



CCW REPORT

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



Reaching Critical Will

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The *CCW Report* is produced by the Reaching Critical Will programme of the Women's International League for Peace and Freedom (WILPF) daily during CCW meetings.

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The views expressed in this publication are not necessarily those of the Women's International League for Peace and Freedom.

EDITORIAL: EXISTING LAW IS NOT SUFFICIENT

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

The discussions on Wednesday morning on incendiary weapons, mines other than antipersonnel mines, and the use of explosive weapons in populated areas followed an eerily similar pattern. In each case, a state suggested a course of action to address the humanitarian harm arising from the use of these weapons; these proposals were then followed by a debate in which others argued that no action is needed because “existing law is sufficient”—states simply need to comply with their obligations, not create new ones.

The pattern provides a clear picture of the main impediment to preventing humanitarian harm from weapons. The mantra that “existing law is sufficient” has unfortunately become a way to avoid articulating new measures, including restrictions and prohibitions. Such measures could actually help governments and military operators have clearer guidance in *how* to comply with existing law. They could give substance to general principles of the law, clarify the application of existing law in specific situations, or help establish means to ensure compliance. Simply evoking this mantra does nothing to actually compel or assist states or other actors to comply with existing law, but instead provides an excuse for total inaction.

If existing law was sufficient on its own, without further guidelines or commitments, how would the United States, United Kingdom, or France be able to justify their contributions to the Saudi-led military intervention in Yemen, which has bombed weddings, funerals, medical facilities, and schools there? How could Russia or Syria be able to defend their utter destruction of Aleppo, their bombardment of homes, schools, hospitals, and other civilian infrastructure? How could Israel say its conduct during its assaults on Gaza is consistent with the laws of war?

Indeed, the use of explosive weapons in populated areas (EWIPA) provides an excellent example of the problem with the “existing law is sufficient” argument.

For years, states, civil society, international organisations, and the UN Secretary-General have raised concern about the use of EWIPA as a particularly egregious practice resulting in severe humanitarian harm. Since September 2015, Austria has been leading a process towards the development of a political commitment amongst states to address this issue. Now it seems that some states wish to bring the issue within the framework of the CCW.

Germany suggested that the use of EWIPA be included in both the final declaration of the Fifth Review Conference and the decisions of the Conference. The focus on Germany's proposal is on the use of EWIPA as a failure to comply with international humanitarian law (IHL); its proposal is for the CCW to “mandate a group of experts to discuss the impact of explosive weapons in densely populated areas to minimise the humanitarian harm by ensuring greater compliance with IHL.”

New Zealand, with the support of Austria and Chile—all of which are active in efforts outside of the CCW to mitigate humanitarian harm from the use of EWIPA—proposed some amendments to Germany's text. They suggested that the group of experts should “consider the impact of explosive weapons with wide area affects in densely populated areas with a view to strengthening respect for IHL and enhancing the protection of civilians.”

The key difference is around the relationship between IHL and the use of EWIPA. Germany's proposal posits compliance with IHL as the solution to the problem, while New Zealand's amendments indicate that strengthening IHL compliance is one aspect of the solution but that the overarching goal is enhancing the protection of civilians.

Based on experience monitoring compliance with the application of IHL with respect to the selection and use of weapons in armed conflict, it is clear that IHL is not sufficient on its own to prevent human suffering. This is, in part, why the CCW

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Editorial, continued

was negotiated in the first place. The general rules of IHL, as contained in the Geneva Conventions and their amended protocols, have been supplemented by agreements that apply to specific weapons. These subsequent humanitarian disarmament agreements give substance to the general rules and thus become an integral part of IHL. Any international law that applies to the use of weapons in armed conflict is, by definition, part of the law of armed conflict.

However, this body of law, from IHL to the CCW, which applies to the selection and use of weapons, is not alone sufficient to address the problems posed by the use of EWIPA.

States have not been forthcoming about their interpretation of what IHL requires in this context, and thus which practices would be illegal. The rules of IHL do not on their own draw a clear boundary against the use of EWIPA. We can see the civilian harm due to the use of EWIPA by actors who claim such use is in compliance with IHL; the lack of any specific treaty-based restriction that provides clear and universal guidance on the application of IHL to the use of EWIPA; and continued supply of weapons to parties of conflict that have perpetrated gross violations against civilian populations.

Saying that the problem is compliance with IHL is true to some degree—but only if one accepts the fact that IHL is designed to restrain the use of force in order to prevent human suffering. Yet many of the states that insist “existing law is sufficient” *are not themselves complying with IHL*. This is why concerned parties have taken up the attempt to draw a clear boundary around the use of EWIPA as a practice that leads to violations of IHL, as well as of human rights law and commitments to protect civilians.

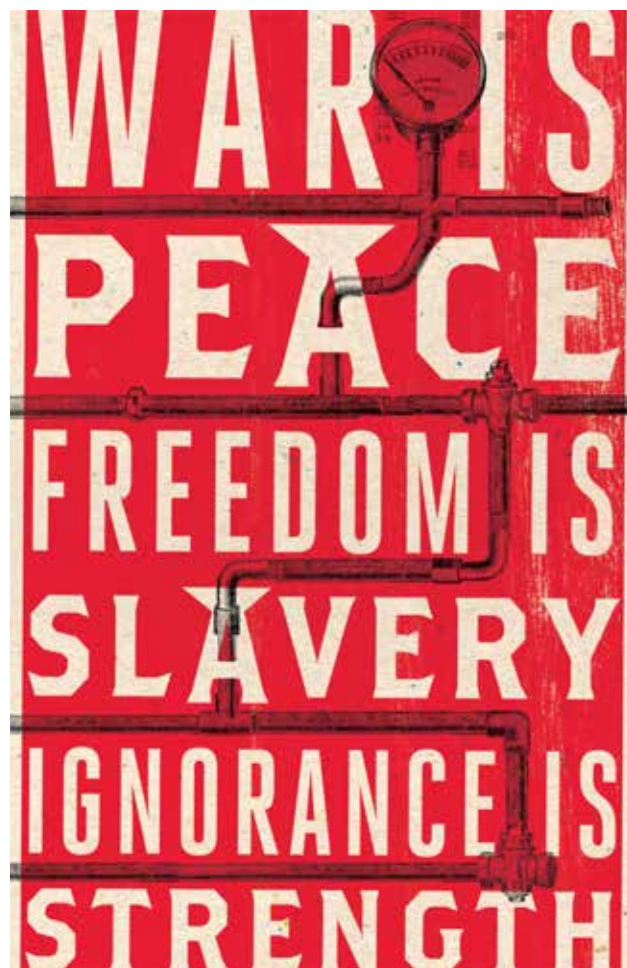
France’s suggested modification to Germany’s proposal is instrumental in this regard. France proposed that the mandate of a group of experts on this issue should be to only discuss the impact of “indiscriminate and excessive use” of explosive weapons. This suggests a normalisation or acceptance of some use of EWIPA—that the bombing of some civilian infrastructure (which is inevitable if explosive weapons are being used in populated areas) is acceptable within IHL or human rights law. It also moves the discussion away from the inherent properties of the use of EWIPA and makes the discussion all about “bad behaviour”.

This is particularly cynical given the current situation in Syria and Yemen, where civilians are living under relentless bombing and shelling. Shall states only bomb a little bit in populated areas? Shall they have a quota of schools or hospitals they can destroy before it is considered “excessive”?

As civilians and combatants alike in Aleppo await death, detainment, rape, torture, some have been musing on the state of the world that led to the hell they now face. “It’s as if this has become very normal for the international community, you know, a rocket falls, 20 or 30 people are killed, under the rubble, they can’t pull them out—that’s a totally normal thing. In any case, there’s no space for graves to bury them in. Let them be buried under the buildings,” said one resident.

The normalisation of violence, of which states still maintain a monopoly even amidst the rise of non-state actor engagement in armed conflict, is contrary to the objective of the development of IHL, or of human rights law. It must be countered at each and every opportunity—and one of the most significant ways to counter it is through the articulation of further rules, guidelines, and laws.

Conversing about these issues within the CCW is fine, but action is urgently needed. As the civilian in Aleppo ended his message, “I think this will be my last video, because we’ve gotten bored of talking, bored of speeches.” •



SIDE EVENT: FULLY AUTONOMOUS WEAPONS: WHY EXISTING LAW, WEAPONS REVIEWS, AND BEST PRACTICES ARE NOT ENOUGH

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

The Campaign to Stop Killer Robots convened a side event on Wednesday that helpfully considered many aspects of the autonomous weapon issue that have so far been under explored at this Review Conference.

Bonnie Docherty of Human Rights Watch and the International Human Rights Clinic at Harvard Law School challenged four of the most common “anti-ban” arguments. The first, that existing international humanitarian law is sufficient, is weak because a new ban treaty would be able to cover more ground. It could include activities such as proliferation, whereas existing law has a focus only on use. A second argument is that regulation would be a better approach than a prohibition. Here, Ms. Docherty explained that regulation alone leaves the development of autonomous weapons within the law and that once created, the potential for acquisition, proliferation, and use would be very high and also difficult to address at that stage. National weapons review processes have been suggested as a third alternative to a ban. Such processes are required under the Geneva Conventions as a way to assess the legality of future weapons use. While very useful, these are only conducted by a small number of countries and are done so to varying levels of rigour, creating inconsistencies. The fourth contention Ms. Docherty addressed is that control at the design and deployment phases would be sufficient. As she explained, not only does this cross a moral threshold but also, a lack of meaningful control across all phases creates a significant accountability gap. A pre-emptive ban would address these concerns.

Maya Brehm of the Geneva Academy focused her presentation on two specific challenges that arise from increasing autonomy of weapons vis-à-vis international humanitarian law (IHL) and other requirements. The first challenge centred on two paradigms: one of law enforcement, which has no scope for categorical killing; and the other on the conduct of hostilities, in which there is some scope for killing. Which goal would an autonomous weapon be designed to serve, and if that failed in some way, what would happen? The second challenge Ms. Brehm discussed focused on the methods through which people are targeted for killing. Depending on an algorithm to take these “decisions” is a challenge to human dignity. The scope for humans to explain the basis of their decision-making process in scenarios of targeted killing, or to be investigated for these decisions, is absolutely necessary.

The final speaker picked up on these themes of dignity and right to life. Peter Herby of the Norwegian Red Cross spoke to other reasons for a ban on

autonomous weapons that are often overlooked in the more procedural and political discussions of the Review Conference. Ethics, for example, are often inadequately represented in law because laws are agreed and negotiated on the basis of compromise and what is possible in any given moment. He asked if the ability of autonomous machines to kill violates the basic principle of human dignity that is at the core of human rights law. Delegating this to machines dehumanises warfare even further. Emotions, as an element of good decision-making, cannot be accounted for. There is also the constant possibility of accidents and there are significant implications for the future of warfare, as well as the legitimacy of military operations.

Following the presentations, there was discussion from the audience, moderated by Dr. Thompson Chengeta of the International Committee for Robot Arms Control. One question hit on a key point about possible approaches: is it better to take a positive or a negative one, the latter of which would focus on prohibitions? Ms. Docherty stressed that for the Campaign to Stop Killer Robots, what is most important is that meaningful human control is maintained. Other speakers added that it is crucial to have clarity about what this means, especially in light of the potential for accidents. Additional questions touched on issues of morality and legality; there was also a question about how private sector research and development in this area can be stigmatized. This will be explored further in a side event scheduled for Thursday, 15 December, also hosted by the Campaign to Stop Killer Robots. •



**CAMPAIGN TO STOP
KILLER ROBOTS**

SIDE EVENT

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

Thursday, 15 December 2016

13:15-14:30

Conference Room XXIV



ALEPPO IS BIDDING HUMANITY GOODBYE*Statement by the Women's International League for Peace and Freedom*

The northern Syrian city of Aleppo has been a key battleground in the conflict between the warring factions in Syria for the past four years. However, the latest developments since July 2016 have prompted a series of consecutive turning points in the city's modern history, leading to its catastrophic destruction this week. Since the Syrian dictator and his foreign allies, including Russia and Iran, firmly encircled the eastern part of the city last September, Aleppo has been witnessing the most relentless, indiscriminate aerial bombardment since the peaceful revolution metastasised into a bloody conflict.

Local sources and international reports have drawn out a systematic pattern of explosive weapon attacks by the Syrian regime and its allies that particularly target medical facilities and schools, leading to extremely high civilian death tolls. The use of explosive weapons in Aleppo, including improvised devices such as barrel bombs, as well as prohibited weapons such as chemical weapons, cluster munitions, and incendiary weapons, has destroyed civilian infrastructure and created a humanitarian crisis. As more than 250,000 civilians became trapped under the siege enforced by the regime since July 2016, basic necessities such as food, fuel, and medication have been obliterated. The deprivation of basic necessities has been used as a weapon of war,

forcing civilians to rely on black markets to make ends meet.

Yet another turning point

This week's events constitute yet another turning point for Aleppo. Local media sources have informally reported mass executions of civilians on the streets of Aleppo, including immolation of several women. The United Nations has reported that Syrian pro-government forces have been entering homes in eastern Aleppo and killing those inside. It also reported that it had "reliable evidence that in four areas 82 civilians were shot on the spot." There are also reports of "military-aged males" being forcibly conscripted to the Syrian army, which is a classic but often overlooked form of gender-based violence. A UN human rights spokesperson has described the situation as a "complete meltdown of humanity".

Regardless of how many reports and sources remain unconfirmed, the suggestions of persecution and retaliation, through rape, arrest, detention, disappearance, torture, and murder are likely to be realistic due to the history of the Assad regime's violations of rights of civilians and prisoners of war.

Women remain disproportionately affected

Once again, women are suffering disproportionately and are in grave danger. According to local yet

*Eastern Aleppo © Ismael Abdulrahman / IDA*

WILPF statement, continued

unconfirmed sources, several women have committed suicide in fear of being raped and sexually abused by pro-government forces. In addition, and amidst the wave of food scarcity, pregnant and breastfeeding women are facing life-threatening health repercussions. Some women are even being starved to death. While many women have become the sole breadwinners for their families, the scarcity of food and medication is making it difficult for them to secure basic needs for their surroundings. Without sanitary pads or clean water, women are also forced to take unsanitary measures during their menstrual cycles, causing health complications and severe infections.

Failure of the international community

One cannot but ask: where has the international community been throughout these recent developments? The answer is evident. The international community has been there all along; the humanitarian helplessness in the face of State intransigence; world leaders insolently staring at and witnessing the worsening atrocities turn into war crimes and crimes against humanity, yet all too busy drafting condemnations and expressions of concern.

The crisis in Aleppo did not swiftly emerge this week; it is a protracted crisis and a manifestation of the collective failure and lack of action by the international community. World leaders have done little, to say the least, to end the slaughter and displacement of Syrian civilians. Most of them have been involved in worsening the situation, either by supporting war criminals or by engaging more significantly in arms transfers to Syria.

This crisis is nothing but a microcosm of how world powers are shaping the dynamics of the contemporary multilateral system: militarised major

powers adopting an unethical and inhuman diplomacy that tolerates grave human rights violations in order to reap the profits of war and violence or to achieve some geostrategic or military "objective". Aleppo will not be the sole victim of this political path, just as 1995 Srebrenica and 1982 Hama were not the last to be crushed by state violence and international indifference. As war criminals remain unpunished for crimes against humanity, the hope for justice, accountability, and victim compensation remains dim.

Restrategising the feminist movement is a must

WILPF strongly believes that the international community needs to revise its approach towards combatting the total impunity for grave violations of civilians' rights in Syria. We call on the international human rights and multilateral systems to move beyond condemnation and reporting, and to instead take effective and sustainable measures to save the lives of millions of Syrian civilians. The UN has an evacuation plan for Aleppo—the international community must help provide safe passage for people trapped in Aleppo.

We also believe that the feminist pacifist movement has a duty to regroup and develop strategies to change these ugly realities. We must not be passive observers as the world burns. We understand that there were ways to prevent this conflict, through cooperation, conciliation, peacebuilding, and disarmament and arms control. We are now faced with the total destruction of an ancient city, the gross violation of human rights, and a humanitarian catastrophe of nearly unprecedented proportions. We cannot keep saying "never again". We must work to ensure it, now. •

The 20 largest arms exporters 2011–15



NEWS IN BRIEF

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

The following is a summary and does not necessarily reflect all positions or statements.

Main Committee I

MC I reviewed the final declaration in an informal plenary session. Ambassador Matthew Rowland of the UK chaired the session and took a section-by-section approach to comments and changes to the draft paragraphs of the declaration.

- In paragraph 15, Russia proposed new text from a recently adopted UN General Assembly resolution on improvised explosive devices (IEDs).
- Russia and China would like to delete paragraph 8 regarding "new weapons".
- The Netherlands requested to include a new heading on "financial situation of the Convention" after paragraph 29.
- Colombia would like to introduce new wording to paragraph 14 on victim assistance, following concerns raised yesterday by other states. Rather than name other conventions explicitly, its suggestion is to state "mine action related conventions".
- Cuba had concerns regarding paragraphs 62 and 63. In the latter instance, it centered around not being a party to Amended Protocol II, which is referenced in the paragraph, and suggested more neutral language to make it possible to support it. France made further suggestions on this point.
- New Zealand referred to its suggestion from the day before to re-draft paragraph 70 and include the word "targeted". France felt that this addition would not do much and has doubts regarding references to customary law; Ireland suggested to use "directed". The Chair felt that leaving either term out would make the condemnation more inclusive. The International Committee of the Red Cross (ICRC) expanded on some of these terms.
- Argentina asked to strengthen paragraph 72 on laser systems. There was discussion about paragraph 77 and its reference to an "expert mechanism," which Cuba objected to. Alternatives were suggested.

The Chair then turned to parts of the draft final declaration where there is a placeholder for text that has to be drafted, as well as related decisions that will be included further in final document. These cover the topics of mines other than anti-personnel mines (MOTAPM), explosive weapons, science and technology, and incendiary weapons. Further discussion on finances took place as well.

Mines other than anti-personnel mines (MOTAPM)

Ireland presented the text it has drafted on MOTAPM, calling for a group of governmental experts (GGE) for up to five days.

Russia stated that it is unable to support the decision paragraph, feeling that there are too many conceptual and other differences contained within it. Belarus agreed but said it can be flexible on the declaration paragraph. Brazil, China, Cuba, and Pakistan do not support convening a GGE on MOTAPM, as proposed in the new paragraphs. Each gave slightly different but related reasons. Greece suggested adding a reference to IHL.

After consultations with interested states parties, Ireland noted broad agreement on compromise language as follows: "States parties declare their intention to minimise the humanitarian harm and to ensure full compliance with IHL in the use of MOTAPM, to take measures before, during, and after active hostilities to enhance the protection of civilians, and to take appropriate measures to facilitate post-conflict clearance operations."

The Chair recognised the new language, but delayed comments until Thursday morning after the issue of MOTAPM has been dealt with in a breakout session.

Explosive weapons

Germany presented two paragraphs on explosive weapons; one as declaration and the other as a decision. The second mandates a GGE to discuss the "impact of explosive weapons in densely populated areas to minimise the humanitarian harm by ensuring greater compliance with IHL". Germany indicated that it is flexible on the language but would like to retain this within the final declaration, and also re-stated openness to combining expert groups and meetings if necessary.

New Zealand expressed support for all activities that raise awareness on this issue and put forward some suggested changes to the paragraphs, that would add the words "with wide area effects" following any reference to "explosive weapons" and reframing the second part to address "strengthening respect for IHL and enhancing the protection of civilians."

Chile and Austria supported these suggestions. Brazil supported the original formulation proposed by Germany, as did France, which also suggested adding "indiscriminate and excessive use". China questioned what some of the key terms mean (explosive weapons and populated areas, for example) and their relationship to the CCW. Without this they cannot agree to a GGE. Russia supported this position; France felt a GGE is premature. Israel also

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News in brief, continued

expressed hesitation. The US said this an issue of IHL compliance though it doesn't oppose discussions on it in some forum.

El Salvador raised questions about the costs and practicalities of the groups being proposed within the context of Main Committee I, particularly noting the financial challenges facing the Convention. It also urged that the final declaration reiterates compliance with the CCW, alongside references to IHL compliance. The US agreed that this is important.

Incendiary weapons

Switzerland also proposed new text regarding incendiary weapons in which states parties decide to allow for further discussion on the matter. The Swiss delegation said it is flexible on the modalities for this discussion. Costa Rica, Croatia, and New Zealand supported the language proposed by Switzerland.

Canada, France, Russia, and the US do not support re-opening the discussion on Protocol III, but would urge compliance with it instead. France suggested an amendment to the text so that the reference to Protocol III would appear before the reference to IHL.

In his final remarks, the Chair noted that the views on incendiary weapons are diverse, and that it would be difficult to have explicit language in the final text. The Chair suggested that the various viewpoints discussed could be mentioned, from moving to amend Protocol III to the idea that compliance with the existing Protocol should be improved.

Science and technology

Switzerland presented its proposal for a new paragraph in the final declaration relating to future discussion of the impact of science and technology to the CCW, as explained in its statement on Tuesday.

France is open to such discussions but is not sure a full day is necessary. Russia agreed. India would like more details on this in order to see what forum it fits into, noting that this might be a cross-cutting theme.

Financial matters

In the morning session, Latvia suggested a new method for collecting dues from states parties that might alleviate some of the challenges facing the Convention, particularly its ability to meet in the first half of 2017. This would involve biennial budgeting in which first year's activities would be covered in full and the subsequent year covered minimally. This proposal was further studied in the second half of the afternoon, with Sweden, the United States, and Switzerland asking for clarifications on the system from the Chair.

In the afternoon session, the Chair circulated language based on the Netherlands' proposal.

On the revised text on financial matters, Germany proposed adding the following paragraph: "The conference requests the CCW Chair, in consultation with the ISU and UNOG financial services, to prepare a proposal to be considered by the next meeting of states parties that includes measures to solve the current financial situation."

Germany also expressed concern that the revised text would not take into account outstanding debts, late payments, or no payments.

France made a general comment that today's informal meeting without translation services should not set a precedent for the future. Cuba and the Netherlands supported this statement, noting that a reduction in cost should not compromise the quality of the meetings. Consequently, Cuba proposed that this should be reflected in paragraph 29.

China expressed frustration that the Convention was deliberating on inter-sessional meetings despite a lack of adequate funds, and called on all states parties to comply with their financial obligations.

Main Committee II

Draft decision to establish a GGE

The Chair of Main Committee II, Mr. Tudor Ulianovschi of the Republic of Moldova, opened the session noting strong support for the establishment of an open-ended group of government experts (GGE) on lethal autonomous weapon systems (LAWS), with only one delegation expressing opposition. Mr. Ulianovschi circulated a draft decision on establishing a GGE, with dates and a timeframe for the session left open to discussion. Mr. Ulianovschi also noted that the session should consider proposals for the candidacy of a Chair on LAWS in 2017.

The United States proposed to amend the draft decision by including "in the context of the objects and purposes of the Convention" with regards to the establishment of the GGE. The US also proposed the change "adhere to the agreed recommendations contained in document CCW/CONF.V/2" rather than "taking into account the recommendations agreed by consensus [contained in the same document]".

Switzerland welcomed that the forward-looking nature of this conversation indicates the establishment of the GGE. Switzerland supported the US proposal and encouraged the point that the GGE should align itself closely to the text agreed in April 2016 at the informal meeting of experts.

France suggested the inclusion "to discuss further the issue of LAWS". This suggestion was opposed by Egypt, Brazil, and Pakistan, who argued that this moved away from the language in the informal meeting of experts.

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News in brief, continued

The Republic of Korea supported the US proposal, and moved that to quote any part of the recommendation from the informal meeting of experts on LAWS would require the inclusion of the recommendation in full. The US agreed on this, noting that the recommendation as a whole captures everything for everyone.

The United Kingdom noted a loss of the reference to “emerging technologies in the area of LAWS”. The Netherlands also stated that this is an important phrase to mention. The Netherlands stated that including “in particular” ahead of “emerging technologies” might be useful.

Algeria and Egypt proposed that “consensus” be included with reference to the submission of the report.

The final draft decision, as amended orally, should read as follows: “Decides to establish an open-ended group of government experts related to emerging technologies in the area of lethal autonomous weapons systems in the context of the objectives and purposes of the Convention, which shall meet for a period of 10 days in 2017, adhering to the agreed recommendations contained in document CCW/CONF.V/2, and submit a consensus report to the 2017 meeting of high contracting parties to the Convention.”

Dates and timeframe

A number of states, including the United States, Japan, France, the United Kingdom, and the Netherlands indicated support for the Chair’s proposal for a meeting of 10 days.

Switzerland recommended 2 x 1 week in order to allow time for states to take stock and consider areas for progress between the sessions, which was supported by Finland, Australia, and the United Kingdom. Switzerland also suggested adding “starting in 2017” to allow for the consideration of future work in later years.

New Zealand expressed concern that the work done on LAWS wouldn’t hinder any inter-sessional meetings pertaining to Main Committee I on incendiary weapons, explosive weapons in populated areas, or mines other than anti-personnel mines. The United Kingdom echoed this concern, noting that the GGE could not be decided upon in isolation.

Suggested dates for the 2 x 1 week meetings on LAWS in 2017 were proposed to go back-to-back with the meetings of experts on Amended Protocol II and Protocol V, once in April and once in November. This was welcomed as a cost-saving measure. The Secretariat also proposed the option of a week in August.

Pakistan and Algeria noted that developing countries might struggle to come for two separate single weeks, and proposed a two-week meeting as a whole.

Chair candidacy for 2017

Mr. Ulianovschi noted that the appointment of the chair should be based on the principle of rotation, a point that Cuba had highlighted in earlier discussions.

Venezuela, on behalf of the Non-Aligned Movement, stated that it was consulting among its member states to propose a chair. •

