



CCW REPORT

Civil society perspectives on the Fifth Review Conference of
the Convention on Certain Conventional Weapons (CCW)
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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: TO PROGRESS OR DISRUPT

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

As states negotiated language for the final declaration and decisions of the conference on Thursday, one civil society observer reminded delegates on Twitter that they are called upon by the CCW to "continue the codification and progressive development of the rules of international law applicable in armed conflict." As we noted in Tuesday's editorial, the CCW was designed to be evolutionary, in order to adapt to changing technologies and methodologies in warfare. The Fifth Review Conference has struggled to live up to this mandate, arguing over work portfolios on incendiary weapons, mines other than antipersonnel mines, the use of explosive weapons in populated areas, and lethal autonomous weapon systems.

Instead of facilitating the progressive development of rules related to armed conflict, some CCW states parties seem instead to be operating out of the pages of the 1944 field manual on "Simple Sabotage" published by the Central Intelligence Agency. In the section on "general interference with organizations and production," the manual suggests operatives "make speeches," encouraging them to "talk as frequently as possible and at great length." It also urges them to "refer all matters to committees, for 'further study and consideration'." It recommends bringing up irrelevant issues as much as possible; haggling over precise wording; referring back to matters decided upon at previous meetings and attempting to reopen those decisions; and advocating "caution" and "reasonableness" and the avoidance of haste.

States not wishing to develop rules of international law related to armed conflict have effectively employed these tactics to disrupt, delay, and defer progressive action in the CCW this week, as they have in other forums.

It is interesting, perhaps, to examine this next to the development of the means and methods of warfare, which has steadily evolved. If we look at the history of weapons development, we see

a trajectory leading us towards increasing automation and remoteness of armed conflict, an increasing dislocation of the weapon operator from the weapon. From hand-to-hand combat to guns to tanks to bombers to drones and now potentially to fully autonomous weapons, the path is clear. Technological evolution in weaponry is driving us ever closer to fully mechanised violence, outside of the hands and minds of human beings.

At the same time, however, some have argued that technological evolution has driven a broader social and cultural evolution, which "has carried us from hunter-gatherer bands to the brink of a cohesive global community." As professor Toby Walsh said during his remarks at the Campaign to Stop Killer Robots' side event on Thursday, it is up to us choose if we use technology for good or for bad.

If we suppose (or want) the purpose or direction of technological evolution to be about facilitating a global community, then where does the creation of autonomous weapons fit in? Where does continued advancement in weapons technology and stalling in the development of rules or restrictions on their development or use drive us? Is the automation of weaponry compatible with the creation and sustenance of a true global community, in which people should surely be putting more resources into figuring out how to live together instead of kill each other?

The level and nature of violence we are already seeing around the globe—destruction of cities, massacres of civilians, seemingly limitless expansion of battlefields, etc.—would seem to be incompatible with a social and cultural evolution towards a global community. Will adding to the mix machines tasked with making kill decisions help or hinder this already fraught state of affairs? •

INCENDIARY WEAPONS: PROGRESS BUT NOT PANACEA*Joseph Crupi and Anna Khalfaoui | Harvard Law School's International Human Rights Clinic*

The CCW Review Conference has partially addressed the serious concerns surrounding the continued use of incendiary weapons raised by several states and civil society over this week. Although the Final Declaration of Main Committee I will not be adopted until Friday, the document is expected to include language condemning use of incendiary weapons and making Protocol III an agenda item for the November 2017 meeting of states parties. Due to the opposition of some countries, however, stronger proposals to address the shortcomings of Protocol III failed to find consensus.

Human Rights Watch and Harvard Law School's International Human Rights Clinic welcome the progress made on the issue of incendiary weapons, although regret that states missed a key opportunity to do even more.

New Zealand proposed a strong amendment to the Final Declaration, to which no states objected. The new language (with New Zealand's amendment in *italics*) will likely read:

Notes the concerns raised by a number of high contracting parties of recent growing reports of the use of incendiary weapons against civilians *and condemns any use of incendiary weapons against civilians or civilian objects, and any other use incompatible with Protocol III and with international humanitarian law.*

The language reflects the fact that at least 24 states and the European Union, as well as civil society organisations, expressed concerns about or condemned the use of incendiary weapons. At least 32 states spoke altogether.

Switzerland also offered a strong proposal that would have set aside time to discuss the adequacy of Protocol III. It read that the Review Conference:

Decides to discuss how to universalize and how to strengthen the respect of the rules of international humanitarian law relevant to incendiary weapons as well as whether the provisions contained in Protocol III adequately protect civilians and combatants from the severe consequences of weapons with incendiary effects.

Croatia, Costa Rica, and New Zealand explicitly expressed support for the proposal. At least 16 additional states called for further discussions of incendiary weapons and/or strengthening Protocol III over the course of the week.

While the Swiss proposal pushed the issue forward, several states, including Canada, France, Russia, and the United States, objected, especially to the last clause. They contended that the use of incendiary weapons is a matter of CCW universaliza-

tion and compliance. The Chair's compromise, which will likely be adopted, adds discussions of Protocol III to the agenda of the 2017 meeting of states parties without specifying the substance of those discussions.

Incendiary weapons cause horrific harm to civilians and soldiers alike, inflicting excruciatingly painful burns and life-long disabilities and disfigurement. Strengthening Protocol III is crucial to increase the stigmatization of incendiary weapons, which can influence even those outside of the CCW.

The failure of Protocol III to prevent civilian casualties resulting from the use of weapons with incendiary effects is due in part to two major loopholes. First, the definition of incendiary weapons includes only weapons that are "primarily designed" to set fires or burn people, a loophole that some states have used to justify the use of multipurpose weapons such as white phosphorus. Second, while Protocol III has a comprehensive prohibition on use air-delivered incendiary weapons in populated areas, there are only weak restrictions on the use of surface-delivered incendiary weapons.

The support for the draft Final Declaration and dozens of statements by concerned states are encouraging signs that CCW states parties are taking the incendiary weapons issue more seriously. We call on states parties to adopt the Final Declaration on Friday and reject any last minute efforts to weaken it.

We also call on states parties to take advantage of the slot on the 2017 agenda to engage actively on incendiary weapons and to work to strengthen Protocol III as soon as possible. •



White phosphorus munition © IHRC



IMPROVISED EXPLOSIVE DEVICES: FOCUS ON HARM, NOT USERS

Erin Hunt | Mines Action Canada

CCW high contracting parties have been discussing the threat posed by improvised explosive devices (IEDs) for years now. Yet, the humanitarian harm has not been at the centre of these deliberations. Instead, talks are focused on “terrorist” use. As highlighted by Ireland and New Zealand this week, focusing on a specific category of user limits the discussion and diverts attention from the humanitarian harm caused.

It is important to remember that victim-activated improvised explosive devices are improvised anti-personnel landmines. According to the Mines Advisory Group, of the over 7,500 improvised devices its teams located and destroyed in the last 12 months, 99% were improvised landmines. Casualties from improvised mines were identified in 13 states last year. The *Landmine Monitor* recorded 1,331 improvised mine casualties for 2015, which was the highest annual total of such casualties recorded since 1999. The next highest number recorded was 1,169 in 2012. It is important to keep in mind that historically, the number of improvised mine casualties was under-reported because such casualties were included in data as caused by unspecified mine types and unknown mine/explosive remnants of war items. Starting in 2008, the *Landmine Monitor* began identifying more casualties from these improvised antipersonnel mines, likely due in part to an increase in their use and also to improved data collection that made it possible to better discern between factory-made antipersonnel mines and improvised

mines, and between command-detonated IEDs and improvised mines in some countries.

While this week’s discussions are linked to Amended Protocol II, all high contracting parties, except ten, have obligations under the higher standards of the Mine Ban Treaty, especially with regards to humanitarian mine clearance and victim assistance. High contracting parties outside the Mine Ban Treaty are encouraged to join that treaty as soon as possible.

High contracting parties need to avoid blurring the lines between clearance done for humanitarian reasons and military clearance (counter-IED). Encountering improvised mines in humanitarian mine clearance is not new; mine action operators have been clearing such devices for two decades.

Victims of improvised mines have been receiving assistance under the Mine Ban Treaty and CCW Protocol V victim assistance provisions. To effectively respond to the additional clearance and victim assistance needs created by improvised mines, all states should be providing increased, multi-year funding to operators in the field. •

Notes

1. *Humanitarian Response, Improvised Landmines and IEDs: Policy issues for principled mine action*, Mines Action Group, November 2016.
2. See <http://www.the-monitor.org>.



Cover photo from MAG report

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.

Procedural matters

The president of the credentials committee presented the final report, which was adopted by the conference.

Brazil objected to the adoption of a report by an international organisation as an official conference document, arguing that this would set a bad precedent. Ireland and the United States expressed disappointment at the lack of consensus to include the document as official. The US reminded the conference that previously, reports from organisation such as UNODA. The President of the Fifth Review Conference, Ambassador Tehmina Janjua of Pakistan, suggested that this report might instead be resubmitted as a working paper, or a report that is not a conference document. There will be further consultations on this.

Main Committee I*Mines other than antipersonnel mines (MOTAPM)*

Ireland submitted a text on MOTAPM for inclusion in the final declaration.

Greece modified the language with the inclusion of "when using mines other than antipersonnel mines" rather than "in the use of antipersonnel mines". Ireland accepted this proposal from a national perspective.

Cuba suggested that both mentions of states "taking measures" should include the qualifier "take appropriate measures," arguing that not including this might lead to hazardous interpretations of the language. China and Nicaragua supported this.

Cuba and China sought clarification from the Chair that this language is intended solely for the declarations, and as a decision.

Ireland also submitted language on a decision regarding MOTAPM, simply noting that the issue should be kept on the agenda as a separate item at the annual meetings of high contracting parties. This language was supported by the United States and Australia.

Russia suggested that the language should reflect more specifically that MOTAPM be included as a separate agenda item for the meeting of high contracting parties in 2017 only, not at annual meetings plural.

Cuba, Belarus, and Brazil also expressed various concerns at the inclusion of MOTAPM as a "separate" agenda item. Cuba highlighted its scepticism as to the permanent inclusion of MOTAPM as a separate issue.

The Chair proposed a three-day meeting of high contracting parties in 2017 to give all agenda items full consideration.

Incendiary weapons

As on Wednesday, the Chair stated that the mention of incendiary weapons in the declaration would take the range of viewpoints into consideration, with limited elaboration on the nature of future discussions. The text simply reads: "Decides to add to the agenda of the 2017 meeting of HCPs the item 'Protocol III'".

New Zealand appreciated the flexibility of this language, noting that its main concern is that incendiary weapons finds space on the agenda. Switzerland welcomed the language along similar lines.

The Chair noted again that a three-day meeting of high contracting parties in 2017, rather than the usual two, would give the item of incendiary weapons sufficient time for consideration.

Science and technology

The Chair noted no amendments to Switzerland's proposed language. The final text states that the agenda of the next meeting of HCPs in 2017 would include the following for informal discussion: "Consideration of how developments in the field of science and technology relevant to the Convention may be addressed under the Convention."

Explosive weapons

Discussion on this began in the morning session. Pakistan welcomed the new text, which addressed "issues arising from the application of IHL and challenges presented by the increasingly urban nature of conflicts and the use of weapons not prohibited or regulated under the Convention and its Annexed Protocols and their impact on civilians". Pakistan preferred the formulation "non-international armed conflicts," but said that an amendment to "armed conflicts" would also suffice. El Salvador supported this amendment.

Brazil expressed concern that the text went outside the scope of the Convention with reference to "weapons not prohibited or regulated". The Chair responded to this concern explaining that there are states that wish to see the debate advance on weapons not currently under regulation or prohibition.

Germany suggested including the phrase "purposes and objectives of the Convention" to tie the text to the Convention.

China did not feel that the Committee had a mandate to cover the issues contained within the wording of the draft text. Russia expressed similar doubts, noting that the Convention should not expand its scope in a "speculative manner".

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News in brief, continued

Switzerland proposed an amendment from “issues arising from the application of IHL” to “issues in relation to the application of IHL”.

Germany moved to include the word “conventional” before the reference to weapons to help with clarification. France supported this amendment.

France noted the importance of a reference to the challenges posed by the urban nature of conflicts and the importance of strengthening IHL in this respect, and made an amendment to the wording along the same lines. El Salvador supported this proposal as suitable to the framework of the CCW.

China welcomed the clarity of the French proposal, though it questioned the emphasis on “increasingly urban” conflict, arguing that many conflicts take place in non-urban areas. The Chair responded to this by noting that conflicts were taking place in areas with a greater concentration of civilians.

States resumed the discussion about explosive weapons in the afternoon session, with a text reading, “Determined to strengthen the respect for IHL and to address, in the context and objectives of the Convention and its Annexed Protocols, the challenges presented by the use of conventional weapons and their impact on civilians, particularly in light of the increasingly urban nature of armed conflicts.” China said that while it was a great improvement from the morning, the new version of the paragraph would be improved by deleting the second part of it. This is the part that makes reference to civilians and urban settings.

Belgium, Germany, Switzerland, and the United Kingdom noted that this change would remove the specificity and purpose of the paragraph.

New Zealand suggested an alternative that was supported by Austria and Brazil. Ireland and France each put forward drafting suggestions. The French suggestion was supported by Belgium but not by New Zealand, on the basis of it not being in conformity with international humanitarian law (IHL). Each of these was an effort to describe a civilian populated area without referring specifically to an urban environment.

China clarified that their concern is not whether civilians are specified or not, because they should be protected in any context, but rather about locating it within an “urban” setting.

The Chair built on all drafting suggestions to re-formulate this part of the paragraph. States will notify him of any concerns.

Main Committee II

Venezuela reported back from the consultations of the Non-Aligned Movement (NAM) about their nomination for the chair of the group of governmental experts (GGE) on lethal autonomous weapons systems (LAWS). India has been proposed for this role.

The draft report of Main Committee II was presented to delegates. Russia said that it could not support paragraph 7 that establishes the GGE. After a brief pause to discuss, the Committee agreed to put this paragraph into brackets for consideration in plenary tomorrow. •



**CAMPAIGN TO STOP
KILLER ROBOTS**

**SO FAR, 19 STATES SUPPORT THE
PROHIBITION OF LETHAL AUTONOMOUS
WEAPON SYSTEMS**

Algeria
Argentina
Bolivia
Chile
Costa Rica
Cuba
Ecuador
Egypt
Ghana
Guatemala
Holy See
Mexico
Nicaragua
Pakistan
Palestine
Panama
Peru
Venezuela
Zimbabwe



SIDE EVENT: WHY A BAN ON FULLY AUTONOMOUS WEAPONS IS NEEDED NOW

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

This side event demonstrated the saliency of a ban on fully autonomous weapons from a number of perspectives, highlighting the moral and political quandaries of these weapons. The Chair was Frank Sauer from the International Committee for Robot Arms Control.

Mary Wareham, global coordinator of the Campaign to Stop Killer Robots, opened the discussion with an overview of how and whether a group of government experts (GGE) on lethal autonomous weapons systems (LAWS) will be established in 2017. So far, it appears that two weeks will be dedicated to LAWS negotiations, an amount that Ms. Wareham welcomed as “not insignificant,” while acknowledging that this is the bare minimum that should be done. Progress comes on the back of efforts of civil society campaigners, of research from institutions such as SIPRI and UNIDIR, and of the concerned science community. These efforts have political significance, such as the initiative in the United States taken by nine House Democrats in a letter to the US Secretary of State, declaring their support for the call to prohibit the development, production, and use of LAWS. Argentina, Guatemala, Peru, Panama, and Venezuela are now added to a list of 19 countries calling for a ban on killer robots. Ms. Wareham also highlighted that the CCW operates by consensus. With one delegation opposing the GGE on the grounds that it could be premature, its establishment cannot yet be taken for granted. Without a GGE, Ms. Wareham made it clear that this review conference would be considered a failure.

Toby Walsh, professor of artificial intelligence at the University of New South Wales, took up the debate from the perspective of academics in the field of artificial intelligence. Mr. Walsh emphasised that the artificial intelligence of the near future is incapable of making decisions over matters of life and death. But the risk that it might is real, and many in the scientific community are concerned that an arms race with potentially disastrous consequences is already underway. Mr. Walsh cited developments such as the “Sea Hunter”—an unmanned, unarmed warship that designed to detect submarines—and the “Unmanned Patrol Squadron” of drones, both from the US Navy. Robots are successful in controlled environments, but in the context of real world complexities they are still primitive, unreliable, and unpredictable. That being said, when the technology is more capable, this will lower the barriers to war. Neither of these is or should be an attractive path. The community of artificial experts are aware of the dangers. They have set up a task force on the ethical design and use of autonomous and intelligent systems that has presented clear warnings on societal safety, including the impacts on security and privacy. There are two simple recommendations: that autonomous weapons should be governed by meaningful human control

over individual attacks; and that to design, develop, or engineer an autonomous weapon to kill people beyond human control is unethical.

Jonathan Frerichs, from the World Council of Churches, urged that new formal negotiations should not just be concerned about process, but about content. Main Committee II discussions are more concerned with the former; a clear negotiating mandate for the GGE is not emerging. Mr. Frerichs noted the importance of the Martens clause with respect to fully autonomous weapons, likening their development to the development of nuclear weapons, where “principles of humanity and dictates of public conscience were bypassed”. With LAWS, humans will have the means to destroy each other with impunity, and over great distances. The issue of accountability, Mr. Frerichs noted, also brings complications with regards to a state monopoly on the use of force. He highlighted that this is an issue of moral and political concern, rather than technological. Conversations should be staying away from the idea that these weapons would be acceptable in the “right hands”.

Jody Williams, 1997 Nobel Peace Laureate and chair of the Nobel Women's Initiative, thanked the speakers for their powerful statements. Ms. Williams put forward a strong argument that there is no ethical or moral reason to create killer robots. Ms. Williams expressed frustration with the disarmament machinery of the UN. Landmines, cluster munitions, and a political declaration on explosive weapons in populated areas are all being negotiated outside of the UN, because the diplomatic processes within it are not working. Ms. Williams impressed on the room that the CCW has a chance to do something meaningful, and to prove its relevance, its credibility, and its earnestness in the protection of civilians. Doing the right thing in this review conference should not be so complicated.

One speaker from the floor focused on concerns that a blanket ban might thwart important peaceful developments in the sphere of artificial intelligence. Mr. Walsh responded with a straightforward refutation. He observed that we have the choice over how technology should develop, and there is a clear message from the scientific community over what the good choice is. To illustrate his point, Mr. Walsh noted the potential of alternative military applications of robotics, such as in mine clearance operations. •

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WILL BE AVAILABLE MONDAY, 19 DECEMBER
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