



Kingdom of the Netherlands

Statement of the Netherlands

delivered by

**H.E. Robbert Gabriëlse, Permanent Representative to the
Conference on Disarmament**

on

**Protecting Civilians in Urban Warfare: Towards a political
declaration to address the humanitarian harm arising from the use
of explosive weapons in populated areas**

Geneva, 10 February 2020

Mr Chair,

We fully subscribe to the statement by the European Union delivered earlier this morning.

We would like to thank Ireland for preparing the paper with elements for a political declaration. Overall, you have managed to synthesize a balanced text that provides a good reflection of the variety of views expressed during the previous consultations and the working papers submitted.

In our view, the purpose of this declaration should be a strong confirmation of the norm against the indiscriminate use of any weapons system, including explosive weapons with wide area effects, in any context, with a view to enhancing the protection of civilians in situations of conflict.

In that regard, I would like to express our support for those delegations that have advocated for a stronger focus on the role of non-state actors. After all, we must acknowledge the fact that a substantive number of civilian casualties result from Non-State Actor actions. The declaration should acknowledge this and underline that IHL should be respected by all parties to a conflict.

Mr Chair,

During these consultations, my delegation will share a number of suggestions, which we believe will strengthen/improve the text and ensure consistency with existing legal obligations.

In that regard, I would like to echo other delegations that have spoken this morning, about the risks of reiterating or paraphrasing provisions of IHL. Such an exercise carries the risk of undermining the existing legal framework, *inter alia* by promoting unwanted obfuscations or reinterpretations. In this regard, our colleagues from Norway made a useful suggestion for a shorter more concise text by avoiding quotations or paraphrasing IHL provisions, which we fully support. Similarly, our colleague from Chile highlighted a number of paragraphs, which would benefit from a further refining of the language in this regard, so I will not reiterate them.

Let me reiterate that the Netherlands is fully committed to the successful completion of this process, and welcomes initiatives for the sharing of good practice with a view to minimizing civilian harm.

Thanks you, Mr Chair.

Elements of a political declaration to ensure the protection of civilians from humanitarian harm arising from the 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. A large proportion of casualties in today's armed conflicts are civilians, especially casualties in urban contexts where explosive weapons have been used.
- 1.2. Explosive weapons with wide area effects 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 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 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 the use of explosive weapons with wide area effects 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 the impacts and long-term humanitarian consequences arising from the use of explosive weapons in populated areas.
- 1.6. 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 of the issue.
- 1.7. We express 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 a conflict, ~~including non-state armed groups~~.
- 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 including to~~ the use of explosive weapons with wide area effects in populated areas. We stress the importance of full compliance with international humanitarian law as a means to protect civilians and civilian objects and mitigate civilian harm. ~~We recognise the difficulty in directing explosive weapons with wide area effects against specific military objectives within populated areas, and we note that while good policy and practices designed to protect civilians exist, there is considerable scope for concrete improvements in the implementation of international humanitarian law: this regard in targeting processes?~~

- 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 the sharing of policy and good practice among States can aid in 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 IHL when conducting hostilities in populated areas, including the requirement to distinguish between combatants and civilians 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 the 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.

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 from the use of explosive weapons with wide area effects 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 obligations under international humanitarian law in all circumstances and adhere to 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 policy and practice, and, in particular, military rules of engagement, with regard to the use of explosive weapons with wide area effects in populated areas, to ensure full compliance with international humanitarian law;
- 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 minimising, 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 policies and practices to avoid

civilian harm, including by refraining from the indiscriminate ~~by restricting the~~ use of explosive weapons with wide area effects in populated areas ~~when~~ disproportional indiscriminate effects may be expected;

3.5 Ensure that our armed forces, in the conduct of military operations, make every effort to consider foreseeable reverberating effects on essential urban services in the planning of military operations and the execution of attacks.

3.5.3.6 Strengthen 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 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;

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

3.7.3.8 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;

3.8.3.9 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, to the maximum extent possible, and share data, where appropriate, ~~disaggregated by sex and age~~, on the impact of explosive weapons with wide area effects in populated areas;

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;

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 international organisations as well as civil society organisations in addressing the direct and indirect humanitarian impact of the use of explosive weapons with wide area effects in populated areas;

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

4.7 Review the implementation of this declaration and identify any additional measures that may need to be taken to improve compliance with existing 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 Statesactors.

ENDS