

I. The Convention on Certain Conventional Weapons and lethal autonomous weapon systems

VINCENT BOULANIN, IAN DAVIS AND MAAIKE VERBRUGGEN

The 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW Convention) and its five protocols ban or restrict the use of specific types of weapon that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately.¹ It is a so-called umbrella treaty, to which specific agreements can be added in the form of protocols (see box 9.1). As of the end of December 2018 there were 125 states parties to the original convention and its protocols. No new states joined the CCW in 2018. Not all the states parties have ratified all the amended or additional protocols.²

The CCW Convention is also important for addressing the challenges posed by the development or use of new types of weapons and their systems with respect to international humanitarian law (IHL). Many of the contemporary debates on conventional arms control are shaped by the concept of ‘humanitarian disarmament’, which prioritizes the protection, security and well-being of people as opposed to states. In particular, it strives to increase the protection of civilians by reducing the human and environmental impacts of arms.³ In recent years, however, there have been increasing tensions between the prioritization of humanitarian demands and the perceived military needs of certain states, with the result that many of the discussions within the convention have become deadlocked.⁴

Meetings of states parties

The states parties to the CCW Convention meet regularly at an annual Meeting of the High Contracting Parties and at a Review Conference, which takes place every fifth year. These meetings also consider the work of the Group of Governmental Experts (GGE) established in 2001, which has been convened

¹ For a summary of the CCW Convention see annex A, section I, of this volume.

² For details of which states parties have ratified the amended or additional protocols see annex A, section I, of this volume.

³ United Nations, General Assembly, First Committee on Disarmament and International Security, ‘Civil society statement on humanitarian disarmament’, 17 Oct. 2018; and the website developed by the NGO community, ‘Humanitarian disarmament’.

⁴ See the discussion on humanitarian disarmament and on the 2016 CCW Review Conference in Davis, I. et al., ‘Humanitarian arms control regimes: Key developments in 2016’, *SIPRI Yearbook 2017: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2017), pp. 543–79; and on developments in 2017 in Davis, I. and Verbruggen, M., ‘The Convention on Certain Conventional Weapons’, *SIPRI Yearbook 2018*, pp. 381–92.

Box 9.1. The 1981 Certain Conventional Weapons (CCW) Convention

The Certain Conventional Weapons (CCW) Convention originally contained three protocols: prohibiting the use of weapons that employ fragments not detectable in the human body by X-ray (Protocol I); regulating the use of landmines, booby traps and similar devices (Protocol II); and limiting the use of incendiary weapons (Protocol III). In subsequent years, states added two protocols: Protocol IV prohibiting the use and transfer of blinding laser weapons was added in 1996; and Protocol V on explosive remnants of war (ERW)—landmines, unexploded ordnance and abandoned explosive ordnance—in 2003. In addition, amendments have expanded and strengthened the convention. Amended Protocol II, for example, places further constraints on the use of anti-personnel mines (APMs), while the scope of the CCW Convention was expanded in 2001 to include situations of intra-state armed conflict. Because Amended Protocol II fell short of a ban on the use of landmines, a parallel process outside of the CCW Convention led to the creation of the Anti-Personnel Mines (APM) Convention (see section II).

in various formats since then. Amended Protocol II and Protocol V have their own implementation processes, which function in parallel with the CCW Convention. All the meetings that took place in 2018 are listed in table 9.1.

The Twelfth Annual Conference of the High Contracting Parties to Protocol V discussed the report of the June 2018 meeting of experts, which focused on national reporting, clearance of explosive remnants of war (ERW), victim assistance and the practical implementation of Article 4 of Protocol V on the recording, retaining and transmission of information.⁵ There were no significant new proposals and the conference agreed to continue to focus its work on these topics in 2019.⁶

The Twentieth Annual Conference of the High Contracting Parties to Amended Protocol II reviewed the status and operation of the protocol and considered matters arising from the national annual reports of states parties.⁷ The meeting also issued an appeal for the universalization of the protocol and considered a report by the Group of Experts on improvised explosive devices (IEDs).⁸ Despite the increasing saliency of the IED threat (see the

⁵ United Nations, Twelfth Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 19 Nov. 2018, 'Report on the 2018 Meeting of Experts of the High Contracting Parties to Protocol V', CCW/PV/CONF/2018/4, 16 Nov. 2018.

⁶ United Nations, Twelfth Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 19 Nov. 2018, 'Final document', CCW/PV/CONF/2018/5, 29 Nov. 2018.

⁷ Twentieth Annual Conference of the High Contracting Parties to Amended Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 'Final document', 30 Nov. 2018.

⁸ Twentieth Annual Conference of the High Contracting Parties to Amended Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 'Report on improvised explosive devices', 30 Oct. 2018. See also the discussion on IEDs in Davis and Verbruggen (note 4), pp. 387–88.

Table 9.1. CCW Convention meetings in 2018

| Dates | Meeting |
|----------------|---|
| 9–13 April | Group of Governmental Experts on LAWS |
| 11–12 June | Amended Protocol II Group of Experts on IEDs |
| 12–13 June | Protocol V meeting of experts |
| 27–31 August | Group of Governmental Experts on LAWS |
| 19 November | 12th Annual Conference of the High Contracting Parties to Protocol V |
| 20 November | 20th Annual Conference of the High Contracting Parties to Amended Protocol II |
| 21–23 November | Meeting of the High Contracting Parties |

CCW = Certain Conventional Weapons; IED = Improvised explosive device; LAWS = lethal autonomous weapons.

Note: All the meetings took place in Geneva

discussions on the APM Convention in section II and in relation to explosive weapons in populated areas below), neither the expert group meeting nor the 20th Annual Conference agreed any significant new measures. Instead, the focus remained on voluntary information exchange on national measures and best practices regarding identification, humanitarian clearance and civilian protection from IEDs.

The 2018 Meeting of the High Contracting Parties was chaired by Latvia. The meeting reviewed compliance with and progress towards the universalization of the CCW Convention. It asked the GGE on lethal autonomous weapon systems (LAWS) to meet for seven days in 2019 (reduced from 10 days at the insistence of Russia) with North Macedonia acting as chair (see below). As in 2017, it also agreed to place ‘emerging issues in the context of the objectives and purposes of the convention’ on the agenda of its next meeting, with an open invitation to states parties to submit relevant working papers on developments in science and technology.⁹ While no meetings were cancelled in 2018 for financial reasons (as had been the case in 2017), the continuing fiscal instability of the CCW was a key theme of discussions. Nonetheless, proposals from the chair to establish a contingency fund or to set up a voluntary reserve were rejected by states parties.¹⁰

⁹ Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, Geneva, Final report, CCW/MSP/2018/11, 28 Dec. 2018.

¹⁰ Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, Geneva, 21–23 Nov. 2018, Report on further measures that could be considered to improve the stability of the Secretariat’s support to the Convention and on financial issues related to the Convention and its annexed Protocols, CCW/MSP/2018/7, 9 Nov. 2018.

As in recent years, the four substantive issues on the agenda were: (a) LAWS; (b) explosive weapons in populated areas (EWIPA); (c) incendiary weapons; and (d) mines other than anti-personnel mines (MOTAPM). There was little progress due to the lack of consensus, but these issues are discussed in more detail below.¹¹

The Group of Governmental Experts on lethal autonomous weapon systems

In 2018, the challenges posed by artificial intelligence and autonomy in weapon systems continued to be the focus of an intergovernmental discussion under the framework of the CCW Convention.¹² The expert discussion on emerging technologies in the area of LAWS has gained momentum since it began in 2014. In 2017 there was a turning point when the discussion moved from an informal meeting of experts to a formal GGE format.¹³ The GGE meeting in 2018 was twice as long as in 2017 or in the old format. It met for a total of 10 days, on 9–13 April and 27–31 April 2018. There was a high level of participation by states parties in both sessions—14 working papers were submitted by 14 different states, the International Committee for the Red Cross (ICRC) and the Non-Aligned Movement (NAM).¹⁴ Civil society was also present at both meetings in large numbers, including representatives of advocacy groups, research institutes, think tanks and universities, as well as engineers from the private sector who participated in a personal capacity.¹⁵

As in 2017, the 2018 GGE was chaired by India's Ambassador to the Conference on Disarmament, Amandeep Singh Gill. With a view to deepening previous discussions, the chair proposed an agenda of work similar to that of the 2017 meeting. The four substantive areas for discussion were: (a) characterization of the systems under consideration; (b) the human element in the use of force, and aspects of human-machine interaction in the development, deployment and use of emerging technologies in the area of LAWS; (c) a review of the potential military applications of related technologies in the context of the group's work; and (d) possible options for addressing the

¹¹ Geyer, K., 'Misuse of consensus strikes again', *CCW Report*, vol. 6, no. 12 (Reaching Critical Will, 26 Nov. 2018).

¹² There is no international consensus on a definition of LAWS, but they are commonly referred to by civil society as weapons that are capable of selecting and attacking targets without the direct involvement of a human operator. See Boulanin, V. and Verbruggen, M., *Mapping the Development of Autonomy in Weapon Systems* (SIPRI: Stockholm, 2019).

¹³ Davis and Verbruggen (note 4).

¹⁴ United Nations Office At Geneva (UNOG), '2018 Group of Governmental Experts on Lethal Autonomous Weapons Systems'.

¹⁵ Campaign to Stop Killer Robots, 'Rise of tech workers', Jan. 2019.

challenges to humanitarian and international security posed by emerging technology in the area of LAWS.¹⁶

Characterization of the systems under consideration

In order to avoid the debate getting bogged down in the same definitional issues as previous meetings, the chair attempted to find commonalities between states in what they see as the key characteristics of LAWS.¹⁷ He presented four possible broad approaches to categorizing relevant systems: (a) the *separative approach*, whereby irrelevant characteristics are set aside and the relevant characteristics are gathered; (b) the *cumulative approach*, whereby categories of characteristics are compiled and evaluated against technical, legal-humanitarian and political-security criteria to assess their relevance to the convention; (c) the *accountability approach*, which considers the characteristics of the type and function of automated decisions; and (d) the *purpose-oriented and effect-based approach*, which focuses on the desirable and undesirable consequences of systems.¹⁸ Despite the chair's efforts, states parties could not agree on a preferred approach and the debate returned to some of the main contentious points from previous years. States expressed radically different views on how the concept of autonomy should be defined and whether a working definition was a necessary prerequisite for advancing the discussion. While the majority of states that took the floor agreed that the level of human involvement was a defining factor in the characterization of LAWS, they could not agree on what this meant in practice.

The human element in the use of lethal force

On the issue of human involvement in the use of force, the chair started the discussion by presenting a chart summarizing previous discussions and working papers (see figure 9.1). This 'sunrise chart' showed that human control could be applied at four different points in the development and use of a weapon with autonomous functions: during research and development (point 1); before deployment, through testing, evaluation and certification (point 2); at the deployment phase, at the point of activation (point 3); and during the operation of the weapon system (point 4).¹⁹

¹⁶ Group of Governmental Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 'Report of the 2018 Session of the Group of Governmental Experts on emerging technologies in the area of Lethal Autonomous Weapons Systems', CCW/GGE.1/2018/3, 23 Oct. 2018.

¹⁷ For an overview of the debate on defining LAWS see Boulanin, V., 'Mapping the debate on LAWS at the CCW: Taking stock and moving forward', *EU Non Proliferation Paper* no. 49 (Mar. 2016).

¹⁸ United Nations Office at Geneva, Group of Governmental Experts on Lethal Autonomous Weapons Systems, 'Chair's summary of the discussion on agenda item 6(a), 9 and 10 April 2018; agenda item 6(b), 11 and 12 April 2018; agenda item 6(c), 12 April 2018; agenda item 6(d), 13 April 2018'.

¹⁹ United Nations Office at Geneva (note 18).

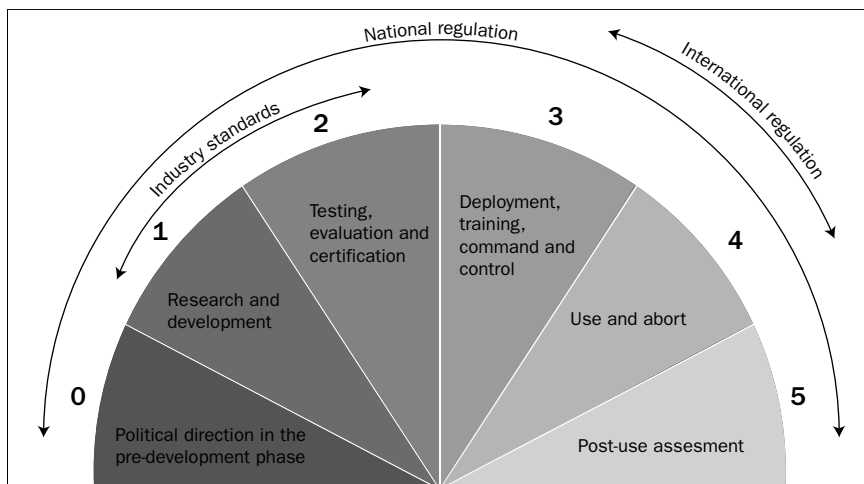


Figure 9.1. ‘Sunrise chart’ conceptualizing the human-machine touchpoints in the context of emerging technologies in the area of lethal autonomous weapons systems

Source: United Nations, Group of Governmental Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, ‘Report of the 2018 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems’, CCW/GGE.1/2018/3, 23 Oct. 2018, p. 14.

During the discussions, some states argued that two additional points could be added: the pre-development phase (point 0), where technical requirements are set at the political level; and after deployment, during post-use assessments (point 5).²⁰ The question of how human control might concretely be operationalized at each of these points remained unresolved.²¹ While there seemed to be a clear consensus among states parties that humans should retain control over the weapon systems they use, be it for legal, ethical or operational reasons, states could not agree on the type and degree of human control that they deemed necessary. They also struggled to flesh out what ‘meaningful’ human control would entail in practice. Finally, states had diverging views on whether the requirement for human control should be translated into new rules of international law or whether it could already be derived from existing international law.

²⁰ Group of Governmental Experts (note 16).

²¹ For a compilation of competing definitions see Singh Gill, A., ‘Chart 2: Consideration of the human element in the use of lethal force; aspects of human-machine interaction in the development, deployment and use of emerging technologies in the area of lethal autonomous weapons systems’, Apr. 2018; and Singh Gill, A., ‘Agenda item 6b’, Apr. 2018.

Review of potential military applications of related technologies

The purpose of the review was to help increase transparency in the development of military technologies and ensure that the GGE stayed in touch with ongoing technological developments. Presentations were made by experts from academia and industry.

Possible options for addressing challenges to humanitarian and international security

The fourth and most contentious item on the agenda was the policy response that states deemed necessary to address the challenges posed to humanitarian and international security by LAWS. The chair proposed a discussion on the pros and cons of each policy option that had so far been tabled.

First, a legally binding instrument for regulating LAWS, such as the complete ban on the development and use of LAWS proposed by the Campaign to Stop Killer Robots or a positive obligation to maintain meaningful human control at all times, an option articulated by the ICRC.²² Thus far, 28 states have indicated support for a legally binding instrument.²³ In 2018, Austria became the first European state to support a ban on LAWS while China was the first and thus far only permanent member of the UN Security Council to do so. China's proposal, however, is to ban the use of LAWS rather than development and production.²⁴ The NAM also favours a legally binding instrument stipulating prohibitions on and regulation of LAWS.²⁵

Second, a political declaration was an option proposed by France and Germany and supported by a number of Western states. This would entail a non-legally binding declaration on aspects such as the importance of human control and accountability. France and Germany argued that a political declaration would send a strong political signal and show that states can find some areas of common understanding while allowing the CCW Convention more time for in-depth deliberations. France and Germany believe that their proposal could be an acceptable compromise for both opponents and proponents of a legally binding instrument.

Third, strengthen the application of existing international law through practical measures such as best practices and information sharing in the

²² International Committee of the Red Cross, *The Element of Human Control*, Working Paper submitted at the Meeting of High Contracting Parties to the CCW, CCW/MSP/2018/WP.3, 20 Nov. 2018.

²³ See Campaign to Stop Killer Robots, 'Country views on killer robots', 22 Nov. 2018.

²⁴ China's proposal covered LAWS with the following 5 characteristics: lethality, full autonomy, inability to stop an attack after activation, inability to discriminate between the conditions of the attack and a capability to evolve. Group of Governmental Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or have Indiscriminate Effects, Position Paper submitted by China, CCW/GGE.1/2018/WP.7, 11 Apr. 2018.

²⁵ Group of Governmental Experts (note 16).

area of legal reviews of new weapons, and means and methods of warfare as required by Article 36 of Additional Protocol I to the Geneva conventions.

Finally, there was the option of doing nothing; that is, to leave the situation as it is based on the consideration that IHL is already fully applicable to LAWS.²⁶ Australia, Israel, South Korea, Russia and the USA indicated a preference for this option, arguing that any concrete action on LAWS would be ‘premature’.²⁷

The chair’s takeaway from the intergovernmental discussion was that while states did not see these options as necessarily mutually exclusive, none of them could obtain a clear consensus. Nor could agreement be found on the way forward. Some of the 28 states that had taken a position in 2018 or before in favour of a prohibition on LAWS, in particular Austria, Chile, Cuba and Brazil, called for a strengthened mandate for the GGE in 2019.²⁸ They argued that it was high time to start a formal negotiation process if the CCW were to avoid the risk of being outpaced by technological developments in the area of LAWS. Russia and the USA, however, were reluctant to commence negotiations before the GGE arrived at a working definition and a shared understanding of the problem. A number of states were still in the process of arriving at a position, and wished to consider the issue in greater depth before engaging in a formal negotiation process. States eventually agreed to roll-on the existing mandate of the GGE, but with only seven days of work in 2019 rather than the ten in 2018 (see below).

Possible guiding principles

Following these discussions, the chair presented a draft GGE report that laid out a set of major themes on which states seemed to have agreed or that they seemed to have deemed important. These ‘emerging commonalities, conclusions and recommendations’ contained a list of ‘possible guiding principles’.²⁹ The report became the focus of two days of intense negotiations with the discussions continuing late into the evening. Among the contentious discussion points were whether LAWS and associated problems should be referred to as ‘potential issues’, the extent to which the language in the document should be prescriptive, the ways forward for work on LAWS, the relevance of human rights to the consideration of LAWS, definitions and terminologies, and whether states parties should debate the perceived

²⁶ Group of Governmental Experts (note 16).

²⁷ Acheson, R., ‘Mind the downward spiral’, *CCW Report*, vol. 6, no. 11 (Reaching Critical Will, Sep. 2018).

²⁸ However, only 25 of the 28 states are states parties to the CCW. Egypt, Ghana and Zimbabwe have spoken in favour of a ban but Egypt has signed but not ratified the convention; Ghana and Zimbabwe have neither signed nor ratified the convention. United Nations Office in Geneva, ‘High contracting parties and signatories’, updated as of 14 Nov. 2018; and Campaign to Stop Killer Robots (note 23).

²⁹ Group of Governmental Experts (note 16).

'benefits' of LAWS.³⁰ States eventually agreed on a version of the document that was much slimmer than the original. The language was also altered to make it acceptable to all states.³¹ The text that states allowed the chair to present at the Meeting of the High Contracting Parties in November 2018 contained 10 principles. Among these were: (a) an acknowledgement that IHL continues to apply to all weapon systems, including LAWS; (b) that human responsibility must be retained for decisions on the use of force and machines cannot be held accountable; and (c) that states should take appropriate measures to ensure that the weapons they develop or acquire can be used in compliance with international law, and incorporate security and safety safeguards that limit the risk of cyberattack or misuse by terrorist groups.

The November Meeting of the High Contracting Parties to the CCW approved the report and the recommendation of the GGE to roll over its mandate. The length of the 2019 GGE, however, became a point of contention. While some states advocated a duration of 20 days in order to make faster progress, others highlighted the financial difficulties involved for delegations participating in the discussions. While the GGE had recommended 10 days of deliberation, the November meeting settled on seven days, following Russia's lead. In 2019 the GGE will be chaired by Ljupčo Jivan Gjorgjinsk of North Macedonia.

Other key discussions: Explosive weapons in populated areas, incendiary weapons and mines other than anti-personnel mines

Explosive weapons in populated areas

Violence has become increasingly concentrated in urban areas in the past 20 years.³² The use of EWIPA—and especially the use of explosive weapons with a large destructive radius, an inaccurate delivery system or the capacity to deliver multiple munitions over a wide area—has frequently led to situations in which over 90 per cent of casualties are civilian rather than combatants.³³ According to Action on Armed Violence (AOAV), there were 9615 civilian deaths and 12 720 injuries linked to explosive weapons in 2018, a reduction of about one-third on 2017 when there were 16 289 civilian deaths and 15 615 injuries. IEDs were responsible for 42 per cent of the civilian casualties from explosive weapons in 2018, while air strikes caused

³⁰ Acheson (note 27).

³¹ Gayer, K. and Pytlak, A., 'News in brief', *CCW Report*, Reaching Critical Will, vol. 6, no. 10 (31 Aug. 2018).

³² See e.g. OECD, 'Trend seven: Urban violence is becoming the new norm', *States of Fragility, 2016: Highlights*, 2016, pp. 21–23.

³³ International Committee of the Red Cross, 'Explosive weapons in populated areas', Fact sheet, 14 June 2016; and the International Network on Explosive Weapons (INEW) website.

32 per cent of casualties, ground-launched weapons 15 per cent and attacks using multiple explosive weapons 9 per cent.³⁴ AOAV attribute the overall decrease in civilian casualties worldwide largely to the decline of the Islamic State (IS) group in Iraq and Syria, as well as the decline of Boko Haram in Nigeria. In Syria, civilian casualties from explosive weapons fell by over 40 per cent, from 8767 in 2017 to 5061 in 2018, but Syria was still the country most affected by such weapons. Many of the casualties were attributed to a period in February and March when Syrian and Russian forces carried out an extensive bombardment of eastern Ghouta. There were also significant decreases in civilian casualties linked to explosive violence in Somalia, where there was a 48 per cent fall, in Pakistan (a 48 per cent fall) and in Iraq (a 77 per cent fall).³⁵

Afghanistan was an exception to the global downward trend. There was a sharp increase in civilian casualties caused by explosive weapons—from 1092 civilian deaths in 2017 to 1488 in 2018—that AOAV attributes mainly to IEDs produced by non-state actors (76 per cent of all civilian deaths and casualties) or air strikes, especially by the USA.³⁶ Notable increases also occurred in Yemen (from 1670 civilian casualties in 2017 to 1807 in 2018), India (from 267 in 2017 to 322 in 2018) and Libya (from 163 in 2017 to 392 in 2018). Ethiopia, Iran, Malaysia, the Philippines and Gaza also experienced increases.³⁷

The humanitarian emergencies resulting from the use of EWIPA have led to calls from an increasing number of states, successive UN Secretaries-General, international bodies and NGOs for measures to provide better protection for civilians and to prevent such harm.³⁸ One of the three principal themes of the UN Secretary-General's new disarmament agenda, launched in May 2018 (see section IV), is a new focus on 'disarmament that saves lives'. This would include efforts to 'rein in' the use of EWIPA with wide-area impacts by supporting the efforts of member states 'to develop a political declaration, as well as appropriate limitations, common standards and operational policies in conformity with IHL'.³⁹ At a UN Security Council open debate on the

³⁴ Action on Armed Violence, '2018: A year of explosive violence', 11 Jan. 2019.

³⁵ On the armed conflicts in Syria and Iraq, see chapter 2, section V, in this volume; on the conflict in Somalia, see chapter 2, section VI, in this volume.

³⁶ Action on Armed Violence (note 34). On the conflict in Afghanistan, see chapter 2, section III, in this volume.

³⁷ Action on Armed Violence (note 34). On the conflicts in Gaza, Libya and Yemen, see chapter 2, section V, in this volume; on the conflicts in Malaysia and the Philippines see chapter 2, section III, in this volume and on the conflict in Ethiopia, see chapter 2, section VI, in this volume.

³⁸ See e.g. International Committee of the Red Cross (note 33); and Article 36, *Explosive Weapons: Protecting Civilians from the Use of Explosive Weapons in Populated Areas*, Aug. 2018. For a list of the 88 states and territories and 4 state groupings that have publicly acknowledged the harm caused by EWIPA in statements, see 'Political response' on the INEW website.

³⁹ United Nations, Office for Disarmament Affairs, *Securing Our Common Future: An Agenda for Disarmament* (Office for Disarmament Affairs: New York, May 2018), pp. x and 34–36.

protection of civilians in armed conflict on 22 May 2018, at least 12 states, as well as the UN Secretary-General highlighted the grave risks to civilians posed by the use of EWIPA, while Ireland, Costa Rica and Austria, among others, indicated support for the development of an international political instrument on the issue.⁴⁰

At the 2018 meeting of the UN General Assembly First Committee on Disarmament and International Security in October 2018, more than 50 states presented a joint statement on the issue delivered by Ireland.⁴¹ This statement calls for efforts to reverse the trend in high levels of civilian harm linked to EWIPA and for enhanced respect for and compliance with IHL. It concludes with a commitment from the endorsing states to continue ‘efforts to address the humanitarian harm caused by EWIPA, through the achievement of a possible future political declaration and by maintaining support for other relevant initiatives, including regional conferences’. The civil society coalition the International Network on Explosive Weapons (INEW) also delivered a statement at the First Committee in 2018. This called on states to ‘enshrine a commitment against the use of explosive weapons with wide area effects in populated areas in the development of new international standards—such as in an international political declaration’.⁴² Following the first regional meeting on EWIPA in Maputo in November 2017, a second such meeting took place in Santiago in December 2018.⁴³

Some states have sought to bring the use of EWIPA within the framework of the CCW Convention. Around 30 delegations addressed the topic at the 2018 Meeting of the High Contracting Parties and a working paper was submitted by Germany. Several states welcomed ongoing multilateral efforts, such as the German-led ‘EWIPA talks’ in two workshops in Geneva in June and September 2018 and an Austria-led effort to develop a political declaration, as endorsed in the UN Secretary-General’s disarmament agenda.⁴⁴ Even though a high number of delegations expressed concerns about EWIPA, in the absence of consensus, the report of the meeting failed to mandate any concrete initiatives.

⁴⁰ United Nations, ‘Speakers urge strict compliance with global legal protections, as Security Council discusses plight of civilians caught up in proxy wars, other conflict zones’, Meetings coverage, SC/13348, 22 May 2018.

⁴¹ United Nations, General Assembly, First Committee, Joint Statement on Explosive Weapons in Populated Areas’, New York, 25 Oct. 2018.

⁴² Boillot, L., ‘Statement by the International Network on Explosive Weapons to the UN General Assembly’s First Committee on International Security and Disarmament’, New York, 17 Oct. 2018.

⁴³ INEW, Regional meeting on the use of explosive weapons in populated areas, Santiago, Chile, 5–6 Dec. 2018.

⁴⁴ Davis and Verbruggen (note 4), pp. 391–92; United Nations (note 39), p. 36; and Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, ‘Mitigating the civilian harm from the use of explosive weapons in populated areas’, Working Paper submitted by Germany, CCW/MSP/2018/WP.1, 14 Nov. 2018.

In fact, some states, such as China, Israel and the UK, contested the very notion of EWIPA, arguing that it was too broad or vague a concept, while Russia claimed that it was already addressed in the CCW Convention or its protocols.⁴⁵ Hence, the meeting report simply notes that a number of states parties ‘signalled their intention to submit working papers on the challenges presented by the use of certain conventional weapons in armed conflict and their impact on civilians, particularly in areas where there are concentrations of civilians’.⁴⁶ The future of this topic is now uncertain: some states are likely to continue to press for discussions within the framework of the convention, while others are more likely to resume efforts to develop an international political declaration outside of the CCW Convention.

Incendiary weapons

Protocol III to the CCW Convention prohibits certain uses of incendiary weapons but its restrictions have failed to prevent civilian harm from such use in recent years in Syria, Ukraine and Yemen, among others. The protocol has two major loopholes: weaker regulation of ground-launched incendiary weapons in comparison with air-dropped models; and inadequate wording on multipurpose munitions, such as white phosphorus, which can be used for several purposes on the battlefield—as an obscurant or smokescreen, for signalling and marking, but also as an incendiary weapon.

Human Rights Watch documented 30 new attacks with incendiary weapons in Syria in 2018 (up from 22 cases recorded in 2017).⁴⁷ On 16 March 2018, for example, air-dropped incendiary munitions were reportedly used on the eastern Ghouta town of Kafr Batna, killing at least 61 and wounding more than 200.⁴⁸ Syria is not a state party to Protocol III and is therefore not bound by its restrictions. It has been using Russian-made or Soviet-era incendiary weapons since 2012.

Several states, along with the ICRC, the UN Secretary-General and many NGOs, have condemned recent incendiary weapon attacks and called for Protocol III to be revisited and strengthened.⁴⁹ At the 2018 meeting of the UN General Assembly First Committee, Human Rights Watch delivered a statement urging governments to enact stronger international law on incendiary weapons, and for the CCW High Contracting Parties to ‘set aside time in 2019 to review the implementation and adequacy of Protocol III, preferably

⁴⁵ See Geyer, K., ‘Explosive weapons in populated areas’, *CCW Report*, vol. 6, no. 12 (Reaching Critical Will, 26 Nov. 2018), pp. 4–5.

⁴⁶ Meeting of the High Contracting Parties (note 9).

⁴⁷ Human Rights Watch, ‘Action needed on incendiary weapons’, Geneva, 14 Nov. 2018.

⁴⁸ Syria Civil Defense, ‘A horrific massacre including unconscionable Napalm air strikes killed at least 61 civilians in #Kafr_Bata Town’, Twitter post, 16 Mar. 2018; and Human Rights Watch, ‘Russia backs Syria in unlawful attacks on eastern Ghouta’, 18 Mar. 2018.

⁴⁹ See the discussion on incendiary weapons in Davis et al. (note 4), pp. 556–57; and Davis and Verbruggen (note 4), pp. 388–89.

through an informal meeting of experts'.⁵⁰ While little progress was made at the Fifth Review Conference in 2016—or at the Meeting of High Contracting Parties in 2017 where it was an agenda item for the first time since 1980—the states parties did decide to retain the issue as a separate agenda item for the 2018 meeting.

At the 2018 meeting, several countries again condemned the recent use of incendiary weapons and called for further time to be allocated in future meetings to consider ways to advance civilian protection. However, Russia, with some backing from China and Cuba, blocked proposals to keep it on the agenda.⁵¹ Hence, while the final report reflected continuing concerns about the use of incendiary weapons, the issue was not included as a separate agenda item for the 2019 meeting.⁵²

Mines other than anti-personnel mines

Discussions on mines other than anti-personnel mines (MOTAPM) are focused on anti-vehicle mines (AVMs), which include antitank mines. It is a topic that has been discussed within the CCW Convention for over a decade, but without any consensus among states parties on how to move the debate forward. At the 2017 Meeting of the High Contracting Parties, however, it was agreed that the 2018 chair would hold an informal open consultation on how best to address the continuing differences of view on how to deal with the humanitarian and developmental impact of MOTAPM, their military utility and how such military utility can be retained while addressing humanitarian concerns. To this end, two informal open consultation meetings took place in Geneva on 14 June and 2 October 2018.⁵³ However, these meetings were unable to bridge the differences of view and the chair's report recommended that informal consultations be continued in 2019.⁵⁴ The 2018 MHCP noted the report and that 'differences of view persisted'.⁵⁵

⁵⁰ Human Rights Watch, Statement on incendiary weapons, UN General Assembly First Committee on Disarmament and International Security, Delivered by Steve Goose, Human Rights Watch, 17 Oct. 2018.

⁵¹ Docherty, B., 'Setback not surrender on incendiary weapons', *CCW Report*, vol. 6, no. 12 (Reaching Critical Will, 26 Nov. 2018), pp. 5–6.

⁵² Meeting of the High Contracting Parties (note 9).

⁵³ Kārklīņš, J., Ambassador and Permanent Representative of Latvia to the United Nations Office at Geneva, 'Background note and informal consultations on 14 June 2018', 7 May 2018; and Kārklīņš, J., 'Background note for the second of informal consultations on MOTAPM', 14 Sep. 2018.

⁵⁴ Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, Geneva, 'Mines other than Anti-Personnel Mines', report of the Chairperson-elect, CW/MSP/2018/3, 2 Nov. 2018.

⁵⁵ Meeting of the High Contracting Parties (note 9).