# Considering Victim Assistance and Remediation Provisions for a Treaty on Killer Robots





#### Executive Summary

International diplomatic and advocacy discussions surrounding a possible treaty on autonomous weapons systems – "killer robots" – have neglected consideration of provisions on victim assistance and remediation. This departs from an almost three-decade trend in treaties banning and regulating weapons, which have included "positive obligations" to assist affected communities and remediate contaminated environments. Autonomous weapons systems have not yet been widely deployed and thus there are few who might be considered victims. Moreover, one hopes that a treaty will stymie widespread use of killer robots. Nevertheless, it is likely that some states will remain outside any eventual treaty and may use autonomous weapons. Therefore, it is important for diplomats and advocates to discuss whether positive obligations to address harms from killer robots belong in a treaty regulating and/or banning them. If so, further consideration should be given to the scope and shape of such provisions on victim assistance and remediation in advance of any negotiations.



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## Diplomatic and Advocacy Conversations about a Killer Robots Treaty Have So Far Neglected Possible Provisions on Victim Assistance and Remediation

The growing trend of autonomy in weapons systems raises serious humanitarian, human rights and security concerns.<sup>1</sup> Many states, the International Committee of the Red Cross (ICRC) and the Stop Killer Robots civil society campaign have asserted that certain weapons that fail to maintain meaningful human control over the use of force ("killer robots") would be incapable of complying with International Humanitarian Law and International Human Rights Law.<sup>2</sup> Therefore, United Nations Secretary-General António Guterres has called on states to "conclude, by 2026, a legally binding instrument to prohibit lethal autonomous weapon systems that function without human control or oversight, and which cannot be used in compliance with international humanitarian law, and to regulate all other types of autonomous weapons systems."<sup>3</sup>

Diplomatic discussions in the Convention on Certain Conventional Weapons (CCW) and UN General Assembly First Committee (Disarmament and International Security), as well as in civil society and academia, have outlined potential provisions of a treaty on autonomous weapons systems. Such possible elements under discussion include negative obligations, such as prohibiting killer robots, as well as positive obligations to maintain meaningful human control over weapons.<sup>4</sup>



However, there has been almost no discussion of whether a treaty on killer robots should also include positive obligations to assist victims and remediate contaminated environments. The only significant exception is a broad concern raised by the ICRC that autonomous weapons systems "may give rise to practices that erode the protections presently afforded to the victims of war under" International Humanitarian Law.<sup>5</sup> Autonomous weapons systems have not yet been widely deployed and thus there are few who might be considered victims. Moreover, one hopes that a treaty will stymie widespread use of killer robots. Nevertheless, it is likely that some states will remain outside any eventual treaty and may deploy autonomous weapons.

Precursor systems point to potential harms that could arise from the use of killer robots. Victim-activated landmines are a kind of analog autonomous, or at least automated, weapon. As an explosive trap, landmines demonstrate the fundamentally indiscriminate nature of automated targeting. Without a person controlling the "decision" to explode the device and the difficulties of tracing who is responsible for laying the mine in the first place, the lack of



accountability is one reason for the inclusion of victim assistance and demining provisions in the 1997 Antipersonnel Landmine Ban Treaty (MBT).<sup>6</sup> One can envision similar problems with the automated turrets and autonomous armed uninhabited ground vehicles (UGVs) under development by weapons manufacturers.<sup>7</sup> Without meaningful human control, such devices will be unable to distinguish between civilians and soldiers, likely resulting in civilian casualties.

One is already seeing from the deployment and use of armed remotely-operated uninhabited aerial vehicles (armed UAVs or drones), that the distancing effect, algorithmic processes to determine who is a target and use of explosive weapons in populated areas, have resulted in civilian casualties and many humanitarian and human rights concerns.<sup>8</sup> Moreover, the recent expansion of artificial intelligence in target selection, whether for use in armed drone attacks or other means, raises possibilities of "digital dehumanization," including decisions made based on gender and racial biases encoded into software and discriminatory target profiles.<sup>9</sup>



Armed uninhabited surface vessels (USVs), if used autonomously, pose risks that such robots will not be able to distinguish effectively between civilian and military ships and may not be able to render sufficient aid to shipwrecked sailors resulting from the sinking of a vessel.<sup>10</sup> Targeting of vessels could have serious environmental implications, resulting from spillage of fuel or cargo.

#### Recent Weapons Treaties Have Victim Assistance and Remediation Provisions

The lack of discussion about potential provisions on victim assistance and remediation in a killer robots treaty is surprising given the development of such norms in recent disarmament treaties. International treaties on weapons over the last three decades – particularly those prohibiting weapons deemed morally, ethically and legally unacceptable – have included not only positive obligations addressing the harms they cause.<sup>11</sup>

The preamble of the MBT expresses states parties' commitment "to do their utmost" to clear minefields, destroy stockpiles and provide "assistance for the care and rehabilitation, including social and economic reintegration of mine victims." Article 4 of the treaty requires states parties to destroy "all stockpiled anti-personnel mines" in their possession, "jurisdiction or control." Article 5 requires states to demine contaminated territory. Article 6(3) obligates states parties "in a position to do so" to provide assistance to mine victims, as well a mine risk education. All states parties "in a position to do so" – supported by UN agencies, the ICRC and NGOs – should engage in international cooperation and assistance to help affected states with demining, victim assistance and mine risk education (Article 6).<sup>12</sup>

While the MBT was negotiated outside traditional arms control and disarmament channels and has been opposed by USA, Russia and China, its positive obligations have had normative effects on states not yet party. The 2003 Protocol on Explosive Remnants of War (ERW Protocol) was adopted by consensus in the CCW and the US, Russia and China are states parties. The ERW Protocol adopts language drawn from the MBT, obligating states to clear areas contaminated by ERW (Articles 3, 7 and 8), support risk reduction education (Articles 2[4]), 5 and 8) and assist victims (Article 8[2]).

MBT language on clearance and risk reduction education is also mirrored in the 2008 Convention on Cluster Munitions (CCM) (Article 4). However, the CCM elaborated on victim assistance, centering it in "applicable international humanitarian and human rights law" and strengthening the obligations on states parties with cluster munition victims in areas under its jurisdiction or control" (Article 5[1]).<sup>13</sup> The provisions on



victim assistance and environmental remediation in the 2017 Treaty on the Prohibition of Nuclear Weapons (Articles 6 & 7) are similar to those in the CCM. However, there is additional language aimed at protecting existing bilateral and multilateral arrangements between nuclear-armed states and states affected by nuclear testing (Article 6[3]) and highlighting the specific responsibility of states that used or tested nuclear weapons to address the harms they caused (Article 7[6]).<sup>14</sup>

Again, one sees the impact of these norms even on states outside the CCM and TPNW. The US has endorsed the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas (EWIPA), which calls on states to "Provide, facilitate, or support assistance to victims - people injured, survivors, families of people killed or injured - as well as communities affected by armed conflict" and support "post-conflict recovery and durable solutions" (Para. 4.5). It also calls for clearance of ERW and risk reduction education (Para 3.5). The consensus Final Outcome Document of the 2024 Review Conference of the UN Programme of Action (PoA) on Small Arms and Light Weapons called for "providing comprehensive social safety nets for victims and survivors" as well as addressing "mental health impacts" (para. 134). Similarly, many states that have opposed the TPNW voted in favor of UN General Assembly resolutions on victim assistance and environmental remediation in states affected by nuclear testing (e.g. A/RES/79/60).

The development of global norms on assisting victims of and remediating land contaminated by weapons has been driven by the advocacy of affected communities themselves and humanitarian organizations that support them. Given the lack of widespread deployment of killer robots, there is no analogous population of survivors. Nevertheless, including victim assistance and remediation provisions in a treaty on autonomous weapons systems would preserve the integrity of the now long-standing norms that treaties and other instruments addressing the humanitarian impact of weapons should also include positive obligations addressing the harms they cause.

#### Examining Potential Complementarities and Conflicts with Other Law and Norms

The specificity of autonomous weapons systems mean that diplomats and activists should not simply "copy and paste" the victim assistance and remediation provisions from other instruments into a killer robots treaty. In particular, care should be taken to ensure that provisions fill legal gaps and/or strengthen rather than undermine existing obligations.

For example, if an autonomous weapons system is designed to use cluster munitions, then the victim assistance, risk reduction education and clearance obligations under the CCM will apply to the harm that has been caused. The humanitarian impact of any unexploded ordnance resulting from the actions of an autonomous weapons system will be an issue under the ERW Protocol. If the killer robot is a victim-activated explosive device and thus just a high-tech antipersonnel landmine, the positive obligations of the MBT apply. More generally, states are obligated under International Humanitarian Law to render aid to wounded soldiers, shipwrecked sailors and civilians.

Nevertheless, there are ways that a killer robots treaty could strengthen existing norms. If an autonomous robot fires a gun or explosive weapons, then the resulting impact will be addressed by the PoA or EWIPA Declaration respectively. However, the PoA and EWIPA are political, not legal, commitments and so inclusion of relevant victim assistance and remediation provisions in a treaty could bolster these obligations.

Given the diffuse human rights, security and environmental implications of killer robots, it is also important to look beyond weapons treaties and International Humanitarian Law when considering the scope and shape of possible obligations to victims and ecosystems. For example, the mandate of the UN Voluntary Trust for Victims of Torture (A/RES/36/151) may be relevant if an autonomous armed robot engages in actions that could be considered torture.

A significant concern with autonomous weapons is that they will likely obscure decisionmaking and due process rights, obstructing accountability for harms. As a result, there may be value to reviewing existing legal and policy frameworks that safeguard against automated decisionmaking which could affect a person's human rights, such as the European Union's General Data Protection Regulation (GDPR) and Data Protection Law Enforcement Directive.<sup>15</sup>

There are increasing calls for arms control, non-proliferation and disarmament policymakers to take disability justice seriously, including the meaningful participation of people with disabilities in decisionmaking processes.<sup>16</sup> Therefore, any discussion of victim assistance provisions should consider complementarities with the Convention on the Rights of Persons with Disabilities (CRPD).

Conversations emerging from the TPNW have highlighted the importance of engaging with the nexus between harms from weapons and obstacles to self-determination for Indigenous and Non-Self-Governing Peoples. As a result, it is important to consider instruments like the UN Declaration on the Rights of Indigenous People that are often neglected in arms control and disarmament discussions.<sup>17</sup>

Global norms on the Protection of the Environment in Relation to Armed Conflict (PERAC) are relevant to any environmental damage that is caused. There have been extensive discussions surrounding International Environmental Law about responsibility for remediating pollution and other damage to ecosystems, ranging from the "polluter pays" principle to "common but differentiated responsibility."<sup>18</sup> Those considering the possibility of victim assistance and environmental remediation provisions in a killer robots treaty should familiarize themselves with these debates.

#### Recommendations

Diplomats, civil society advocates, humanitarian workers and activists engaged in discussions of a potential treaty on autonomous weapons systems should consider:

- Whether to include positive obligations addressing possible harms resulting from the use of killer robots, such as victim assistance and remediation of contaminated environments;
- The relevance of precedent offered by recent international treaties and norms on weapons, which have included provisions on victim assistance and remediation of contaminated land;
- The relevance of other normative frameworks for redress and remediation, such as from human rights and environmental law;
- How to ensure that possible provisions fill legal gaps and strengthen rather than undermine existing obligations.



### Endnotes

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<sup>3</sup> United Nations. (2023) A New Agenda for Peace. New York, United Nations. p. 27. <u>https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-new-agenda-for-peace-en.pdf</u>

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