



Unchecked Harm

The Need for Global Action on Incendiary Weapons



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Summary

Adopting a robust response to the shortcomings of international law on incendiary weapons is a humanitarian imperative. These weapons are among the cruelest in modern warfare, inflicting excruciating burns and lifelong suffering. In November 2022, countries have an opportunity to build on the momentum of last year's Convention on Conventional Weapons (CCW) Review Conference and strengthen their calls for action to address the human costs of incendiary weapons.

At the Sixth CCW Review Conference in December 2021, states expressed grave concerns at the horrific impacts of incendiary weapons. Many backed a proposal from Ireland to hold informal consultations on the implementation and universalization of CCW Protocol III on incendiary weapons, which is often criticized for having definitional and regulatory loopholes. Two states—Russia and Cuba—were able to block consensus on the proposal, generating anger and frustration from those who sought to respond to the weapons' humanitarian consequences and preserve the legitimacy of the CCW. This development should be seen as a temporary setback rather than the end of efforts to better protect civilians from the use of incendiary weapons.

This report calls on CCW states parties to unite and renew their calls for consultations at this year's annual meeting. It provides information on recent incendiary weapon attacks in Ukraine, and the relevance of restricting the weapon's use. It then examines states' positions on incendiary weapons and the debate at the Review Conference, illuminating the breadth of their concerns and the strength of support for addressing them. Finally, it shows that the debate took place in a larger context of demands for action from survivors, medical professionals, and civil society organizations. This report concludes that states should harness their energy from the 2021 CCW Review Conference and stay motivated by the words of survivors to advance the protection of civilians from incendiary weapons.

Recommendations

To begin addressing the serious concerns raised by incendiary weapons, Human Rights Watch and the Harvard Law School International Human Rights Clinic (IHRC) urge CCW high contracting parties to:

- Adopt a mandate at their annual meeting in November to hold informal consultations to assess the adequacy of Protocol III; and
- Hold discussions outside the CCW, particularly if the mandate is blocked, to consider the adequacy of national and international measures to address issues raised by incendiary weapons, and to find ways to create stronger international standards.

Incendiary Weapons and Harm Caused

Incendiary weapons are notorious for their horrific human cost. They contain different chemical compounds, such as napalm or thermite, that ignite and cause short and long-term harm, including excruciating burns, respiratory damage, and psychological suffering. Incendiary weapons also damage and destroy homes and other buildings, infrastructure, crops, and livestock, causing socioeconomic harm.¹

Incendiary weapons inflict thermal burns that can reach to the level of fourth or even fifth degree. They can cause damage to muscles, ligaments, tendons, nerves, blood vessels, and even bones.² Treatment often lasts weeks or months and requires daily attention. Many victims die from their burns and those who survive are left physically and psychologically scarred.³

The heat and smoke from incendiary weapons can also seriously affect the respiratory system. Incendiary weapons release carbon monoxide and carbon dioxide, which can cause poisoning and respiratory or organ failure when inhaled.⁴ Inhaling hot gas and combustion products can cause other pulmonary complications in addition to respiratory burns, such as pneumonia and fluid build-up in the lungs.⁵

Those who survive the initial injuries caused by incendiary weapons often face a lifetime of suffering. Long-term physical harm includes chronic pain, skin damage, scars, and physical, visual, hearing, and other disabilities.⁶ The physical injuries associated with incendiary weapons are also linked with cognitive and psychological harm. The mental health problems associated with burn injuries include but are not limited to anxiety, depression, post-traumatic stress disorder (PTSD), despondence, helplessness, and loneliness.⁷ Both the physical and psychological harm can create obstacles to social and economic inclusion for survivors of incendiary weapon attacks.

¹ Human Rights Watch and the Harvard Law School International Human Rights Clinic (IHRC), *Standing Firm against Incendiary Weapons*, November 2019, <https://www.hrw.org/news/2019/11/11/standing-firm-against-incendiary-weapons>.

² United Nations Department of Political and Security Council Affairs, "Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use: Report of the Secretary-General," A/ 8803/Rev. 1, 1973, p. 31.

³ *Ibid.*, p.30.

⁴ Gregory T. Guldner and Curtis Knight, "Napalm Toxicity," *StatPearls*; Hao Tian et al., "Epidemiology and Outcome Analysis of Facial Burns: A Retrospective Multicentre Study 2011–2015," *Burns*, vol. 46 (2020), p. 494; Peter Reich and Victor W. Sidel, "Napalm," *New England Journal of Medicine*, vol. 277 (1967), p. 87.

⁵ Stockholm International Peace Research Institute, *Incendiary Weapons*, pp. 142-143.

⁶ Human Rights Watch and IHRC, *"They Burn Through Everything": The Human Cost of Incendiary Weapons and the Limits of International Law*, November 2022, <https://www.hrw.org/report/2020/11/09/they-burn-through-everything/human-cost-incendiary-weapons-and-limits>, p. 10.

⁷ *Ibid.*

International Law Governing Incendiary Weapons

Adopted in 1980, CCW Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) governs the use of incendiary weapons but has failed to provide adequate protection for civilians.⁸ The protocol, which currently has 115 states parties, has two loopholes that have undermined its humanitarian impact.

First, Protocol III's definition does not encompass multipurpose munitions, such as those containing white phosphorous, that create smokescreens or signal troops yet produce the same incendiary effects. Article 1 only encompasses munitions that are "primarily designed" to set fires or cause burn injuries. Second, Article 2 prohibits the use of air-dropped incendiary weapons in civilian areas yet permits attacks using surface-launched versions of incendiary weapons under certain circumstances. This arbitrary distinction ignores that incendiary weapons cause the same kind of harm regardless of their delivery mechanism.

Protocol III should be amended to address these shortcomings, which continue to pose grave threats to civilians caught in armed conflict. A complete ban on incendiary weapons would have the greatest humanitarian benefits. As shown by recent use of incendiary weapons, which Human Rights Watch has documented in Afghanistan, Gaza, Iraq, Syria, Ukraine, and Yemen, their use has continued to endanger civilians.⁹ States should therefore strengthen existing international law to bolster protections for civilians from the lifetime of suffering these weapons inflict.

⁸ Convention on Conventional Weapons (CCW) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, adopted October 10, 1980, entered into force December 2, 1983.

⁹ Human Rights Watch and IHRC, *Incendiary Weapons: Call for Action and Human Cost*, February 2021, <https://www.hrw.org/news/2021/02/19/incendiary-weapons-call-action-and-human-cost>.

Recent Use in Ukraine

Since Russia's full-scale invasion of Ukraine in February 2022, Human Rights Watch has reviewed visual evidence showing at least 40 attacks in Ukraine using surface-fired incendiary weapons. A total of 32 videos posted to social media to date, and tracked by Human Rights Watch, showed active incendiary weapon attacks across several of Ukraine's *oblasts* or provinces, including Dnipropetrovsk, Donetsk, Kharkiv, Kyiv, Luhansk, and Mykolaiv oblasts.¹⁰ Human Rights Watch also positively identified the remnants of incendiary capsules in photos taken at other locations as being from surface-launched 122mm Grad incendiary rockets.¹¹ The warhead delivered by these rockets contains 180 hexagonally shaped capsules made of a magnesium alloy called ML-5, which serves as the incendiary element. The evidence of ongoing use shows that incendiary weapons remain a current issue.

At this time, it is not possible to attribute responsibility for specific attacks, but Russia and Ukraine both possess 122mm Grad incendiary rockets. This type of incendiary weapon was previously used by government forces and separatist combatants in eastern Ukraine in 2014 and in Syria in 2013–2019.¹²

¹⁰ Human Rights Watch tracked incendiary weapons attacks at the following locations and dates; Popasna (3/13/22) and (4/7/22), Kyiv (3/22/22), Donetsk water treatment plant (3/25/22), Mykolaiv (4/19/22), Zarechnoe (4/22/22), Yenakievo (4/23/22), Khartsyzsk (4/25/22), Mariinka (5/4/22) and (5/15/22), Gorlovka (5/9/22), Petrovsky District (5/10/22), Avostal plant, Mariupol (5/15/22), Zolote (5/20/22), Kharkiv (5/26/22) and (7/28/22), Maryinka (5/31/22), Slovyansk (7/1/22), Donbass (7/20/22), Donetsk (7/23/22), (8/1/22), and (8/10/22), Avdiivka (7/24/22), Kharkiv (7/28/22), Nikopol (8/4/22) and (8/5/2022), Krasniy Pahar (8/5/22), Tsirkuny (8/15/22), Ozerne (9/20/22), and unknown locations (8/5/22), (8/14/22) and (8/17/22).

¹¹ Human Rights Watch tracked incendiary weapons remnants at the following locations and dates; Novoyakovlivka (4/12/22), Village near Zaporizhzhia (4/19/22), Izyum (5/17/22), Yasinovataya (5/20/22), Maryinka (5/13/22), unknown location and date.

¹² Human Rights Watch and IHRC, *Incendiary Weapons: Recent Use and Growing Opposition*, November 2014, <https://www.hrw.org/news/2014/11/10/incendiary-weapons-recent-use-and-growing-opposition>. See also Human Rights Watch, *Q&A: Incendiary Weapons in Ukraine*, March 2022, <https://www.hrw.org/news/2022/03/17/qa-incendiary-weapons-ukraine>; Human Rights Watch, *Syria/Russia: Incendiary Weapons Burn in Aleppo, Idlib*, August 2016, <https://www.hrw.org/news/2016/08/16/syria/russia-incendiary-weapons-burn-aleppo-idlib>; Human Rights Watch and IHRC, *"They Burn Through Everything."*

The 2021 Review Conference Debate

The use of incendiary weapons in Ukraine this year follows intense discussions on the issue at the CCW's Sixth Review Conference in December 2021 at the UN in Geneva. At that meeting about two dozen states made passionate appeals for addressing the humanitarian concerns raised by incendiary weapons. Almost all states that participated in discussions called for further talks on the topic, and many also called for strengthening Protocol III.¹³

Much of the debate centered around Ireland's proposal for the incoming chair to conduct informal consultations regarding the implementation and universalization of Protocol III before the November 2022 Meeting of the High Contracting Parties.¹⁴ Russia and Cuba ultimately blocked the proposal, which was possible because the CCW operates by consensus.¹⁵ This approach to decision-making effectively allows any state to veto the will of the majority and leads to the lowest common denominator. Nevertheless, the strength of states' positions on Protocol III, detailed below, and their frustration that progress was thwarted suggests heightened outrage at the harm caused by incendiary weapons and commitment to take action against them.

Condemnation and Concern

Twenty states condemned or expressed concern about civilian harm from incendiary weapons during the Review Conference.¹⁶ In their interventions, states focused on the human suffering caused by incendiary weapons. For example, Mexico highlighted the “horrible social, economic, and physical impact in the mid-term and long-term, presented by incendiary weapons,” referencing discussions and reports presented by civil society and academia on the humanitarian effects of these weapons.¹⁷ Spain shared the sentiment, stating that “the use of incendiary

¹³ Statements of Australia, Austria, Chile, Colombia, Costa Rica, Ecuador, the Holy See, Ireland, Mexico, the Netherlands, New Zealand, Norway, Palestine, Panama, Peru, the Philippines, Switzerland, the United Kingdom, Uruguay, and Spain, CCW Sixth Review Conference, Geneva, December 13-17, 2021 (UN Web TV), <https://media.un.org/en/asset/k1j/k1jlv050m2> (accessed October 20, 2022).

¹⁴ Ray Acheson, “Incendiary Weapons,” in *Reaching Critical Will*, *CCW Report*, vol. 9, no.11, December 15, 2021, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2021/RevCon/reports/CCWR9.11.pdf> (accessed October 20, 2022), pp. 3-5.

¹⁵ Bonnie Docherty, “Countering Consensus through Humanitarian Disarmament: Incendiary Weapons and Killer Robots,” *Humanitarian Disarmament*, <https://humanitarianandisarmament.org/2021/12/21/countering-consensus-through-humanitarian-disarmament-incendiary-weapons-and-killer-robots/>, December 21, 2021 (accessed November 7, 2021).

¹⁶ Statements of Australia, Austria, Chile, Colombia, Costa Rica, Ecuador, the Holy See, Ireland, Mexico, the Netherlands, New Zealand, Norway, Palestine, Panama, Peru, the Philippines, Spain, Switzerland, the United Kingdom, and Uruguay, CCW Sixth Review Conference, Geneva, December 13-17, 2021 (UN Web TV), <https://media.un.org/en/asset/k1j/k1jlv050m2> (accessed October 20, 2022).

¹⁷ Statement of Mexico, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), <https://media.un.org/en/asset/k1i/k1ite6cqsj?kalturaStartTime=3535&kalturaStartTime=3533>. All audio files in this report were accessed October 20, 2022.

weapons is a source of serious concern to my delegation, and we think that the international community ... needs to pay more attention to this concern.”¹⁸ Australia also expressed “grave concern” over the unlawful use of incendiary weapons, including those containing white phosphorous, and stated that “violations of Protocol III are capable of inflicting a horrific human toll,” urging fellow states to “meet their obligations under Protocol III and under general [international humanitarian law].”¹⁹

Strengthening or Amending Protocol III

Some states that spoke during the 2021 CCW Review Conference also supported efforts to assess the adequacy of Protocol III and to prevent the unnecessary suffering caused by these weapons through stronger law.²⁰ Mexico said that strengthening the protocol was one of its primary goals for the Review Conference and stated that the CCW “must consider firstly ... strengthening of Protocol III on incendiary weapons and weapons with incendiary effects.”²¹ The Holy See called for “an honest, technical, and legal review of the provisions contained in Protocol III in order to strengthen [the] instrument so as to remain relevant in today’s conflicts and enhance the protection granted to the civilians and combatants.”²² Costa Rica shared its concern with the protocol’s loopholes and stated that “High Contracting Parties must look at the possibility to review Protocol III and this review should be done in order to strengthen those parts of the document that don’t make it possible to ensure true protection.”²³

Palestine emphasized the importance of strengthening Protocol III as a reflection of the relevance and legitimacy of the CCW process, stating, “As an international community, we have a collective responsibility to demonstrate that international legal instruments are effective.”²⁴ It cited the cruel effects of incendiary weapons as reason for the dire need to strengthen international law

¹⁸ Statement of Spain, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/00DFDE70-E8F9-4E62-9124-21673DFF5CEB_10ho7/chunks/snippet_l0s114-42t119-29.mp3.

¹⁹ Statement of Australia, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/E5E907Do-6Co9-4A6D-A65D-B2E88727A914_15ho9/chunks/snippet_lEs38-17t43-24.mp3.

²⁰ Statements of Australia, Austria, Chile, Colombia, Costa Rica, Ecuador, the Holy See, Ireland, Mexico, the Netherlands, New Zealand, Norway, Palestine, Panama, Peru, the Philippines, Spain, Switzerland, the United Kingdom, Uruguay, CCW Sixth Review Conference, Geneva, December 13-17, 2021 (UN TV), <https://media.un.org/en/asset/k1j/k1jlv050m2> (accessed October 20, 2022).

²¹ Statement of Mexico, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/E5E907Do-6Co9-4A6D-A65D-B2E88727A914_15ho9/chunks/snippet_lEs83-54t89-31.mp3.

²² Statement of the Holy See, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/3FCAE8A9-9213-49E4-98B9-BE45DE78B5BD_10ho8/chunks/snippet_lEs40-47t46-41.mp3.

²³ Statement of Costa Rica, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_lEs41-52t44-52.mp3.

²⁴ Statement of Palestine, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/00DFDE70-E8F9-4E62-9124-21673DFF5CEB_10ho7/chunks/snippet_lEs152-42t157-51.mp3.

regarding their use. While discussing the use of white phosphorous in Gaza in 2009, it urged all states to “[adopt] an effects-based definition of incendiary weapons in Protocol III that covers multipurpose munitions.”²⁵

Other states shared Palestine’s concerns about Protocol III’s definitional loophole. Chile and Costa Rica, for example, highlighted the urgent need for an “updated” protocol to govern the use of incendiary weapons and weapons “with incidental incendiary effects such as white phosphorous, tracers, and flares.”²⁶ The Philippines said, “we see value in strengthening Protocol III, including its adequacy in dealing with the humanitarian harm posed by white phosphorous.”²⁷

States also commented on the shortcomings of Protocol III to regulate surface-launched incendiary weapons that continue to cause extensive civilian harm. Panama, for example, stated that “Article 2 enshrines laxer restrictions for incendiary weapons launched from land than from those launched from the air, in spite of the fact that all these weapons have the same destructive consequences for the civilian population.”²⁸ Mexico echoed the need for amending Article 2 to cover “gaps that have been left open by Protocol III,” such as the weaker rules governing surface-launched incendiary weapons.²⁹

Calls for Consultations

During consideration of a draft final declaration in Main Committee I, which reviewed and considered proposals for the CCW’s existing protocols, Ireland made the following proposal:

The Chairperson-designate of the 2022 Meeting of the High Contracting Parties conduct informal consultations with regard to the implementation and universalization of Protocol III, and report the findings to the 2022 Meeting of the High Contracting Parties, and that

²⁵ Ibid. For Israel’s rebuttal, see Statement of Israel, CCW Sixth Review Conference, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/00DFDE70-E8F9-4E62-9124-21673DFF5CEB_10ho7/chunks/snippet_I0s167-26t173-31.mp3. See also Human Rights Watch, *Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza*, March 2009, <https://www.hrw.org/report/2009/03/25/rain-fire/israels-unlawful-use-white-phosphorus-gaza>.

²⁶ Statement of Chile, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_I0s3-54t10-08.mp3; Statement of Costa Rica, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/E5E907D0-6C09-4A6D-A65D-B2E88727A914_15ho9/chunks/snippet_I0s136-32t141-07.mp3.

²⁷ Statement of the Philippines, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/00DFDE70-E8F9-4E62-9124-21673DFF5CEB_10ho7/chunks/snippet_I0s147-05t152-22.mp3.

²⁸ Statement of Panama, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_I0s21-48t27-00.mp3.

²⁹ Statement of Mexico, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/3FCAE8A9-9213-49E4-98B9-BE45DE78B5BD_10ho8/chunks/snippet_I0s179-09t184-15.mp3.

Protocol III be included as an item on the 2022 Agenda of the Meeting of the High Contracting Parties.³⁰

The proposal sought to ensure that the Review Conference took concrete action on the issue of incendiary weapons, more than 40 years after Protocol III's adoption.³¹ Ireland expressed its hope that these informal meetings would result in "substantive work on Protocol III."³² It said that despite different views on the adequacy of Protocol III, the High Contracting Parties "have assured interest in ensuring the full and effective implementation of the protocol."³³

This proposal, along with the humanitarian concerns of incendiary weapons, generated significant support during the Review Conference. New Zealand said that it was "grave[ly] concerned about the ongoing use of incendiary weapons and their horrific human cost" and backed Ireland's proposal for informal consultations.³⁴ Switzerland also endorsed Ireland's proposal, citing the need to protect civilians and combatants from the severe consequences of incendiary weapons and to preserve the protocol's "integrity, adequacy, credibility, and its historical, legal, and political significance."³⁵ Palestine stated that, "as a nation that has experienced the severe humanitarian consequences posed by incendiary weapons," it supported Ireland's proposal and "believe[d] that Protocol III remains an important component of this convention and warrants attention."³⁶

Peru similarly called for informal consultations and stressed the importance of member states being "willing to consider in good faith the effectiveness and the suitability of the protocol."³⁷ Other states that supported Ireland's proposal included Austria, Australia, Chile, Costa Rica, Mexico, and Norway.³⁸

³⁰ Statement of Ireland, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/E8BA5792-E251-4121-8619-AE47E4FE00B4_10h16/chunks/snippet_I0s137-01t137-56.mp3.

³¹ The protocol was adopted on October 10, 1980.

³² Statement of Ireland, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/E8BA5792-E251-4121-8619-AE47E4FE00B4_10h16/chunks/snippet_I0s137-01t137-56.mp3.

³³ *Ibid.*

³⁴ Statement of New Zealand, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/3FCAE8A9-9213-49E4-98B9-BE45DE78B5BD_10ho8/chunks/snippet_I0s159-05t162-09.mp3.

³⁵ Statement of Switzerland, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_I0s34-15t38-18.mp3.

³⁶ Statement of Palestine, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_I0s20-54t21-37.mp3.

³⁷ Statement of Peru, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files),

https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_I0s27-09t30-15.mp3.

³⁸ Ray Acheson, "Incendiary Weapons," in *Reaching Critical Will*, CCW Report, vol.9, no.13, December 17, 2021,

<https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2021/RevCon/reports/CCWR9.13.pdf> (accessed October 20, 2022), p. 6.

Chile and Ecuador called for consultations even before Ireland set out its proposal. Chile stated that, “in light of the great humanitarian consequences of the use of incendiary weapons and weapons with incendiary effects ... a technical, legal, humanitarian, and environmental analysis of incendiary weapons and weapons with incidental incendiary effects should be considered urgently.”³⁹ In addition to condemning the use of incendiary weapons, Ecuador also called on delegations to “devote sufficient time to discuss [incendiary weapons] within [the] conference.”⁴⁰ Panama recommended including Protocol III on the agenda of the 2022 CCW Meeting of the High Contracting Parties. Panama criticized the use of incendiary weapons calling them an “affront to human conscience” and referenced the devastating effects of these weapons in contemporary warfare. It highlighted the physical, psychological, social, and economic effects of these weapons and underscored the gendered and environmental impacts.⁴¹

The United States stated that it was “not in a position to support adding a Protocol III agenda item in 2022, but [did] see merit in the proposal to conduct informal consultations.”⁴²

Concluding Debates

Despite widespread support, the proposal for informal consultations was debated until the last day of the Review Conference. Russia argued consultations would repeat limited discussions held after the previous CCW Review Conference in 2016. Russia stated, “Issues relating to Protocol III were discussed five years ago,” and the “results [are] well known to all participating states.... [T]here was no consensus that arose.”⁴³ Russia also warned that opening discussions on the provisions of the protocol would “weaken the regime of compliance of this convention and this protocol.” It instead emphasized the need to ensure strict compliance of the protocol to help “remove certain concerns that states have related to the use of incendiary weapons.”⁴⁴ Cuba stated that informal consultations would undermine multilingualism because informal meetings

³⁹ Statement of Chile, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_LEs3-54t10-08.mp3.

⁴⁰ Statement of Ecuador, CCW Sixth Review Conference, Geneva, December 13, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/E5E907Do-6Co9-4A6D-A65D-B2E88727A914_15ho9/chunks/snippet_LEs124-25t130-36.mp3.

⁴¹ Statement of Panama, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/F5F2F619-3824-4CC1-97A6-1FA1E1033FF8_15ho2/chunks/snippet_LEs21-48t27-00.mp3.

⁴² Statement of the United States, CCW Sixth Review Conference, Geneva, December 15, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/E8BA5792-E251-4121-8619-AE47E4FE00B4_10h16/chunks/snippet_LOs144-07t144-39.mp3.

⁴³ Statement of Russia, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_LOs60-06t62-08.mp3.

⁴⁴ Statement of Russia, CCW Sixth Review Conference, Geneva, December 14, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/3FCAE8A9-9213-49E4-98B9-BE45DE78B5BD_10ho8/chunks/snippet_LEs165-33t173-10.mp3. Russia stated that countries with concerns could discuss the issue under the “Agenda Item on Protocols.”

are usually held in English without interpretation. The consultations would also negatively affect small delegations with limited resources to participate.⁴⁵

More than a dozen states defended the proposal. Many highlighted the humanitarian grounds of their support and some explicitly expressed technical and procedural concerns relating to Russia and Cuba's ability to block the widely supported proposal. For example, Norway stated that, "at a minimum, we should allow ourselves to debate this important protocol that does not have its own meeting in a structured manner ... with the proper focus that a Protocol of this convention deserves."⁴⁶ Alluding to the "worrying development" of consensus diplomacy, Switzerland emphasized the "need to have the appropriate space to discuss the implementation of existing protocols and their universalization."⁴⁷

Mexico reminded the conference of the human costs of incendiary weapons and stated, "It's incredible that in spite of the fact that ... the conference is aware of the horrendous humanitarian effects of these kinds of weapons, we are not at all ready to consider it as an item for discussion at our meetings."⁴⁸ Mexico went on to say, "[W]e are getting bogged down in technicalities and stripping the convention of its substance and relevance."⁴⁹ Chile emphasized that "if we cannot discuss the use of these weapons under this convention because of technicalities ... we are completely watering down the convention. We are stripping it of its legitimacy, the protocol is weakened, and this Review Conference will not be fulfilling its purpose."⁵⁰

The president of the 2021 CCW Review Conference, Ambassador Yann Hwang of France, concluded the debate by removing Ireland's proposal from the conference's final declaration despite what he called "very broad support to keep it."⁵¹

⁴⁵ Statement of Cuba, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_l0s64-4ot66-46.mp3.

⁴⁶ Statement of Norway, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_l0s75-15t76-37.mp3.

⁴⁷ Statement of Switzerland, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_l0s70-14t71-07.mp3.

⁴⁸ Statement of Mexico, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_l0s62-15t64-07.mp3.

⁴⁹ Ibid.

⁵⁰ Statement of Chile, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_lEs69-14t70-06.mp3.

⁵¹ Statement of Review Conference President Ambassador Yann Hwang, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_lEs78-29t81-11.mp3.

Ireland expressed frustration at being blocked by such a small number of states and criticized the lack of effort to reach a compromise proposal. “We have tabled something, we are open for discussion,” Ireland stated, “but unfortunately what we see is a take it or leave it approach, which unfortunately is handing the power of veto to a small number of states, which is deeply concerning to my delegation.”⁵²

In the end, the final declaration of the Sixth Review Conference did not set aside dedicated time to discuss Protocol III or incendiary weapons. Instead, the final declaration repeated almost verbatim the language from the Fifth Review Conference’s final document, as follows:

Notes the concerns raised by a number of High Contracting Parties over reports of use of incendiary weapons against civilians and condemns any use of incendiary weapons against civilians or civilian objects, and any other use incompatible with relevant rules of International Humanitarian Law, including provisions of Protocol III where applicable.⁵³

⁵² Statement of Ireland, CCW Sixth Review Conference, Geneva, December 17, 2021 (UN audio files), https://conf.unog.ch/dr/public/61.0500/74B8DB02-8B35-4121-92FE-D59E8EC436E9_15h17/chunks/snippet_lEs68-01t69-11.mp3.

⁵³ Final Declaration, CCW Sixth Review Conference, Geneva, December 13-17, 2021, in Final Document of the Sixth Review Conference, CCW/CONF.VI/11, April 27, 2022, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2021/RevCon/documents/final-document.pdf> (accessed November 7, 2022), Part II, para. 89. See also Final Declaration, CCW Fifth Review Conference, Geneva, December 12-16, 2016, in Final Document of the Fifth Review Conference (advanced version), CCW/CONF.V/10, December 23, 2016, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2016/RevCon/documents/final-document.pdf> (accessed November 7, 2022), Part II, para. 71.

Humanitarian Call to Action

Medical professionals, burn survivors, and civil society organizations mobilized over the past year to have their voices heard in the diplomatic debate surrounding incendiary weapons. Through open letters, online briefings, joint statements, and other means, these individuals and organizations drew from their first-hand experiences and professional expertise to highlight the horrific humanitarian consequences of these weapons and call upon states to strengthen international law regulating their use.

In an open letter to the 2021 Review Conference, more than 60 healthcare professionals and medical organizations called upon governments to “recognize the unnecessary human cost of incendiary weapons and initiate a process to revisit and strengthen existing law.”⁵⁴ Signatories included trauma and reconstructive surgeons, burn specialists, doctors, nurses, and physical therapists, who professionally understand the human effects of such injuries and the challenges of treating them. Burn survivor organizations that collectively represent more than 550 burn survivors and family members also signed the letter. Members of these groups “have directly or indirectly experienced the effects of burn injuries and empathize with those who suffer the immediate and lifelong consequences of incendiary weapons.” Signatories of the letter reiterated to governments the “humanitarian imperative” of addressing incendiary weapons at an international level.⁵⁵

To highlight the humanitarian arguments underpinning the appeals to regulate incendiary weapons, Human Rights Watch and the International Human Rights Clinic at Harvard Law School hosted an online briefing featuring a survivor, doctor, and disarmament leader in the margins of the CCW Review Conference.⁵⁶ Kim Phuc, who as a child was photographed fleeing a 1972 napalm attack during the Vietnam War, described the day that changed her life. “How can we imagine the horrible fire that would drop from the sky?” she said. “We were so scared, my clothes burned off,

⁵⁴ Humanitarian Disarmament, “Open Letter on Incendiary Weapons from Healthcare Professionals and Burn Survivor Organizations,” November 2021, <https://humanitariandisarmament.org/initiatives/open-letter-on-incendiary-weapons/> (accessed October 20, 2022).

⁵⁵ Ibid.

⁵⁶ David Hogan, “Incendiary Weapons: Views from the Frontlines and the Financial Sector,” *Humanitarian Disarmament*, December 14, 2021, <https://humanitariandisarmament.org/2021/12/14/incendiary-weapons-views-from-the-frontlines-and-the-financial-sector/> (accessed October 20, 2022). In a May 2021 webinar, organized by the same organizations, a survivor, military trauma nurse, and a burn rehabilitation doctor shared their powerful stories, perspectives, and ideas for action on incendiary weapons. See Jacquelyn Kantack, “A Burning Issue: The Human Cost of Incendiary Weapons,” *Humanitarian Disarmament*, May 4, 2021, <https://humanitariandisarmament.org/2021/05/04/a-burning-issue-the-human-cost-of-incendiary-weapons/> (accessed October 20, 2022).

shrieking in pain and fear.”⁵⁷ While her horrific experiences exemplify the immediate and lifelong cruelty of incendiary weapons, Kim Phuc expressed hope for the day that, “all people will live without fear in real peace, no fighting and no hostility.”⁵⁸

Dr. Rola Hallam, a British doctor, recounted treating the horrific injuries suffered by victims after Syrian government forces dropped an incendiary bomb that fell in a school yard in Urum al-Kubra on August 26, 2013. “That day is etched on my heart, mind, and soul ... the smell of burning flesh is burned in my memory.”

Dr. Hallam implored diplomats attending the webinar, “You must review the problem[s in] this convention and act to protect lives. You have a legacy to leave your children and their children. You have to do everything possible so that no other child or innocent human being is inhumanly maimed by these weapons.”⁵⁹ Dr. Hallam’s and Kim Phuc’s accounts highlighted the physical as well as psychological trauma that incendiary weapons cause both survivors and frontline workers.

PAX’s Roos Boer concluded the webinar by presenting her organization’s recently released report *Put Out the Fire: Strengthening International Law and Divestment Policies on Incendiary Weapons*, which links this suffering to the divestment policies of financial institutions.⁶⁰

In a joint statement to the Review Conference, 10 civil society groups drew on Kim Phuc’s account and experiences as a survivor of napalm, to urge states to “set aside your political differences and—at a minimum—assess the adequacy of the instrument created in response to [Kim Phuc’s] suffering.”⁶¹ They called upon states parties “to address the human cost of incendiary weapons by working to close [CCW Protocol III’s] loopholes.”⁶² The statement encouraged states parties to agree at a minimum to an in-depth discussion of Protocol III in 2022.

Civil society groups renewed their calls for action during the UN General Assembly’s First Committee on Disarmament and International Security in October 2022. A statement delivered by

⁵⁷ Hogan, “Incendiary Weapons: Views from the Frontlines and the Financial Sector,” *Humanitarian Disarmament*.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ PAX, *Put Out the Fire: Strengthening International Law and Divestment Policies on Incendiary Weapons*, December 9, 2021, <https://paxforpeace.nl/news/overview/put-out-the-fire-strengthening-international-law-and-divestment-policies-on-incendiary-weapons> (accessed October 20, 2022).

⁶¹ Joint Civil Society Statement on Protocol III to the Convention on Conventional Weapons Sixth Review Conference, Geneva, December 13, 2021, <https://www.hrw.org/news/2021/12/13/joint-civil-society-statement-protocol-iii-convention-conventional-weapons-sixth>.

⁶² Ibid. The statement was on behalf of Article 36, Human Rights Watch, Mines Action Canada, PAX, Pax Christi Vlaanderen, Protection, Latin America Human Security Network (SEHLAC), and the Women’s International League for Peace and Freedom.

Human Rights Watch on behalf of 15 organizations described the failure of last year’s Review Conference as a “temporary setback not the end of the road.” It stressed that “[a]ddressing incendiary weapons at the international level is a humanitarian imperative,” and called for CCW states parties to renew their calls for informal consultations at their annual meeting in November.⁶³

⁶³Joint Civil Society Statement on Incendiary Weapons, UN General Assembly’s First Committee on Disarmament and International Security, New York, October 18, 2022, <https://www.hrw.org/news/2022/10/18/joint-civil-society-statement-incendiary-weapons>. Statement was delivered by Bonnie Docherty on behalf of Amnesty International, Action on Armed Violence, Article 36, Campaña Colombiana Contra Minas, Center for Peace Education, Harvard Law School’s International Rights Clinic, Human Rights Watch, Humanity & Inclusion, Mines Action Canada, Nonviolence International Canada, PAX, Pax Christi Philippines, Peace Movement Aotearoa, Seguridad Humana en América Latina y el Caribe (SEHLAC), and Women’s International League for Peace and Freedom.

Conclusion

The CCW Review Conference's failure to approve designated discussions on the effectiveness of Protocol III for the 2022 Meeting of the High Contracting Parties, despite widespread support and resolve to protect civilians from the harmful effects of incendiary weapons, highlights the inadequacy of consensus-based diplomacy.⁶⁴ The determination to put humanitarian concerns above individual state interests, demonstrated during the Review Conference, however, was heartening to those who want to address the cruelty caused by incendiary weapons.

States' passionate statements about the human costs of incendiary weapons and the ongoing use of such weapons in Ukraine underscore the urgent need to strengthen international law. In-depth discussions on the adequacy and effectiveness of Protocol III need to happen. States should adopt a mandate at the upcoming November 2022 CCW meetings to hold informal consultations to assess the adequacy of Protocol III. Regardless, and particularly if such a mandate is blocked, states should harness the energy from the 2021 CCW Review Conference and hold independent, informal consultations outside the CCW on the harms raised by incendiary weapons and find ways to create stronger international standards governing their use. States should hold steadfast to their humanitarian commitments and act upon their calls for consultations.

⁶⁴ Docherty, "Countering Consensus through Humanitarian Disarmament: Incendiary Weapons and Killer Robots," *Humanitarian Disarmament*.