

Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas

- *We like the clear focus of this title, but strongly suggest you delete the reference to “humanitarian harm” here, as we don’t consider “humanitarian” to be an appropriate descriptor of “harms”.*

Part A: Preamble

Section 1

- *Overall, we think this section includes the key elements that set the scene for the rest of the text, but it may benefit from a little more specificity about the current situation to improve the reader’s understanding as to the motivation for this Political Declaration.*

1.1 As ~~contemporary~~ conflicts become more protracted, complex and urbanised, the proportion of civilian casualties is increasing. The causes involve a range of factors, including the use of explosive weapons in populated areas, and pose complex challenges for the protection of civilians.

1.2 Explosive weapons with wide area effects can have a devastating impact on civilians and civilian objects in populated areas. Beyond immediate deaths and injuries, civilian populations can be exposed to severe and long-lasting reverberating effects. These occur in particular when critical civilian infrastructure ~~is damaged or destroyed~~, such as hospitals, energy networks, and water and sanitation systems, is damaged or destroyed. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering. Urban warfare ~~can~~ also results in psychological and psychosocial harm to civilians.

- *This section would benefit from a description of what indirect/reverberating effects can include (e.g. in a footnote).*

1.3 These effects ~~can~~ have a negative impact on progress towards the Sustainable Development Goals and can result in the displacement of people within and across borders. Following ~~urban~~ armed conflict, explosive remnants of war can impede the return of displaced persons and cause casualties long after hostilities have ended.

- *While we support the reference to the SDGs, paragraphs 1.2 and 1.3 might read better if the order of the effects moved more clearly from the most immediate (i.e. deaths and injuries) outwards in a logical sequence – with the highly negative impact on progress towards achieving the SDGs coming last.*

1.4 Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, the use of improvised explosive devices directed against civilian and civilian objects, and other violations of International Humanitarian Law, including by non-State armed groups, all exacerbate these challenges and are of grave concern.

1.5 The inherent difficulty in directing and limiting the effects of explosive weapons with wide area effects to specific military objectives located in populated areas ~~can~~ increase the likelihood of civilian harm. While many militaries implement good operational policies and practices designed to protect civilians, there is scope for practical improvements in the universal implementation of, and compliance with, International Humanitarian Law, and in such good practices. Broadening and strengthening initiatives designed to share military policies and good practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

- *We query whether the first sentence of this paragraph (a technical challenge, which can be read to normalise the use of EWIPA) fits with the rest of it (on military policy and practice).*

- *This section may be an appropriate place to include an acknowledgment of the key point made during consultations of the importance of understanding the effects of weapons, including their area effects.*

1.6 We recognise the importance of efforts to record civilian casualties, and the use of all practical measures to ensure appropriate data collection, including, where possible, data disaggregated by sex and age. The collection of data on civilian casualties can inform policies designed to mitigate civilian harm, aid efforts to investigate harm to civilians, establish accountability and enhance lessons learnt processes in armed forces

1.7 We welcome the on-going work of the United Nations, the International Committee of the Red Cross (ICRC) and civil society to raise awareness of the impacts and long-term humanitarian consequences that can arise from the use of explosive weapons in populated areas. We also welcome work to empower and amplify the voices of those affected, including women and girls, and we encourage further research into the potential gendered impacts. We stress the imperative of addressing the short and long-term humanitarian consequences that can result from the conduct of hostilities in urban areas.

Section 2

- *Overall, we think this section provides a useful summary of the relevant law.*

2.1 We recall the obligations and commitments under applicable international law, particularly International Humanitarian Law and International Human Rights Law, and reaffirm our commitment to support measures to hold accountable those responsible for violations of international law.

2.2 ~~Existing~~ International Humanitarian Law provides the framework ~~to regulate~~ regulating the conduct of armed conflicts, and is applicable to the use of explosive weapons with wide area effects in all operating environments, and to all parties to an armed conflict. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and mitigate civilian harm.

- *This section might flow better if the final sentence was placed after 2.3.*

2.3 We recall the obligations on all States and parties to armed conflict to adhere to International Humanitarian Law when conducting hostilities in populated areas, including the requirements to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions against indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

2.4 We welcome the work of United Nations Security Council to strengthen the protection of civilians during armed conflict and to strengthen compliance with International Humanitarian Law, and recall to that end UNSC Resolutions on the protection of civilians in armed conflicts, including Resolution 1265 (1999), 1894 (2009) and 2417 (2018).

- *It would be useful to understand why these specific references have been chosen, and to discuss whether it might be preferable to refer to the UN (or its agencies and work streams) and resolutions more broadly.*

Part B: Operative Section

Section 3

- *Overall, we believe this section represents a good compromise between the range of views expressed during consultations so far.*

Committed to strengthening the protection of civilians and civilian objects in armed conflict, strengthening compliance with International Humanitarian Law, and addressing the ~~humanitarian~~ harm that can arise from the use of explosive weapons with wide area effects in populated areas, we will:

3.1 Develop, review, implement, and, ~~where necessary~~, improve national policy and practice, as and when necessary, with regard to the protection of civilians during armed conflict in urban areas.

3.2 Ensure comprehensive training of our armed forces on International Humanitarian Law, and on the measures and good practices to be applied during the conduct of hostilities in populated areas to protect civilians and civilian objects.

3.3 Ensure that our armed forces adopt and implement policies and practices to avoid civilian harm by restricting the use of explosive weapons with wide area effects in populated areas ~~whose effects extend beyond the immediate area of a military objective~~.

- *The final clause is unhelpful here since this is often not known until after the weapon is used, and the overall impression conveyed by this language risks undercutting the general humanitarian objective we are pursuing. We believe the “wide area effects” language already covers off the substantive concern.*

3.4 Ensure that our armed forces make every effort in the planning of military operations and the execution of attacks in populated areas to consider direct, indirect and reverberating effects on civilians and civilian objects which can reasonably be foreseen, and take appropriate mitigation measures to limit the risk of harm to civilians and civilian objects.

3.5 Ensure the marking, clearance, and removal or destruction of explosive remnants of war as soon as possible after the end of active hostilities ~~in accordance with applicable international law~~.

3.6 Enhance the protection of civilians by identifying, developing and exchanging good practices to reduce ~~aggregate~~ risks to civilians during military operations in urban warfare.

- *Thematically, you could consider combining this with paragraph 3.1.*

3.7 Facilitate the urgent dissemination and understanding of International Humanitarian Law by all parties to armed conflict.

- *Thematically, you could consider combining this with paragraph 3.2.*

Section 4

4.1 Strengthen international cooperation and assistance among armed forces with respect to exchanges of technical information and tactical doctrine in order to develop a community of good practice to enhance the protection of civilians. ~~As a starting point, a working group of interested parties could agree a toolbox of good practice, which could form the basis for structured military to military exchanges, workshops, and seminars.~~

- *We don't understand the "toolbox" suggestion made in the second sentence, we don't think this very specific level of detail is consistent with the rest of the text, and we certainly would not wish to limit engagement exclusively to military-to-military interactions nor to convey any suggestion that 'next steps' on the Declaration might not be open to the involvement of, or contributions from, all supporters of the Declaration.*

4.2 Collect and, where appropriate, share disaggregated data, on the direct and indirect impact on civilians of our military operations involving the use of explosive weapons in urban areas,

- *We will need to understand how this would work in the context, for example, of coalition operations.*

4.3 Support the United Nations, the ICRC and other organisations capturing data on the impact of military operations involving the use of explosive weapons in urban areas, as appropriate, to complement and support the role of States in this area.

4.4 Make every effort to assist victims, families and affected communities in a holistic, integrated and non-discriminatory manner, taking account of the rights of persons with disabilities, and supporting post-conflict stabilisation.

4.5 Provide and facilitate rapid and unimpeded access for humanitarian relief to all persons in need.

4.6 Support the United Nations, the ICRC, other international organisations and relevant civil society organisations in actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact of the use of explosive weapons with wide area effects in populated areas.

4.7 Encourage appropriate cooperation with ~~local~~ stakeholders, civil society experts, and humanitarian organisations specialised in this field.

- *It would be useful to elaborate on what the purpose of this cooperation is and what might it entail.*

4.8 Meet periodically to review the implementation of this declaration and identify any relevant additional measures that may need to be taken to improve compliance with ~~existing~~ International Humanitarian Law and strengthen the protection of civilians and civilian objects with regard to the use of explosive weapons with wide area effects in populated areas.

4.9 Actively promote this declaration, distribute it to all relevant stakeholders and seek adherence to it by the greatest possible number of States.