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Empty plenary room during the Meeting of High Contracting Parties, November 2019 © Campaign to Stop Killer Robots

IN THIS ISSUE:

- 1 Editorial: The CCW is still standing, but to what end?
- 3 Fully autonomous weapon systems
- 7 Use of explosive weapons in populated areas
- 9 Incendiary weapons
- 10 Mines other than anti-personnel mines
- 11 Gender
- 11 Financial issues
- 13 Elements of a treaty to ban fully autonomous weapons
- 15 Event report: How to ban killer robots and why it's time



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THE CCW IS STILL STANDING, BUT TO WHAT END?

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

Following directly on the heels of a difficult round of disarmament discussions at the UN General Assembly First Committee in New York, the high contracting parties to the Convention on Certain Conventional Weapons (CCW) met in Geneva for their annual meeting to discuss a range of issues including fully autonomous weapons, the use of explosive weapons in populated areas, incendiary weapons, and mines other than anti-personnel mines. As at First Committee, there was a clash between those governments seeking to prevent humanitarian harm from weapons and those resisting any possible curtailment of the development or use of weapons. Since the CCW operates on the basis of consensus-as-unanimity, the handful of states objecting to regulations or restrictions were once again successful in obstructing further work on pretty much all of the CCW's agenda items. The meeting adopted its final report by consensus, but the agreed outcomes are once again reflective of the lowest common denominator, not a progressive agenda for preventing human suffering from weapons and war.

Discussions about what to do next regarding fully autonomous weapons continued from the latest round of the group of governmental experts (GGE) on the subject, which met in August 2019. The GGE had mostly agreed to a consensus report after an intense late-night debate but punted to the CCW meeting of high contracting parties a decision about how long it would meet for over the next two years. In the end, the parties decided that the GGE will meet for only ten days in 2020 (22–26 June and 10–14 August) and tentatively for another 10–20 days in 2021. During these meetings, the GGE “is to explore and agree on possible recommendations on options related to emerging technologies in the area of lethal autonomous weapons systems.” To this end, it is to consider the guiding principles adopted this year, previous conclusions of the GGE, and further work on legal, technological, and military aspects of autonomous weapons, “and use them as a basis for its consensus recommendations on the clarification,

consideration and development of aspects of the normative and operational framework on emerging technologies in the area of lethal autonomous weapons systems.”

This goal, as the Campaign to Stop Killer Robots has noted, is convoluted and ambiguous. As a result of the eight CCW meetings on fully autonomous weapons held since 2014, the international community has “seen strong convergence on the need for some form of human control over the use of force,” notes the Campaign. “However, states still struggle to agree on credible recommendations for multilateral action due to the objections of a handful of military powers, most notably Russia.” The agreement to spend the next two years exploring possible recommendations on options, and clarifying, considering, and developing aspects of a framework, puts the world in a rather dire predicament as the development of fully autonomous weapons proceeds apace outside of the conference halls.

Meanwhile, high contracting parties could not even agree to put other horrific weapons on the CCW's formal agenda. Most delegations commenting on incendiary weapons condemned or expressed concern about the use of incendiary weapons and their cruel effects. Many of these called for dedicated CCW discussions and/or strengthening of Protocol III. But states failed to reinstate this as an agenda item for 2020 because only two countries publicly opposed it. In the meantime, as Human Rights Watch has pointed out, incendiary weapons are currently being used by the Russian-Syrian military alliance in or near populated areas in Syria.

Similarly, while the majority of states participating in discussions on mines other than anti-personnel mines (MOTAPM) expressed concern at the humanitarian impact from the indiscriminate and disproportionate use of these weapons, a couple of delegations argued against any further restrictions. Russia argued that portraying MOTAPM as a particular humanitarian threat is not “in keeping

with reality” while Belarus argued that “arbitrary restrictions” on the use of MOTAPM to protect states’ sovereignty and integrity are unacceptable. Based on the latest draft of the report available upon writing, MOTAPM is not included as an agenda item next year. In fact, there is no reference to MOTAPM in the report at all.

The only issue relatively unscathed by the CCW’s consensus rule is the use of explosive weapons in populated areas (EWIPA). This is because Austria and Ireland have kick-started a process outside of the CCW to carry discussions and action forward. In October, Austria hosted a conference on protecting civilians from urban warfare, which Ireland is following up with a series of informal consultations towards the development of a political declaration to address humanitarian harm from the use of EWIPA. The first consultation will be held on 18 November 2019, the objective of which is to “initiate an inclusive and transparent process through which the international community can engage in discussions on relevant thematic elements for inclusion in a Political Declaration.” So while a handful of states such as Israel, Russia, and the United States argue that the use of EWIPA is not relevant or appropriate for the CCW, the majority of states have found another way to try to prevent humanitarian suffering from this particular practice.

The argument from most of the “usual suspects” objecting to action on certain types of weapons or the use of certain weapons is that all we need is better implementation of international humanitarian law (IHL). This is rather ironic, considering many of the delegations who assert this are those violating IHL. Their refusal to allow multilateral articulation of restrictions or prohibitions on weapons or the use of weapons in order to ensure compliance with IHL would seem to contradict their stated concern with the law’s implementation.

Further complicating this year’s work at CCW was the unprecedented decision to negotiate the final report behind closed doors, resulting in the exclusion of civil society, a vacant plenary room, and the stuffing of (mostly male) delegates into tiny spaces without language interpretation to “reach agreement” on how to move forward. Several

governments objected to this decision, which completely belies the transparent and inclusive manner in which the CCW usually operates. Because of this procedure, and due to the fact that the final report has not yet been released at the time of publication, we cannot guarantee our reporting on final agreements to be correct and encourage readers to check against the final report once it is published.

And so much like First Committee survived its latest iteration despite geopolitical tensions, the unweaving of multilateral rules and commitments, and financial crisis, the CCW, too, is still standing—although becoming less transparent than ever before and more polarised. But those engaged in the work of trying to maintain the rule of law, prohibit weapons, and restrict the use of force need to ask, what can we do to not just preserve the institutions we have but to advance the agendas we set out for them? Can we protect the treaty bodies and the forums for discussion and negotiation without making that an end in itself? Remembering the mandates of these forums is essential, keeping the UN Charter’s commitment to ending the scourge of war for future generations at the core. If we are not advancing disarmament, if we do not approach weapon prohibition and restriction as necessary for international and human security, then these forums will inevitably fail—because we will have failed them.



Small room meeting closed to civil society to negotiate the CCW high contracting parties final report, November 2019
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FULLY AUTONOMOUS WEAPON SYSTEMS

Katrin Geyer | Women's International League for Peace and Freedom

The topic of autonomous weapon systems was the most extensively discussed subject at this year's CCW Meeting of High Contracting Parties (MHCP). Deliberations revolved mostly around the report adopted by the group of governmental experts (GGE) on lethal autonomous weapon systems (LAWS) in August this year (CCW/GGE.1/2019/CRP.1/Rev.2) and the content of its mandate for the next two years. States had to position themselves on the bracketed content in the report, which had left it to the MCHP to decide on the amount of days that the GGE should meet in 2020 and 2021, and the scope of its mandate.

Delegations assessed the GGE's work in varying degrees. Many states expressed appreciation for the GGE's work and its achievement so far. Others were more cautious about the GGE's achievements. Peru noted that the GGE has been discussing definitions and characteristics of LAWS for years but noted the debates continue to be "sterile". While Brazil welcomed the GGE's work, it said that it must not be fully satisfied with the success so far. Mexico made similar remarks. Brazil regretted that it wasn't possible, in light of the urgency of the issue, to finalise the GGE's recommendations in their entirety and stressed that the adoption of a report with a bracketed part shall not constitute a precedent. Chile had similar regrets.

Against this backdrop, many participants, including the European Union (EU), Germany, and the High Representative for Disarmament Affairs Ms. Izumi Nakamitsu called for the CCW to act fast and to remain responsive to rapid weapons technology advancements if it is to demonstrate its relevance. Brazil expressed a great sense of urgency, observing, "the development of new technologies and its integration into military programs is still outpacing our diplomatic efforts to regulate its security and humanitarian impacts. We, the international community, do not have the luxury of time if an effective framework to deal with the challenges posed by LAWS is not developed." Mexico and Chile expressed similar concerns. New Zealand said that the "eyes of the world are on our

GGE," demanding meaningful outcomes. Ecuador, New Zealand, and Austria also urged for the GGE to step up its pace. Germany said it was urgent for the GGE to produce "normative and operative results." Mexico called for a clear roadmap, commitment and political will, and warned that otherwise this process won't lead to any results and that "we'll be failing humanity."

Mines Action Canada, a non-governmental organisation (NGO), also observed that "CCW is in danger of being caught standing still while technology advances in leaps and bounds." PAX, another NGO, affirmed that the development of autonomous weapons is "entering a new phase where the human is gradually disappearing from the decision-making loop."

Guiding principles

Most states welcomed the eleven guiding principles on autonomous weapon that were agreed upon at this year's GGE session in August. The Netherlands, the EU, Germany, Bulgaria, the United Kingdom (UK), Finland on behalf of high contracting parties working together in the framework of the alliance for multilateralism, Austria, and others called for the guiding principles' formal endorsement at this meeting. In this respect, the Netherlands noted that it was committed to applying the principles in its national policies. Spain made a similar declaration. Belgium, the EU, and Bulgaria also called for the operationalisation of the principles.

Austria and El Salvador perceived the endorsement of the CCW's guiding principles as a step to prepare future negotiations of a legally binding instrument. Iraq argued that the guiding principles should not substitute elements to be contained in a legally binding instrument for the regulation and banning of LAWS. Peru had similar views.

The way ahead

The majority of states reiterated the need for the importance of human control over the use

of force to ensure compliance with international law, including international humanitarian law (IHL), including the UN High Representative for Disarmament Affairs Ms. Izumi Nakamitsu, the European Union (EU), Slovenia, Brazil, Estonia, Croatia, Ireland, Italy, Costa Rica, and Russia. The EU further stressed that human beings remain accountable for decisions over life and death to ensure compliance with international law, in particular IHL and international human rights law (IHRL). Russia, on the other hand, stressed that while human control is a necessary condition to implement existing norms of international law, including IHL, it should be up to states to decide on the specific forms of human control.

Many states noted that there is a need to deepen common understandings about key concepts, such as human-machine interaction, human control, characteristics, and definitions of autonomous weapons to assess if weapon systems with increasing autonomous functions are compliant with IHL. More specifically, Austria, Spain, the International Committee of the Red Cross (ICRC), Bulgaria, Brazil, Pakistan, Ecuador, New Zealand, Ireland, the EU, Poland, and Greece, amongst others, said the GGE on LAWS should focus on and advance on the issue of human control. Sweden informed that it is currently funding a study by the Stockholm International Peace Research Institute (SIPRI) and the ICRC on elements of human control, which will be shared in advance of next year's meetings. Spain, Brazil, Bulgaria, the EU, Japan, and others also suggested the concept of human-machine interaction should be further explored to ensure greatest respect for IHL. Italy, Pakistan, and other delegations observed that it is necessary to further discuss characteristics and implications of LAWS. Brazil said it wants the two next years to concentrate on finding common understandings on LAWS so that policy measures can be adopted at the 2021 Review Conference. Others suggested also focusing on best practices, compilation of existing international law and a gap analysis, and legal weapon reviews. Brazil urged the GGE to identify gaps in existing international humanitarian law and to establish a network of legal experts to provide support to the process. Some delegations also urged to further look at the potential impact of LAWS on human rights, such as South Africa.

France, Bulgaria, the EU, Slovenia, Germany, the UK, Belgium, and Finland on behalf of high contracting parties working together in the framework of the alliance for multilateralism, underscored that the two years until the 2021 Review Conference should be used to clarify and develop aspects of a "operational and normative framework" on autonomous weapon systems. Germany said that it was "high time" to focus attention on such a framework so to ensure that autonomous weapon systems without human control will never become a reality.

The majority of states, such as the Non-Aligned Movement (NAM), Panama, Ecuador, Iraq, Costa Rica, Cuba, Sri Lanka, Austria, China, Egypt, Mexico, Austria, Pakistan, Venezuela, Belgium, Peru, Colombia, China, and Brazil, amongst others, continued to call for a legally binding instrument on autonomous weapon systems.

Ecuador noted that the GGE has reached a critical point, and should now move to review the elements for a binding normative framework ensuring sufficient human control over weapons to ensure compliance with IHL. The NAM, Venezuela, Pakistan, and Peru hoped that the GGE will make progress towards concrete recommendations, including elements for a legally binding instrument stipulating regulations and prohibitions on LAWS, and said that codes of conduct, moratoria, or political declarations are insufficient. Belgium said that it seeks international support in the broadest sense possible for a prohibition on LAWS that do not comply with legal, humanitarian, and ethical standards. Cuba, Panama, and El Salvador also called for a legal instrument prohibiting LAWS.

Ms. Nakamitsu reminded of the UN Secretary-General's call for a ban, and his repeated assertions that weapons that would have the power and discretion to take human lives are politically unacceptable, morally repugnant, and should be prohibited by international law. The Campaign to Stop Killer Robots, Human Rights Watch, Mines Action Canada, and PAX reiterated that the only viable option is a pre-emptive ban on the development, production, and use of fully autonomous weapons, reminding that the majority of the world's nations have called for negotiations on a legally binding instrument with prohibitions

and restrictions. PAX informed that a new opinion poll in ten European countries recently released shows an average 73 per cent supporting a prohibition on lethal autonomous weapons.

Brazil said that it supports the beginning of negotiations to establish a positive obligation of human control in weapons system which autonomous functions. Sri Lanka noted that that it supported the proposal to undertake negotiations with a view to arriving at a legally binding instrument on LAWS within the framework of human rights and international humanitarian law. Pending such legal framework, Sri Lanka and the NAM encouraged states to consider putting in place national moratoria on the development or use of LAWS. Austria supported immediate negotiations on the regulation of LAWS through a legally binding instrument in order to ensure meaningful human control over selecting and engaging targets. China and Egypt also said there was a need to formulate a legally binding instrument.

India noted that while it sees merit in the proposals for a legally binding instrument, it finds it to be premature to prejudge the outcome of deliberations on the nature of such a legally binding instrument by calling for the prohibition of LAWS. It also said that it cannot support positions calling for moratoria on LAWS. The United States said that “dictating a particular format for an outcome before working through the substance will not allow for the fullest and most rigorous discussion.” Russia urged to avoid hasty decisions that may prevent technological progress, the development of peaceful robotics, and artificial intelligence. It does not see the need for any legally binding instrument or moratoria on LAWS. Estonia also said it was unpersuaded of the need of a legally binding instrument and argued that IHL is capable of governing new weapons technologies.

Belgium, New Zealand, and the EU welcomed the recent Declaration by the Alliance for Multilateralism on LAWS. This declaration was initiated by the Foreign Ministers of Germany and France and presented at the UN General Assembly high-level week by the Foreign Minister of Finland with cross-regional support. New Zealand said it intends to sign on to the declaration.

Switzerland, Ireland, Estonia, and Poland, Italy expressed support for a further political declaration, which Italy described as a “realistic and productive outcome” of the GGE’s work. Ireland said this could be a “firm and collective basis” for further regulation of weapon systems with increased autonomous functions. Poland said that such a declaration could encourage CCW states parties to regulate the development, testing, and use of LAWS with assigned levels of human control.

Brazil announced that as part of the preparatory process for next GGE, it will hold a symposium on LAWS in February 2020 in Rio de Janeiro. It will be dedicated to the issue of LAWS within the legal, technological, entrepreneurial, and strategic military aspects. Invitations, along with a programme and exact dates will be shared shortly with states, international organisations, and NGOs. Chile welcomed this.

The GGE’s mandate

The final report of the GGE’s August report left two decisions open. The first related to the number of days that the GGE will meet in 2020 and 2021. The MCHP agreed for the GGE to meet from 22–26 June, and 10–14 August 2020. The meetings are subject to financial and budgetary conditions. This means that the MCHP only decided on ten meeting days in 2020, with the duration of meetings in 2021 to be decided at next year’s MCHP.

Due to closed informal consultations not accessible to civil society, we cannot report on detailed negotiations on this topic, but states did refer to this in plenary. Greece, Belgium, Chile, Estonia, Switzerland, Bulgaria, Ecuador, Ireland, New Zealand, Sweden, Argentina, Germany, Austria, Finland, Slovenia, Brazil, the EU, and France supported the GGE to meet for 30 days in total in 2020 and 2021. Many of those noted that the time allocated in 2019 was not sufficient. Brazil observed that “the most important issue here is not time or the number of sessions but our political commitment.” The United States was open to the amount of days. Meanwhile, Israel said it was difficult to expand meetings to 30 working days in light of limited national and UN resources. Russia said 20 days in total would be enough in line of the mandate and financial difficulties.

The second issue that the GGE had left open for discussion for the MCHP was the inclusion of the term “development” in relation to a possible normative and operational framework on LAWS. Against Russia’s insistence to include “potential” before “development,” the MCHP mandated the GGE to consider consensus recommendations on the “development of aspects of the normative and operational framework.” Russia raised this point in the late hours of Friday’s session but Mexico, Panama, Chile, Costa Rica, and Ecuador all held against it, arguing that they could not accept a mitigating or qualifying adjective before “development.”

Throughout the general exchange of views, and the separate agenda item on autonomous weapon systems, many states referred to the GGE’s mandate and the need for the inclusion of the term “development”. Brazil said it was important to keep the full reference, arguing that the mandate’s language was “mild and falls behind the expectations of that majority in the CCW.” It noted that further delusion of the mandate will be “painful to accept”. It argued that the term “development” is something the majority would like to keep in order to see effective regulation of LAWS. Chile had similar observations and noted that the term “development” expresses in concrete terms the expectation for putting together an international legal framework based on the past discussions over more than six years. Argentina,

Venezuela, Cuba, New Zealand, Panama, Japan, the United States, Mexico, and Switzerland also expressed support for keeping the term “development.” The United States said that this term accurately characterises the work the GGE has already been doing with regard to the guiding principles and said it should continue in that vein, along with compilations of good practices and conducting legal reviews of weapons. Japan supported the term as it leaves open the possibility for a potential development of a framework which may take various forms.

Russia said that neither the GGE nor the CCW has the mandate to change the scope of the work of the group, and said that the GGE should continue its discussion mandate. Israel argued that discussions are far from being exhausted, which it said also stemmed from the fact that “we are discussing potential future weapons.” Israel therefore supported a continued discussion mandate for the GGE.

Costa Rica, Switzerland, Peru, Egypt, and the Arab Group expressed dissatisfaction at the fact that this year’s session had to be conducted in an informal manner. Costa Rica and the Arab Group asserted that they could not support meetings in informal formats due to the lack of interpretation services. A few others, such as Japan, welcomed the open and focused informal consultations and encouraged to hold these within the next mandate as well.



USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

Katrin Geyer | Women's International League for Peace and Freedom

More than 30 delegations addressed the use of explosive weapons in populated areas (EWIPA) in the general exchange of views, as well as in the agenda item on “emerging issues.” The High Representative for Disarmament Affairs Ms. Izumi Nakamitsu, along with delegates from the European Union (EU), Canada, Bulgaria, Peru, Mexico, Costa Rica, India, Bulgaria, Belgium, the Philippines, Ecuador, Turkey, Ireland, France, Italy, Germany, Greece, Chile, Poland, Spain, Austria, Japan, the Netherlands, and the International Committee of the Red Cross (ICRC), amongst others, expressed deep concern at the devastating impacts of EWIPA on civilians and civilian objects and infrastructure. Austria noted that 90 per cent of victims are civilians when explosive weapons are used in populated areas, making this an “urgent call for action.” The EU noted that “indiscriminate attacks against civilian populations, the recurrence of attacks against medical facilities, schools and humanitarian workers, and the arbitrary denial of humanitarian access to people in need are all unacceptable, yet reported on a regular basis.” Mexico also said that the use of EWIPA is unacceptable, leading to the cruelest humanitarian consequences. The ICRC spoke of a “domino” effect of death, disease, and displacement caused by EWIPA.

Australia said it is confident that “compliance with international humanitarian law will go a long way to address concerns raised by the international community about the use of” EWIPA. Canada argued that the indiscriminate use of EWIPA is a question of compliance with international humanitarian law (IHL), as opposed to a problem inherent to a type of weapon. Germany made similar remarks. Canada noted that the issue must be addressed by the international community and underscored the urgency to continue discussions on how to ensure IHL compliance and the protection of civilians in these contexts. The ICRC, on the other hand, argued that explosive weapons with a wide impact area are very challenging to employ in populated areas in conformity with IHL rules.

A few states, such as India, the United Kingdom (UK), and the United States (US), amongst others, asserted that they seek to minimise the impact on civilians in their military operations in urbanised contexts. Some states indicated scepticism about addressing the use of EWIPA. Israel argued that “that the call encouraging avoidance of the use of explosive weapons are counterproductive and unreasonable as far as law abiding states are concerned,” and insisted that “such calls are legally unfounded” and “unrealistic.” The United States said it is impractical and counterproductive to try to ban or stigmatise the lawful and appropriate use of explosive weapons as inherently problematic, as these weapons can also strengthen civil protection compared to other means and methods of warfare.

Many states spoke about the key milestones that have been achieved around the world in recent years and months to raise awareness of the challenges associated with the indiscriminate use of EWIPA, including New Zealand, the European Union, Germany, Sri Lanka, and others.

One such “milestone” was the Vienna Conference “Protecting civilians in urban warfare,” hosted by Austria in early October 2019. The EU, Mexico, the UK, the Republic of Korea, Colombia, the ICRC, Peru, Germany, the US, New Zealand, Belgium, Sweden, and Chile were amongst those that either welcomed or positively referred the conference. Austria informed that 133 states from all regions, international organisations, and civil society participated in the conference, demonstrating the broad support to the issue.

As another positive development, the High Representative for Disarmament Affairs and Ireland reminded that the UN Secretary-General's disarmament agenda called for the support of the development of measures designed to address the humanitarian impact of EWIPA. Ireland, Austria, and the United Nations Mines Action Service (UNMAS) welcomed the priority that the UN Secretary-General and the president of the ICRC have attached publicly to the humanitarian impact

of the use of EWIPA. UNMAS reminded that its joint appeal calls on states and parties to a conflict to reduce urban fighting altogether, and to recognise that they cannot fight in populated areas in the same way they would in open battlefields. The ICRC and the UN Secretary-General called on parties to avoid the use of EWIPA. The ICRC clarified that “an avoidance policy suggests a presumption of non-use, meaning that explosive weapons with a wide impact area should not be used in populated areas, unless sufficient mitigation measures are taken to reduce significantly the wide area effects of the weapons and the consequent risk of civilian harm, among other good practices to be put in place well in advance of military operations.”

Sweden, Belgium, Austria, Bulgaria, New Zealand, and Ireland, amongst others, also welcomed the strong support and commitment to addressing the humanitarian harm of EWIPA demonstrated through this year’s joint statement by 71 states delivered at First Committee.

The majority of states addressing EWIPA, including the EU, Spain, France, Peru, UNMAS, Bulgaria, Chile, US, Italy, Belgium, New Zealand, Germany, Colombia, and Austria positively referred to the start of a series of open consultations to elaborate a political declaration to govern the use of EWIPA. The first consultation, to be convened by Ireland, will take place on 18 November in Geneva. Ireland expressed hope that a political declaration “is one of a set of measures which can enhance compliance with IHL and better protect civilians during armed conflict,” and is committed to facilitate “an open and transparent process in the months ahead.”

The UK said that such a process should also recognise the challenges posed by the indiscriminate use of improvised explosive devices (IEDs) and the growing role of non-state actors in causing harms to civilians, while UNMAS called for the inclusion of explosive remnants of war risk education clearance and victim assistance. The UK informed that along with Germany and France, it has produced a paper setting out key principles for a political declaration.

Germany welcomed that the operational approach it had developed, aimed at strengthening and

existing rules of IHL, inter alia, through the sharing of best practices, has found wide acceptance. The EU, the US, Bulgaria, Germany, and others, also welcomed efforts to share best practices to protect civilian populations.

Germany presented its working paper submitted to this meeting (CCW/MSP/2019/WP1), in which it outlines the need for a holistic approach to reduce risks and mitigate harm to civilians from the effect of EWIPA, taking into account heightened awareness and appropriate reflection in military doctrines, strategic directives, tactical instructions, rules of engagement, education training, and exercise of armed forces, and other measures. Ireland welcomed the working paper.

The EU, Greece, Bulgaria, Germany, Poland, Peru, Switzerland, New Zealand, Uruguay, Costa Rica, Mexico, Japan, Ireland, and Austria, amongst others, supported the continuation of discussions on EWIPA within the CCW. New Zealand regretted that there is no agenda item on this topic this year, and that the “informal working group” as suggested by Germany last year didn’t come to fruition. Switzerland said that the CCW shouldn’t only be seen as a forum dedicated to new protocols but has also proven as an adequate platform to exchange views and consolidate opinions. New Zealand hoped, however, that the CCW could play a supporting role to the political declaration process. Ireland said that the achievement of a political declaration can be complementary and reinforce any agreed future programme of work. Mexico expressed similar hopes.

The US did not support the inclusion of the use of EWIPA as specific agenda item at the CCW, arguing that this forum only deals with certain types of weapons. Israel and Russia made similar observations. Israel argued that the EWIPA discussion disregards two different types of actors who take opposing approaches to IHL: “law abiding states who are forced to fight in urban environments” on the one hand, and those who are indifferent towards IHL on the other. Russia opposed launching separate expert discussions on this topic.

Various delegations, including Greece, Italy, Bulgaria, Ecuador, and Turkey, also referred to

the increasing threat of IEDs. Greece urged for action to mitigate the human suffering caused by use of these weapons. It underlined the new EU regulation, 2019/1148, which seeks to further strengthen existing rules to prevent terrorist access from explosive precursors. Some states

welcomed the heightened efforts under CCW Amended Protocol II to address this issue. Mines Action Canada urged for discussions around IEDs to be grounded in existing law, including the Mine Ban Treaty and CCW Amended Protocol II.

INCENDIARY WEAPONS

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

At last week's annual meeting of the Convention on Conventional Weapons (CCW), almost all states parties that spoke out on incendiary weapons stood firm in condemning recent use and pushing for further discussions. Russia and the United States ultimately blocked proposals to set aside time in 2020 to discuss CCW Protocol III, which governs the weapons. But after heated debate, the final report reflected the widespread concern and calls to reinstate an agenda item on the protocol.

Incendiary weapons, which produce heat and fire through the chemical reaction of a flammable substance, can inflict severe burns, leave extensive scarring, and cause respiratory damage and psychological trauma. They also start fires that destroy civilian homes, objects, and infrastructure.

At least 25 speakers, including at least 17 states parties, addressed incendiary weapons during the CCW meeting. Australia and Mexico spoke twice. Interventions were also made by the European Union, the UN High Representative of Disarmament Affairs, the International Committee of the Red Cross (ICRC), and three nongovernmental organizations.

Of the 17 states parties, at least 14 of them condemned or expressed concern about the use of incendiary weapons and their cruel effects. At least 12 called for dedicated CCW discussions and/or strengthening of Protocol III. New Zealand, for example, recommended approving both a slot on the 2020 agenda and a separate informal meeting. The European Union, which represented 28 member states and three others, also condemned the use of incendiary weapons on civilians or in

civilian areas and requested that Protocol III be put back on the agenda. Regardless of states' views on amending Protocol III, the concerns they voiced call for more in-depth analysis of the issue.

In 2019 in Syria, the Syrian-Russian military alliance continued its use of incendiary weapons in or near civilian areas. In May and June alone, incendiary weapons were used at least 27 times, mostly in Idlib governorate, according to Human Rights Watch. Syria has not joined Protocol III, but Russia has.

Human Rights Watch had identified about 150 incendiary weapons attacks in Syria since November 2012, but the total number is most likely higher. Human Rights Watch bases its identifications on analysis of open-source material, testimony, and satellite imagery.

Adopted in 1980, Protocol III is the only existing international law dedicated to regulating the use of incendiary weapons. But two key loopholes reduce its efficacy.

First, Protocol III's definition of incendiary weapons limits the scope of application to those systems "primarily designed" to set fires or cause burn injury." This definition does not encompass munitions, like those containing white phosphorus, that have the same incendiary effects but are "primarily designed" to create smokescreens or signal troops.

Second, Protocol III draws an arbitrary and outdated distinction between air-dropped and ground-launched incendiary weapons. It prohibits the use of air-dropped models in concentrations

of civilians, but the provision on the use of ground-launched incendiary weapons in such areas includes several caveats. Incendiary weapons cause the same horrific burns and destructive fires regardless of their delivery mechanism.

Discussions of incendiary weapons in the CCW forum began in the wake of Israel's use of white phosphorus in Gaza in 2009. At the 2016 Review Conference, states parties agreed to set aside time to discuss Protocol III. It remained on the agenda in 2017 and 2018, but Russia blocked its renewal for 2019. Although states failed to reinstate the agenda item for 2020, they succeeded in getting their position on the record in the final report, which was adopted by consensus. This accomplishment was limited only in that the report implies an equal number of states ("some") came out for and

against the agenda item, when in fact only two publicly opposed it. Over the coming year, states parties should reiterate their condemnation of the use of incendiary weapons and renew their push for dedicated time to discuss their concerns, their national policies and practices, and their views on strengthening the protocol. They should prepare to revisit Protocol III at the 2021 Review Conference, with an eye to strengthening its provisions by closing its loopholes.

For more information on incendiary weapons, their recent use, and states positions, see Human Rights Watch and the Harvard Law School International Human Rights Clinic, Standing Firm against Incendiary Weapons, November 2019, https://www.hrw.org/sites/default/files/supporting_resources/201911arms_incendiaries.pdf.

MINES OTHER THAN ANTI-PERSONNEL MINES

Katrin Geyer | Women's International League for Peace and Freedom

Various delegations referred to the issue of mines other than anti-personnel mines (MOTAPM) in their statements during the general exchange of views. The European Union (EU), Montenegro, Costa Rica, Ireland, Bulgaria, Germany, South Africa, Mexico, and the United Nations Mine Action Service (UNMAS) expressed concern at the humanitarian impact from the indiscriminate and disproportionate use of MOTAPM. Ireland recalled that the Geneva International Centre for Humanitarian Demining's monitoring indicated an 18 per cent increase of Anti-Vehicle Mine incidents in 2018, with 569 reported casualties, 53 per cent of them civilians, across 23 states. Costa Rica noted that the increasing use of MOTAPM undermines social and economic development and called for the CCW to strengthen victim assistance. Belarus said it is necessary to promote risk education and clearance to minimise humanitarian concerns. Ms. Izumi Nakamitsu, High Representative for Disarmament Affairs, welcomed continued efforts in Amended Protocol II (AP II) discussions to address the humanitarian impacts of MOTAPM, including the identification of specific technical measures that could mitigate the risk associated with the use of these weapons.

Montenegro, the Republic of Korea, Bulgaria, Costa Rica, the EU, Germany, Italy, Ireland, and Mexico called for the issue to be on the CCW agenda in future meetings.

Turkey said while it views MOTAPM as legitimate weapon systems, it recognises the need to eliminate their humanitarian impacts. It noted that if discussions serve to protect civilians, it could see merit in discussing MOTAPM in future CCW meetings. South Africa supported the continuation of informal discussions in 2020 to collate divergent views on the modalities and format of further consideration of this issue.

Russia said that portraying MOTAPM as a particular humanitarian threat is not "in keeping with reality," as shown in discussions in the meeting of states parties to AP II. It argued that potential humanitarian risks must be resolved within the existing standards of international humanitarian law (IHL), including AP II. Cuba asserted that its compliance with original Protocol II ensures protection of civilians from any type of mines, including MOTAPM. Belarus argued that arbitrary restrictions on the use of MOTAPM to protect a states' sovereignty and integrity are unacceptable.

GENDER

Katrin Geyer | Women's International League for Peace and Freedom

Throughout the meeting of high contracting parties, ten delegations called either for greater gender diversity or the inclusion of gender perspectives in the CCW's work and beyond.

Ireland noted that "greater diversity is key to improved decision making, and we need to consider how we can achieve more equal participation between men and women in this forum." Panama and the European Union (EU) also called for the greater participation of women in decision-making on conventional weapons issues, and additionally stressed the importance of women's promotion to leadership positions. Croatia also affirmed the need to include non-male experts in deliberations relating to disarmament, peace, and security, including on the topic of autonomous weapon systems in particular. UN High Representative for Disarmament Affairs also encouraged high contracting parties to continue addressing gender balance at the CCW and reiterated the UN Secretary-General's commitment to promote gender equality and women's empowerment in all disarmament and arms control processes.

A few delegations also called for better inclusion of gender perspectives at the CCW, such as Peru, Uruguay, Spain, and Chile. Peru argued that this is important to maintain peace and security and to "defend the rights of the most vulnerable". The EU said it is important to take into account gender perspectives when discussing autonomous weapon systems, "given the nexus between gender and emerging technologies," recognising the critical role that data plays for AI-based technologies. Ms. Izumi Nakamitsu welcomed that the annual conferences of both Protocol II and Protocol V considered including gender aspects into their mandates next year. Montenegro also welcomed the increased consideration of gender issues within the CCW framework.

The European Union reminded the CCW of its commitment to the prevention of gender-based violence and said it will continue to support the full implementation of UN Security Council resolutions on Women, Peace and Security.

FINANCIAL ISSUES

Katrin Geyer | Women's International League for Peace and Freedom

The CCW is one of the many international arms control instruments that has been in a precarious financial situation for a few years. The majority of states expressed deep concern at this condition. As France observed, a problem that had been temporary has now become structural. A significant drawback was the disruption of the CCW's Implementation Support Unit (ISU)'s normal functioning in the past years. As a result, the 2018 Meeting of High Contracting Parties (MHCP) had to request the UN Office of Disarmament Affairs (UNODA) to provide temporary staff support to the ISU. The 2018 MHCP decided to monitor the financial situation of the CCW and requested the Chair to continue consultations in 2019. The result of these consultations, and the Chair's

proposed measures to address the stability of the Secretariat's support to the Convention, can be found in his non-paper CCW/MSP/2019/CRP.1.

To secure the funding of ISU staff, the 2019 MHCP agreed to the establishment of a Working Capital Fund (WCF) that will operate in accordance with the Terms of Reference stipulated in Annex IV of the adopted report. The WCF's functioning will be reviewed at 2021 Sixth Review Conference.

The Chair's non-paper, and a presentation by the Chief of the Programme Planning and Budget Section of the UN Financial Resources Management Service (FRMS), were the basis for discussions amongst delegations.

The vast majority reiterated that the only way to solve the financial difficulties of the Convention is for all states to pay in full and on time their assessed contributions. They urged all states that haven't done so to settle their outstanding contributions and arrears without delay. France noted that the sums that states owe are "miniscule" in comparison to states' budgets.

Most delegations expressed their support for the proposals suggested by the Chair in his non-paper. The UK welcomed the focus on addressing non-payment and delayed payment, encouraging states to pay early and to establish a schedule that enables the CCW to function effectively.

Latvia, Australia, Russia, Ireland, the United States, Switzerland, and Austria, amongst others, supported the establishment of a WCF. Canada also expressed support for it, describing it as useful tool to help ensure the stability of a dedicated ISU. The Netherlands and Russia underscored the need for a dedicated ISU as essential for the Convention.

France said it supported it as it had no choice, but lamented that such an option was imposed by those countries that haven't paid their assessed contributions.

Significant disagreement existed about Russia's proposal to add a new paragraph in Section IV of the first draft report that "priority should be given to funding the contracts of the staff of the ISU over other activities under the Convention." The United Kingdom and France could not support such a proposal as they said this could potentially have far-reaching implications. Since most of the consultations related to the final report were closed to civil society, and the final report isn't available at the time of writing, we are not in a position to report on this issue in further detail.

Canada asserted that funds be only withdrawn from the WCF to provide short-term liquidity to finance the contracts of ISU staff. Many states, such as Canada, Belgium, India, the UK, Switzerland, United States, the Netherlands, France, and the EU, reiterated that the measure of a WCF must not replace other efforts to address the core issue of non-payments, and the WCF's funds should not be used to cover meeting costs or states' arrears.

Disagreement existed over the UN Secretariat's announcement earlier this year to withhold states parties' credit to counteract the problem of growing debt and liabilities. Some states, such as the Netherlands and the United States, expressed concern at the UN's withholding of credits as this is inconsistent with financial rules of the CCW. The Financial Resources Management Service (FRMS)' representative asserted that the UN Secretariat is to follow UN financial rules before rules introduced by the Convention and noted that creating liabilities that are unfunded contravenes UN financial rules. Various states called for transparency around financial decision-making processes within the CCW. Canada said that it should be up to states to ask for the return of credit. Switzerland encouraged further discussions to find a solution aligned with the financial rules of the UN and of the CCW.

Various states said that additional measures should be explored for the CCW Review Conference in 2021. The EU and France suggested considering suspending voting rights in order to motivate High Contracting Parties to settle their accumulated arrears. Cuba asserted that it could not support any measures that would imply the suspension of the rights of High Contracting Parties to participate in the work of the CCW. The Non-Aligned Movement said it is concerned about the possible impacts of the proposed financial measures on the participation of certain states and the perspectives of universalisation.

Cuba, Iraq, the Arab Group, and Algeria stressed the need to ensure financial sustainability of the Convention to avoid informal meetings without the availability of interpretation, putting certain delegations at a disadvantage.

Some states, such as France, Ireland, Costa Rica, and others, lamented the time and resource allocated to this topic instead of to substantive issues.

ELEMENTS OF A TREATY TO BAN FULLY AUTONOMOUS WEAPONS

Bonnie Docherty, Alev Erhan, and Shaiba Rather | Harvard Law School's International Human Rights Clinic

The host of problems raised by fully autonomous weapons, also known as lethal autonomous weapons systems or “killer robots,” are well known. Many states parties to the Convention on Conventional Weapons (CCW) highlighted moral, legal, accountability, technological, and security concerns at their annual meeting last week. States should move beyond highlighting problems, however, and negotiate a new treaty to address them.

The Campaign to Stop Killer Robots recently released a paper laying out proposed elements for a treaty to retain meaningful human control over the use of force and to ban fully autonomous weapons. These weapons systems would select and engage targets without meaningful human control. States will have to negotiate the specific treaty language, but the Campaign's proposal seeks to inform thinking about content.

Scope of application

The treaty should apply to the range of weapons systems that select and engage targets on the basis of sensor processing, rather than human input. The breadth of the scope will help ensure that problematic weapons do not escape regulation. The instrument's restrictions, however, should focus on systems that lack meaningful human control because most of the threats posed by fully autonomous weapons come from the absence of such control.

The concept of meaningful human control

States, international organisations, and nongovernmental organisations have expressed widespread agreement about the need for some form of human control over the use of force. While their terminology and views on the human role may vary, they have identified many of the same factors. The Campaign has distilled those factors

of meaningful human control into decision-making, technological, and operational components.

Decision-making components give humans the information and ability to make decisions about whether the use of force complies with legal rules and ethical principles. For example, a human operator should understand the operational environment and how the system functions.

Technological components are embedded features of a weapon system that can enhance meaningful human control, such as predictability and the ability for a human to intervene after a system is activated.

Operational components make human control more meaningful by limiting when and where a weapon system can operate and what it can target.

While none of these components are independently sufficient to amount to meaningful human control, all have the potential to enhance control in some way and often work in tandem.

Core obligations

The heart of the legally binding instrument should consist of three core obligations. First, the legally binding instrument should set out a general obligation to maintain meaningful human control over the use of force. This overarching provision would facilitate compliance with applicable legal and ethical norms and could inform interpretation of the treaty's other provisions. The obligation governs conduct rather than a specific technology in order to be future proof, and the phrase “use of force” would allow for application to law enforcement operations as well as armed conflict.

The legally binding instrument should also include prohibitions on weapons systems that select and engage targets and that by their nature—rather

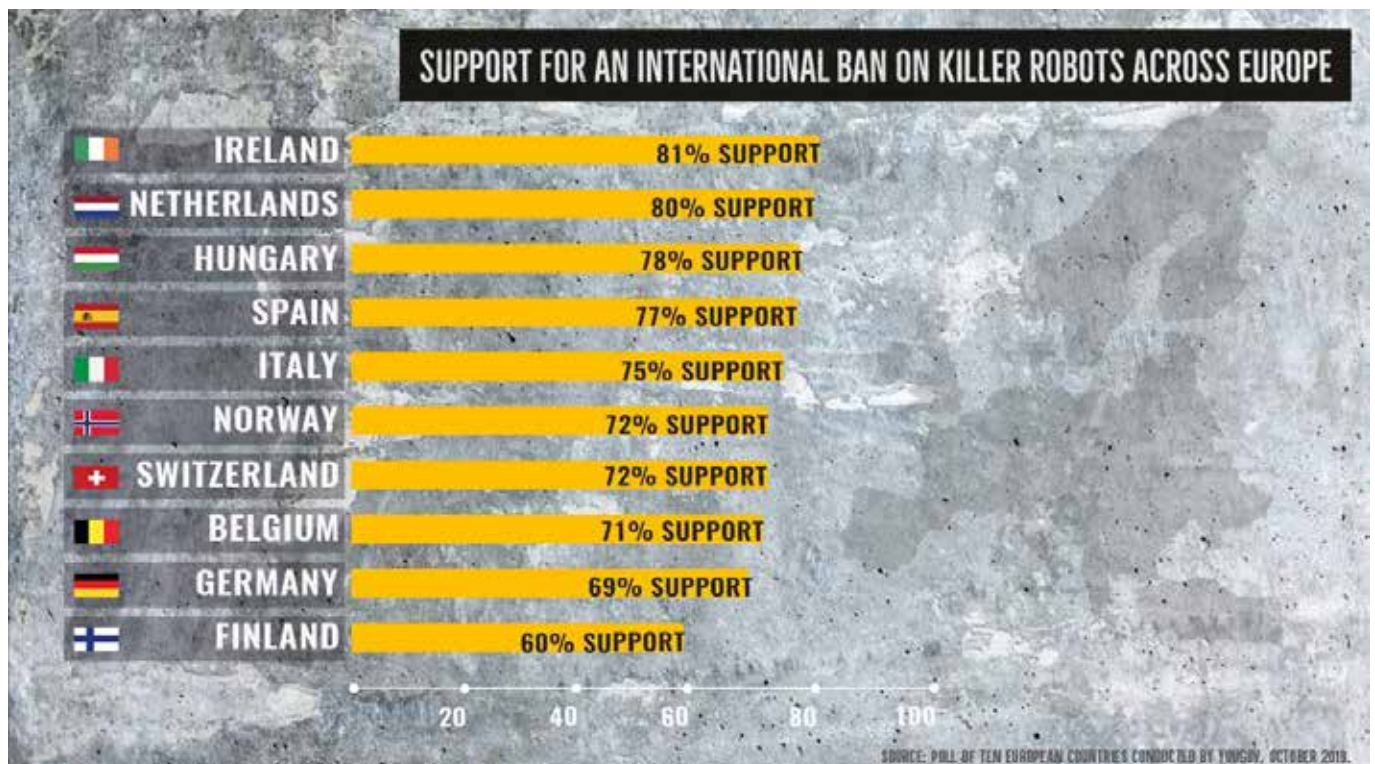
than their manner of use—pose fundamental moral or legal problems. The treaty should prohibit the development, production, and use of such weapons systems. Most notably, the new instrument should prohibit systems that by their nature select and engage targets without meaningful human control. The prohibitions could also extend to other weapons systems that select and engage targets and are inherently problematic, in particular systems that rely on certain data to represent humans.

To complement the negative obligations, the treaty should impose specific positive obligations on states to help ensure that meaningful human control is maintained in the use of all other systems that select and engage targets. The new instrument's positive obligations should cover weapon systems that are not inherently

unacceptable but that might still have the potential to select and engage targets without meaningful human control. Drawing on the components of meaningful human control discussed above, the obligations should require states parties to ensure that weapon systems that select and engage targets are used only with such control.

Conclusion

The treaty would, of course, complement these key elements with a preamble and other obligations, such as reporting requirements, compliance measures, and regular meetings of states parties. The Campaign urges states to move beyond talk of possible options and guiding principles and redirect their energy to negotiating a strong treaty to prevent and prohibit fully autonomous weapons.



EVENT REPORT: HOW TO BAN KILLER ROBOTS AND WHY IT'S TIME

Farah Bogani | Campaign to Stop Killer Robots

On Wednesday, 13 November, the Campaign to Stop Killer Robots side event highlighted pathways towards a ban on killer robots and pressed upon why the world needs a ban now. Nearly 100 people attended the event. Marta Kosmyna, Silicon Valley Lead for the Campaign to Stop Killer Robots, moderated the panel.

Frank Slijper from PAX shared findings from PAX's Slippery Slope report launched on 11 November. Slijper revealed a military-industrial complex in which arms companies are developing increasingly autonomous weapons in a relatively quick space of time. Such technologies are being applied by more and more companies across a growing number of countries, proliferating globally. Slijper also pointed out that companies are increasingly working on military uncrewed systems and this raises questions for how human control will be guaranteed over these weapons.

Laura Nolan is a member of the International Committee for Robot Arms Control (ICRAC) and worked for Google before quitting in protest against Project Maven. Nolan highlighted endorsers of a ban from Nobel Peace Laureates, to tech workers, to the UN Secretary-General on the basis that such technology and weapons are morally reprehensible and unethical. She further emphasised that the latest poll results conducted by YouGov show 73% of the European public (with Ireland, the Netherlands, and Hungary leading in results) believe governments should work towards an international ban on killer robots. For Nolan, the results are clear: morals and ethics matter in the growing opposition to fully autonomous weapons.

Bonnie Docherty from the International Human Rights Clinic at Harvard Law School presented key elements of a treaty in response to the oft-repeated question by states, "what would a treaty look like?" The paper suggests core obligations to maintain meaningful human control over the use of force; prohibitions on weapons systems that select and engage targets and by their nature pose

fundamental moral or legal problems; and positive obligations to ensure meaningful human control is maintained in the use of all other systems that select and engage targets. The paper also presents a concept of meaningful human control.

Steve Goose from Human Rights Watch assessed the Convention on Conventional Weapons (CCW) process, identifying a majority of countries that are ready to begin the process for negotiations but are held back by a minority. There are options to go outside CCW to the UN General Assembly, as in the case of the Arms Trade Treaty, or to an outside international process, as was the case for antipersonnel landmines and cluster munitions. Nevertheless, Goose urged diplomats to look beyond the Palais des Nations to the world in which support for a ban is gathering, at the same time tech and arms industries are racing towards greater autonomy. It is past time diplomats transform their six years' worth of talk to deliver an urgently needed ban treaty.



CSKR side event © Campaign to Stop Killer Robots

CCW REPORT

Reaching Critical Will (RCW) is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organisation in the world. RCW works for disarmament and the prohibition of many different weapon systems; confronting militarism and military spending; and exposing gendered aspects of the impact of weapons and disarmament processes with a feminist lens. RCW also monitors and analyses international disarmament processes, providing primary resources, reporting, and civil society coordination at various UN-related forums.



Reaching Critical Will

www.reachingcriticalwill.org



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