

The Role of NGOs in Framing LAWS Discussions in the Convention on Certain Conventional Weapons

INTRODUCTION

In the 1970s, the international community became increasingly aware of the development of new weapons technologies that conflicted with international humanitarian law (UNODA, 2014; Rosert and Sauer, 2020). In response, the International Committee of the Red Cross (ICRC) convened a Conference of Government Experts on Weapons which may Cause Unnecessary Suffering in 1974. In 1997 the UN General Assembly Resolution 32/152 called for a conference to prohibit the use of weapons deemed excessively injurious or to have indiscriminate effects (UNODA, 2014).

These efforts culminated in the Convention on Certain Conventional Weapons (CCW) (UNODA, 2014). The CCW was entered into force in December 1983 (ibid). An instrument of international humanitarian law, the CCW aims, above all, to “prohibit weapons that make no distinction between civilians and combatants or cause unnecessary suffering or superfluous injury” (ibid: 2). The CCW currently has a total of 125 States Parties and 4 signatories (UNODA, nd).

The CCW has been the epicentre of recent global debates on Lethal Autonomous Weapons Systems (LAWS). In 2013, the CCW Meeting of High Contracting Parties convened an informal Meeting of Experts to discuss questions related to emerging technologies in the area of LAWS (UNODA, nd). Informal meetings were held by both the High Contracting Parties and the Meeting of Experts in 2014, 2015 and 2016, culminating in the establishment of a Group of Governmental Experts (GGE), who have met yearly since 2017 (*Convention on Certain Conventional Weapons*, nd).

This paper analyses the discussion of LAWS in the CCW, focusing on the implications of global NGO strategy to frame the issue. The paper proceeds in three sections. The first section outlines the parties, issues, interests and positions of CCW actors. Within the CCW, parties can broadly be categorised into proponents and opponents of a ban on LAWS. The second section explains why focusing on NGOs is relevant. Weapon autonomy is difficult to conceptualize and a global coalition of NGOs has hindered agreement in the CCW by influencing discussion framings and pushing for a ban on LAWS as a category of weapons. The final section discusses alternatives to a negotiated agreement: renouncing efforts to converge on a shared definition of “meaningful human control” and instead negotiating exceptions in line with ethical and legal principles. The paper concludes by summarising the arguments presented.

PARTIES, ISSUES, INTERESTS, POSITIONS

In 2013, a coalition of NGOs launched the Campaign to Stop Killer Robots (KRC), comprising 160 international, regional and national NGOs in 66 countries (Rosert and Sauer, 2020). The prospect of delegating life-and-death decisions to machines raises a host of moral, legal, accountability, and security concerns; the KRC thus calls for a legally binding instrument to

maintain meaningful human control by prohibiting LAWS (Human Rights Watch, 2020a; Rosert and Sauer, 2020). Thirty state parties, mainly from the Global South, support the aim of a precautionary ban (Barbé and Badell, 2020: 143). Having criticised diplomacy at the CCW to be “moving forward at snail’s pace”, the KRC believes the problem warrants more urgent action than what CCW meetings can achieve (Campaign To Stop Killer Robots, 2019a).

Supporters of the ban include the Non-Aligned Movement (NAM) countries, who see a need for regulation (Campaign To Stop Killer Robots, 2019c). French President Emmanuel Macron, who has also stated that he is “dead against” machines making “decisions to kill without human intervention” (Thompson, 2018). German officials have been calling for a ban on LAWS since 2013 (Rosert and Sauer, 2020), urging support for the German government's 2018 ban proposal (Campaign To Stop Killer Robots, 2019c). UN Secretary-General António Guterres has stated even that “machines with the power and discretion to take lives without human involvement are politically unacceptable” (UN News, 2019).

Many countries, however, display no interest in new international law, rejecting calls to negotiate a ban on LAWS. China, Israel, Russia, South Korea, the United Kingdom and the US are investing heavily in the development of autonomous weapons systems (Bode and Huelss, 2018; Human Rights Watch, 2020b). These states highlight the advantages to autonomy in weapons: rendering constant control and communication links obsolete, force multiplication, reduction of personnel costs and increased weapon speed (Horowitz, 2019). Opponents also argue that autonomy could render warfare more humane. As machines do not experience fear, stress, fatigue or panic, overreact or seek revenge, LAWS could prevent certain atrocities of war (Sauer, 2021). There is, therefore, little appetite in those states to forego the purported military benefits of critical technological developments (Horowitz, 2018).

The US position, for instance, is to keep exploring an international human rights-compliant use of autonomy in the critical functions of weapons systems (Sauer, 2021). Russia argues that LAWS-related concerns can be addressed through implementation of existing international legal norms (Sauer, 2021). In the August 2019 CCW meetings, both Russia and the US called proposals for a treaty on LAWS “premature” (Human Rights Watch, 2020b).

Chinese President Xi Jinping strives to make the People’s Liberation army a “world-class military”, aiming to modernise it by 2035 (*The Economist*, 2019). While China has implied that it supports a ban on the *use* of LAWS since the GGE meeting in 2018 (Bode and Huelss, 2018: 399), it has clarified that this does not extend to the production of LAWS (Human Rights Watch, 2020b). Middle powers such as India are also reluctant to regulate, sensing an opportunity to close their technological gap to the high-tech militaries of the world (Reddy, 2016; Sauer, 2021).

THE ROLE OF NGOS IN FRAMING LAWS DISCUSSIONS AND THE IMPLICATIONS ON CCW NEGOTIATIONS

Scholarship on weapons prohibitions illustrates how civil society can affect preferences and agreements, even against the interests of military powers (Bower, 2015, Petrova, 2016).

Petrova (2016: 397) highlights how civil society can influence rhetoric frames of issues at the international level, introducing new categories and issues to discussions. This is powerful because the discursive context can provide the conditions for effective influence by changing perceptions of state and societal actors or pressuring or persuading them to implement particular policy goals (Keck and Sikkink, 2014; Bower, 2015). For example, in the context of UN climate talks, framing the discussion on CO2 emissions was highly consequential to the abatement strategy of reducing greenhouse gases (Sjöstedt, 2002: 370).

International NGOs play a prominent role in civil society networks. Established in 2009, the International Committee for Robot Arms Control (ICRAC) is an NGO of experts from the domains of AI and robot ethics to human rights law and international security (ICRAC, nd). Between 2010-2013, the ICRAC's "scholar-activists" raised awareness of the LAWS debate by engaging expert and academic communities (Bolton and Mitchell, 2020). However, it was only after HRW adopted the issue in 2012 and launched the KRC in 2013 that the LAWS issue gained political traction (Human Rights Watch, 2020b; Rosert and Sauer, 2020). There is "near unanimity" among governments that the KRC is responsible for introducing weapon autonomy to UN arms control discussions, particularly regarding how binding regulation of LAWS can be integrated in the CCW (Rosert and Sauer, 2020: 1). Other actively engaged organisations that include the ICRC and the UN Institute for Disarmament Research, regularly giving statements and organizing side events at the CCW (ibid).

Autonomy and "Killer Robots"

The first three years of the CCW process on LAWS were plagued by definitional struggles. Traditionally, arms control negotiations operate by regulating the use of a weapon (Bieri and Dickow, 2014), or by precisely categorising the weapon - such as a landmine - before pursuing regulation (Sauer, 2021). Weapon autonomy, meanwhile, is a function of a weapon system - the degree of autonomy may change over time and between different tasks (Haas and Fischer, 2017: 286). As almost every weapons system will soon be made (partially or fully) autonomous, making autonomy externally indiscernible from remotely operated weapons, it is important to distinguish *which* functions are autonomous (Horowitz, 2019; Rosert and Sauer, 2020: 17). For example, many weapons systems are already capable of performing specific functions without human input or supervision, such as a drone "finding" a route from one location to another (Sauer, 2021: 240). Thus, despite KRC efforts, LAWS cannot be defined and regulated as a discrete category in the same way as previously banned weapons and it is difficult to discern "LAWS" (bad) from "not-LAWS" (okay) (Maas, 2019: 296; Rosert and Sauer, 2020: 17).

At the 74th session of the UNGA in 2019, 41 states raised "killer robots" in their statements to the session (Campaign To Stop Killer Robots, 2019c). Rosert and Sauer (2020) point out that there is a mismatch between the KRC framing of LAWS as "killer robots" and the characteristics of the issue. Effective framing must be both simple to understand, while being emotional to invoke feelings of fear or threats to moral and societal values (Keck & Sikkink, 1998: 27–28 in Rosert and Sauer, 2020). While the simplified term "killer robots" conveys notions of existential

threat that induces fear in the media and public, it obfuscates the message by giving LAWS a “sci-fi-feel” (Rosert and Sauer, 2020: 16), fuelling the notion that LAWS do not exist yet.

Ban opponents stall CCW efforts by declaring discussions as premature and speculative about future weapons. In the 2014 CCW talks, both France and the US argued that the discussion was about “future technologies” and that it was therefore impossible to foresee how they would develop (Boulainin, 2016: 3).

Meaningful Human Control

Weapon autonomy is difficult to conceptualise. The international community struggled to define what constituted an “autonomous system”. While there was strong convergence on the idea that humans should be involved, disagreements arose on what constituted human control. Thus, in May 2014 CCW discussions, “meaningful human control” (MHC) emerged as a major theme (Horowitz and Scharre, 2015; Human Rights Watch, 2020b).

The 2014 definition of MHC proposed by the ICRC includes a provision that, for MHC to be exercised, a commander must have “full contextual and situational awareness of the target area and be able to perceive and react to any change or unanticipated situations that may have arisen since planning the attack” (Horowitz and Scharre, 2015: 9). Yet these requirements are divorced from the reality of warfare: as such awareness has never existed, the definition fails to capture the challenges posed by autonomy (ibid).

Notwithstanding, CCW participants have largely converged on the ICRC’s minimalist-functional concept of autonomy, understanding weapon autonomy as the execution of target selection and engagement without human intervention (Sauer, 2021). Thanks to the ICRC, the notion of MHC is being embraced by civil society, a consistently growing number of CCW States Parties, as well as in both academic literature and the diplomatic debate (ibid). This is reflected, for example, in a set of guiding principles on human-machine interaction that CCW states agreed to in 2019 (CCW/MSP/2019/9-Annex III).

A definition that does not reflect the realities of the battlefield does not further an understanding of LAWS or address what is novel about greater autonomy in weapons systems, however (Horowitz and Scharre, 2015). This notion of MHC is advantageous in terms of conceptual simplicity, allowing States Parties to remain largely agnostic regarding the precise characteristics of the underlying technology and does not delineate what types of systems constitute LAWS (Sauer, 2021).

International Humanitarian Law

To resonate with target audiences, the framing of issues should be tailored to the normative environment, known as “grafting”. This stimulates systemic change, as norm entrepreneurs encourage other actors to emulate adoption (Price, 1998).

The KRC grafts the issue of LAWS onto fundamental international humanitarian law (IHL) principles. One underlying issue is that all weapons should meet the same criteria, as stipulated by CCW Protocol III and IHL (Bieri and Dickow, 2014). For LAWS, three obligations are of particular concern: the capability to distinguish between civilians and combatants; proportionality in the use of violence; and the personal responsibility of the person in charge of a mission (ibid). The KRC assumes that LAWS can never be programmed to meet these requirements (Bieri and Dickow, 2014; Campaign To Stop Killer Robots, nd). Essentially, decisions about the proportional use of force requires “assessing and processing complex data that might be based on contradictory signals if measured against a pre-programmed set of criteria-action sequences characteristic of autonomous decision-making” (Bode and Huelss, 2018: 403). The argument is that, because no human could be held accountable for failures of a LAWS, a precautionary ban is required (Horowitz and Scharre, 2015:4).

This legal framing is not straightforward. LAWS do not necessarily violate legally binding IHL principles (Cook, 2019). Decisions in the context of war - whether a group comprising armed individuals also comprises civilians, for example - are questions of judgement requiring complex analysis even for humans (Bode and Huelss, 2018). Furthermore, such a focus on indiscriminateness may become obsolete with technological advancement, rendering LAWS “at least as IHL-compliant as - or even more IHL-compliant than - remotely operated weapons” (Rosert and Sauer, 2020: 19).

LAWS do violate the nascent concept of MHC, though this has yet to become a legally binding IHL principle. Thus, in its current form as customary law, MHC is a weaker reference point than other, enshrined IHL principles (Rosert and Sauer, 2020). Grafting LAWS regulation in the CCW onto IHL principles - despite the absence of a legal violation - led militarily advanced states to stress the prematurity of imposing limitations on LAWS in the May 2014 CCW discussions, especially given the lack of a shared understanding of LAWS (Bieri and Dickow, 2014).

ALTERNATIVE TO A NEGOTIATED AGREEMENT

The view that multilateral regulation of LAWS should take the form of a legally binding international instrument is shared by the majority of countries participating in CCW meetings. To date, this proposal constitutes the most concrete attempt to point the way forward for future negotiations (Amoroso and Tamburrini, 2021). Yet CCW talks have not yielded lasting multilateral outcomes, where decisions are taken by consensus, meaning that just a few or even a single state can block a majority agreement, resulting in “lowest common denominator decision making” (Human Rights Watch, 2020b; Amoroso and Tamburrini, 2021).

Relinquishing the quest for a one-size-fits-all standard of “meaningful human control” could pave the way for a legally binding instrument to regulate LAWS without renouncing the search for principled forms of meaningful control (Amoroso and Tamburrini, 2021). Discontent about overly restrictive meaningful human control requirements might be mitigated by negotiating exceptions to human control as long as they concern weapon systems and contexts for which less strict

forms of human control suffice, which addresses accountability and moral agency concerns at the core of MHC principles (ibid).

The GGE, made up of multiple stakeholders, is uniquely suited to facilitate case study analyses that allow CCW states to develop a deeper, shared conceptual grasp of the intricacies involved with implementing human control, and investigate contexts for which less strict forms of human control suffice (Sauer, 2021: 257). Such research is already being implemented by smaller expert groups such as the International Panel on the Regulation of Autonomous Weapons (ibid).

With regards to the strategies of the KRC, Rosert and Sauer (2020) propose highlighting the fundamental problem of LAWS as infringing on human dignity instead of the IHL frame of inherent indiscriminateness. Instead of calling for a “ban,” the authors suggest calling for a positive obligation, codifying the requirement of human control (ibid). As Sharkey (2019: 9) notes, there are campaigning advantages to “saying that something is against human dignity evokes a strong visceral response.”

Moreover, according to KRC survey data (Campaign To Stop Killer Robots, 2019b), public opposition to LAWS increased globally from 56% in 2016 to 61% in 2018, suggesting that public opposition is primarily fuelled by the notion that delegating life and death decisions to machines crosses a moral line - the framing of there being something fundamentally wrong with “having humans killed by mindless machines” is thus better suited to creating grassroots pressure on governments (Sauer, 2021).

CONCLUSION

By developing categories and framings of LAWS to pursue legally binding LAWS regulation, the KRC has shaped CCW negotiations (Keck and Sikkink, 2014). Yet regulating weapon autonomy through the CCW is difficult because constructing a *tangible* framing of LAWS is complex due to terminology, definition and concreteness (Rosert and Sauer, 2020).

As LAWS do not constitute an exclusive category, it is difficult to discern “LAWS” (bad) from “not-LAWS” (okay) (Maas, 2019: 296; Rosert and Sauer, 2020: 17). Calling for a ban means that the KRC and its supporters inaccurately portray LAWS as a category of weapons, enhancing definitional struggles in the 2014 CCW discussions. This is further complicated by framing LAWS as “killer robots”, fuelling the argument that CCW efforts to regulate LAWS are premature, which hinders agreement. Opposition is strengthened by the absence of legal provisions that establish the unlawfulness of LAWS, despite the KRC’s attempts to graft LAWS onto binding IHL principles.

As Amoroso and Tamburrini (2021) suggest, discontent about overly-restrictive MHC requirements could be mitigated by negotiating exceptions to human control in certain contexts. For example, The US DoD Directive on Autonomy in Weapons Systems envisages training and designing guidelines with differentiated policies for human control (Cook, 2019: 17). Such a policy could be implemented in national weapons reviews while still enforcing principles of MHC.

Made up of multiple stakeholders, the GGE could facilitate analyses to develop a deeper, shared understanding among CCW states of the complexities of maintaining human control and investigate situations for various levels of MHC (Sauer, 2021: 257).

Though multilateral negotiations may be arduous given the number of parties and issues, Rubin (2002: 2) states that an agreement reached under such conditions has better chances of surviving (Rubin, 2002: 100). It currently seems unlikely that the CCW process would end up yielding more than “soft law”, however (Sauer, 2021: 258). Even if LAWS regulation does not emerge from the CCW, it is unclear whether other international fora are better suited to LAWS negotiations - this would be a particularly interesting avenue for future research.

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