

Elements of a political declaration to ensure the protection of civilians from humanitarian harm arising from the indiscriminate use of explosive weapons in populated areas.

The text below draws on the interventions made at the first consultation on the elaboration of a political declaration to address the humanitarian harm arising from the use of explosive weapons in populated areas held in Geneva on 18 November 2019 and the written submissions subsequently received.

Part A:

Section 1 - Identifying the problem and challenges

1.1. The increasing urbanisation and protracted nature of armed conflict pose complex challenges for the protection of civilians. A1.1 According to the 2019 report of the UN Secretary-General on Protection of Civilians in armed conflict], a large proportion of casualties in today's armed conflicts are civilians, especially casualties in urban contexts where explosive weapons, including improvised explosive devices used by non-state parties, have been used indiscriminately.

The increasing urbanization of armed conflicts and their increasingly protracted nature can lead to serious short and long-term humanitarian and socio economic challenges, including the destruction of civilian objects and infrastructure necessary to the civilian population such as housing, schools, hospitals, water and sanitation systems, as well as large scale internal and internal displacement.

Much of the harm and destruction observed in current conflicts appears to be the result of infringement of IHL fundamental rules and principles. These devastating humanitarian effects are the result of direct attacks against civilians and civilian objects, indiscriminate or disproportionate uses of explosive weapons, including improvised explosive devices (IEDs), by parties to a conflict.

In the context of the increased urbanization of current military conflicts, we must condemn the exploitation by some parties of the proximity of the civilian population to conceal their presence and actions, threaten, terrorize and deliberately expose and/or indiscriminately target civilians and civilian objects, in violation of IHL rules and principles [including using the presence or movement of the civilian population or individual civilians as human shields, thereby endangering them and posing particular challenges for their protection].

We must also recognize that, as a consequence, military objectives are increasingly located in urban or populated areas and that failure to apply legitimate force in the pursuit of these military objectives may have even more serious humanitarian consequences, such as the prolongation of serious human rights abuses by states or non-state groups that do not recognize international norms of behavior in conflict.

1.2. Explosive weapons—used in a manner inconsistent with wide area effectsthe fundamental principles of IHL - distinction, precaution and proportionality— are having a devastating impact on civilians and civilian objects in populated areas. Beyond the immediate deaths, injuries, and psychological trauma, the civilian population can be exposed to severe and long-lasting harm as a result of the destruction of housing, schools, hospitals, energy networks, water and sanitation systems, cultural heritage sites and infrastructure.

1.3. This devastation often results in the displacement of people within and across borders. We also note that the use of explosive weapons ~~results may result~~ in contamination by explosive remnants of war, impeding the return of displaced persons and causing casualties long after hostilities have ended.

1.4. We underline the imperative of addressing the short and long-term humanitarian consequences ~~of that may result from~~ the conduct of hostilities in populated areas. ~~We recognise the importance of casualty recording and the need to ensure appropriate data collection, including data disaggregated by sex and age, on the impacts of explosive weapons in populated areas.~~

1.5. 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 on~~ the impacts and long-term humanitarian consequences ~~arising that may arise~~ from the ~~use of conduct of hostilities in populated areas, notably when~~ explosive weapons ~~in populated areas~~ are used in an manner inconsistent with IHL.

1.6. We also welcome work to empower, and amplify the voices of those affected ~~by the devastating impact that may arise from the indiscriminate use of explosive weapons in populated areas~~, including women and girls, and we encourage further research into the potential gendered impacts ~~of the issue~~.

1.7. We express our strong concern about erosion in respect for international humanitarian law and deliberate violations of the law during armed conflict, and recall that international humanitarian law applies to all parties to conflicts, including non-state armed groups, even when the enemy does not comply with its own obligations.

1.8. We condemn the use of improvised explosive devices, the use of civilians as human shields and other tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas.

Section 2 - legal framework

2.1 We reiterate that existing IHL provides the framework to regulate the conduct of armed conflicts and ~~applies to~~ the use of weapons and means of warfare, including explosive weapons ~~with wide area effects in all operational environments, including~~ in populated areas. We stress the importance of full compliance with international humanitarian law as aan effective means to protect civilians and civilian objects and mitigate civilian harm. We recognize the ~~difficulty in directing challenges that may arise from the use of~~ explosive weapons ~~with wide area effects against specific military objectives~~ within populated areas, and we ~~note that while~~ welcome the fact that many States have ~~put in place~~ good policy and practices designed to protect civilians ~~exist,~~ We stress that there is ~~considerable~~ still scope for concrete improvements further sharing of such good policy and practices in order to improve concretely the implementation of international humanitarian law.

2.2 We welcome initiatives designed to foster clarity and enhance the implementation of existing obligations under IHL, in particular with regard to the use of explosive weapons ~~with wide area~~

~~effects~~ in populated areas. Institutionalising Widening and enhancing the sharing of policy and good practices among ~~States~~ the military can ~~aid in support~~ the promotion and better implementation of international humanitarian law, thereby strengthening the protection of civilians and civilian objects during armed conflict.

2.3 We recall the obligations on all States and parties to armed conflict to ~~adhere to respect their obligations under~~ IHL when conducting hostilities in populated areas, including the requirement to distinguish between combatants and civilians (understood as non-combatants) as well as between military objectives and civilian objects; the prohibitions of indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack. ~~We also recall, pursuant to the general~~ obligation under IHL to provide civilians with general protection against dangers arising from military operations.

2.4 We welcome the work of United Nations Security Council to enhance the protection of civilians during armed conflict and to strengthen compliance with IHL—and recall to that end its resolutions on the protection of civilians in armed conflicts, including Resolutions 1265 (1999), 1894 (2009) and 2417 (2018):

Part B:

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

Section 3. Operational commitments: existing legal framework, military policy and practice, sharing good practice on the protection of civilians

3.1 Comply with, and promote respect for, all applicable obligations under international humanitarian law in ~~all circumstances~~ the conduct of hostilities and ~~adhere to with~~ all other applicable international law, including ~~obligations under~~ international human rights law;

~~3.2 Refrain from any use of weapons that are prohibited as inherently indiscriminate;~~

~~3.3 Develop, review and, where necessary, improve and implement at national level policy and practices, and, in particular, military rules of engagement, including with regard to the use of explosive weapons with wide area effects in populated areas, to ensure full compliance with international humanitarian law.~~ ~~- Make continuous efforts, building in particular on lessons learned, to review, improve and adapt our practices, doctrines, procedures, operational preparation and equipment to that end.~~

~~3.4 Ensure that our armed forces, in the conduct of military operations, will, in accordance with IHL, take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. In fulfilling existing obligations under IHL, we will ensure that our armed forces adopt implement policies and practices to avoid minimize incidental civilian harm by restricting the~~

~~use of refraining from using explosive weapons with wide area effects in populated areas when indiscriminate effects may be expected they may consist in indiscriminate attacks;~~

~~3.5 Strengthen~~ 3.4 Facilitate the dissemination, understanding and implementation of international humanitarian law by all potential parties to conflicts. Encourage international cooperation and assistance with respect to the identification, development and exchange of good practices to enhance the protection of civilians in urban warfare. This would include the organisation in areas that States may deem appropriate, including, but not limited to the organization of the chain of command; rules of engagement; weapon-target matching; targeting procedures, planning and training; real time information sharing; collateral damage estimates; and battle damage assessments; including the need to take account of foreseeable effects on urban populations and infrastructure;

3.56 Ensure the marking and clearance, removal or destruction of explosive remnants of war in accordance with applicable international law;

3.67 Ensure adequate training of armed forces on international humanitarian law, including on the measures and good practices to be applied during the conduct of hostilities in populated areas to effectively protect civilians and civilian objects;

3.78 Strengthen cooperation between armed forces and facilitate the exchange of technical and tactical expertise, such as through structured military to military dialogues, workshops, seminars and other initiatives to develop a community of good practice to enhance the protection of civilians;

Section 4:

4.1 Condemn the deliberate targeting of civilians and civilian objects, the use of improvised explosive devices and the use of human shields, and call on all parties to put an end to such practices and support measures to hold those responsible for violations of international law accountable;

4.2 Collect and share- ~~Encourage States to engage in data disaggregated by sex and age collection, at the national level, on the impact of explosive weapons with wide area eligible military objectives, attacks conducted, effects in populated areas, applied and damage assessment made, in order to improve their national policies and practices.~~

4.3 Make every effort to assist victims, families and affected communities, in a non-discriminatory manner and taking account of the rights of persons with disabilities, as well as supporting post-conflict stabilisation; ~~in accordance with existing obligations under IHL~~;

4.4 Urge all parties to armed conflict to facilitate rapid and unimpeded passage for humanitarian relief to civilian populations in need;

4.5 Support the United Nations, the ICRC, other qualified international organisations as well as and civil society organizations in addressing the direct and indirect humanitarian impact~~conduct of the use of explosive weapons with wide area effects in populated areas actions aimed at protecting and assisting civilian populations;~~

4.6 Encourage cooperation with local stakeholders, civil society experts, and humanitarian organizations specialized in this field;

4.7 ~~Review the implementation of this declaration and identify any additional measures States will continue to exchange good practices and lessons learned that may need to be taken to~~on the implementation of this declaration in order to improve compliance with IHL and to strengthen the protection of civilians and civilian objects ~~with regard to the use of explosive weapons with wide area effects in populated areas;~~

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

ENDS