendiary weapons, noting that any use against civilians is incompatible with IHL.
- Moldova asked if new work should be undertaken in 2017 to better address incendiary weapons.
- The Holy See questioned if Protocol III is sufficient to prevent use.
- Mexico called for more technical discussion.
- Several delegations including Croatia, Ireland, and New Zealand suggested reviewing Protocol III with a view to strengthening it.
- Switzerland suggested a meeting could be held to determine if a review of Protocol III is necessary.
- Russia said it was skeptical of calls to review or amend Protocol III and that its full compliance would be sufficient to relieve “existing concerns”.

Lethal autonomous weapon systems (LAWS)

- Around 40 countries as well as the European Union and Non-Aligned Movement voiced support for establishing an open-ended Group of Governmental Experts in 2017 to take forward discus-



News in brief, continued

- sions on this issue. This was echoed by civil society (Association for Aid and Relief Japan, Human Rights Watch, Mines Action Canada, PAX and WILPF) and the ICRC.
- Some governments put forward suggestions for the GGE's mandate and scope:
 - Mexico stated that a GGE's objective must be to "prioritise an ethics based approach".
 - Austria called for a sufficiently broad mandate that would allow states to discuss legal, technical, ethical, and societal effects.
 - The Netherlands urged that it focus on finding definitions, include the concept of meaningful human control, and formulate an interpretive guide that outlines IHL as it applies to autonomous weapons.
 - The Republic of Korea suggested further advancing common definitions, sharing best practices, and identifying relevant IHL.
 - Algeria and Slovakia also stressed definitions as a focus area.
 - Spain expressed that the GGE should lead to the adoption of a future definition of LAWS to facilitate respect for IHL and IHRL.
 - Sri Lanka also emphasised a focus on definitions, with IHL at the core of the group's agenda. The GGE could also consider how to continue unhindered access to dual use technologies for peaceful uses.
 - Switzerland stated that considering relevance with existing law, especially IHL, should be a key focus of work.
 - Russia said it's premature to formalise LAWS talks.
 - Australia, Canada, and Sweden affirmed the importance of national reviews to ensure compliance between policies and changing technology, per article 36 of the Geneva Conventions.
 - Mines Action Canada explained why article 36 reviews are not sufficient for LAWS.
 - Argentina, Cuba, Ecuador, Moldova, Nicaragua, Pakistan, Panama, Peru, and the Holy See made explicit reference to prohibiting LAWS, bringing the number of states supporting a ban to 17.
 - Australia said a "sweeping prohibition" of LAWS would be premature.
 - China indicated it would support the development by consensus of a legally binding protocol on the use of LAWS.
 - Many states reiterated their support for meaningful human control.
 - A joint statement on this subject will be delivered by Switzerland later this week.
- ### Mines other than anti-personnel mines (MOTAPM)
- Ireland proposed the establishment of a GGE on MOTAPM.
 - Canada, Finland, New Zealand, the Netherlands, Panama, Switzerland, and the US supported the Irish proposal.
 - Argentina, Australia, Brazil, France, Israel, Italy, Moldova, Mexico, and the Republic of Korea indicated support for continued discussion on this issue.
 - South Africa supports on-going discussion but noted that this has been a subject on the CCW's agenda for many years and progress has not been made.
 - Some of those who generally support further discussions did raise caution about balancing that with the legitimate use of MOTAPM. This included Bulgaria, France, Greece, the Republic of Korea, and Turkey.
 - Brazil, among a few others, argued there are cost implications of replacing existing stockpiles of MOTAPM with other options.
 - Cuba said that no new discussions on this subject are necessary. Russia also expressed skepticism.
- ### Status of the Convention
- Nearly every statement emphasised that universalisation must be a priority. Many welcomed Bahrain and Cote d'Ivoire as the most recent countries to become States Parties. Nine countries have joined the CCW since its last Review Conference, which was attributed by some to the Accelerated Plan of Action
 - There were a considerable number of statements that referenced the financial constraints facing the CCW as a result of non-or late payment of fees. States that mentioned this include Australia, Cuba, Finland, France, Germany, the Netherlands, Spain, the UK, and the US.
 - Switzerland proposed a one-day informal meeting in 2017 to consider the impact of science and technology on the Convention.
 - Others stressed the importance that it remain "flexible," "responsive," and "dynamic". The ICRC highlighted that it is a living document that must adapt to technological developments.
 - The European Union, Argentina, Croatia, Japan, the Republic of Korea, and Turkey brought up the importance of submitting compliance reports as a way to build confidence and increase transparency. •