

## Consultations on EWIPA Elements Paper, 10 February 2020: Interventions by New Zealand

### General Statements on the Elements Paper

- Thank you Mr. Chair. I would like to take this opportunity to register New Zealand's appreciation for all of Ireland's excellent work so far in leading this response to the numerous calls for action we have heard in recent years on the issue of explosive weapons in populated areas. As a supporter of the UNSG's action item on this issue, in his Agenda for Disarmament, New Zealand very much welcomes the Elements Paper you have circulated. We believe that it provides a good basis for our discussions as we move steadily towards a Political Declaration.
- In particular, we are pleased to see the clear focus, both in the title and throughout the Elements Paper, on **explosive weapons in populated areas** – and in particular those with **wide area effects** – the impacts of which on civilians are, of course, precisely what has given rise to the significant humanitarian concern underpinning this process.
- New Zealand would like to register three brief general observations at this stage.
- First, in our view, in moving from the Elements Paper to a Political Declaration, we believe it would be useful to more clearly separate **existing international humanitarian law**, on the one hand, from statements about enhancing implementation on the other. This would make it easier for us to ensure that all key IHL rules are referred to accurately, and would make much clearer to the world exactly how our Political Declaration is contributing to its full and effective implementation.
- Second, we believe that the Political Declaration should be as clear as possible about what it is adding to ensure IHL can be better implemented with respect to the use of EWIPA. In other words the Declaration should articulate the political commitment that is being made to reduce the harm these weapons are having on civilians in conflict zones around the world. In the Element Paper's current form we fear this key message is being lost.
- Third, we would like to see the Political Declaration include something more specific by way of a **forward looking implementation process**. While we are not suggesting that the Political Declaration should impose a heavy meeting or reporting burden on states, we would see value in including – at least – an intention to meet and report back on progress. (Perhaps this could even be done in the margins of another regular meeting.)
- Thank you again. New Zealand is most grateful for the opportunity today to comment on your Elements Paper and we will look to provide some more specific suggestions later today in anticipation of making the important transition from this point to our Political Declaration.

### Part A, Section 1: Identifying the Problem and Challenges

- Thank you Ambassador. New Zealand has three comments in relation to this section.
- First, building on the valuable material already contained in **paragraph 1.2**, we would request that the Political Declaration also deals with the “reverberating effects” of EWIPA. The fact that explosive weapons have reverberating effects (for example, flow-on effects resulting from damage to critical infrastructure) is a key result of their use that causes civilian harm, and has therefore also been a key factor leading to the numerous calls in recent years for us to take action on EWIPA. A number of delegations have also highlighted the link between the various effects of EWIPA and the achievement of the Sustainable Development Goals, which we would also see value in highlighting in the Political Declaration.
- Second, we would suggest that, in moving from this text to a Political Declaration, **paragraph 1.4** should include a reference to *why* data collection is so important rather than just stating that it is necessary. For example, we could simply acknowledge that data collection can help

us to understand the effects of certain types of weapons and to ensure that this knowledge is taken into account when decisions about use are being made.

- Third, with respect to **paragraph 1.7**, we are rather uncomfortable with the reference to “deliberate” violations of IHL in the same context as “erosion for respect” of IHL. In addition, the references to “deliberate violations” can be interpreted in a way that is legally incorrect – (as explained in the ICRC’s paper). We also wonder whether reiterating the fundamental principle that IHL applies to all parties to a conflict risks creating a space for readers of our Political Declaration to ask themselves whether this was ever in doubt.

#### **Part A, Section 2: Legal Framework**

- Thank you Mr. Facilitator. New Zealand has just two comments in relation to this section.
- First, as indicated in our general comments, and as a number of others have also indicated, we consider that in moving from this Elements Paper to a draft Political Declaration, it would be useful to more clearly distinguish between existing IHL and the new elements of our political declaration. For example, in this section, we understand **paragraphs 2.1 and 2.3** to be largely focused on existing obligations, while **paragraph 2.2**, in between them, contains new material. We would therefore suggest that in the Political Declaration, the first (introductory) section, should recall that IHL fully applies to the use of these weapons (and, if desirable, briefly restate the key rules), while in the second (operative) section we could focus on policy commitments. This would minimise any risk of inadvertently paraphrasing existing law imprecisely, and would also make much clearer exactly how our Political Declaration is contributing to its full and effective implementation.
- Second, and more substantively, we are uncomfortable with the phrasing of **paragraph 2.2** which can be read to endorse, or even encourage, the use of EWIPA to enhance the implementation of IHL. For us, this normalisation of the use of EWIPA sits rather uncomfortably in the context of a Political Declaration which is aimed at improving the implementation of IHL and reducing the negative effects on civilians of the use of explosive weapons in populated areas.

#### **Part B, Section 3: Operational Commitments, including Existing Legal Framework, Military Policy and Practice, Sharing Good Practice on the Protection of Civilians and Part B, Section 4: Operational Commitments, including Data Collection, Victim Assistance, Cooperation and Review**

- Thank you Mr. Chair. New Zealand has two comments in relation to Part B, Section 3.
- First, in **paragraph 3.2**, we don’t consider the use of the word “refrain” to be sufficient, when – as others have indicated – the use of weapons that are inherently indiscriminate is prohibited outright under IHL.
- Second, we regret that **paragraph 3.4** is framed in the context of existing legal obligations. This paragraph does not, in our view, take us any further than existing IHL rules, and there is some concern that it risks confusing, or even lowering, those standards. New Zealand very much anticipates that the value in our Political Declaration will lie in taking this further and including a more ambitious commitment that tackles the challenge we are seeking to address in our Political Declaration: that is, enhancing the protection of civilians in urban warfare, specifically with respect to the use of EWIPA.
- In relation to section 4, as indicated in our general comments this morning, New Zealand would like to see the Political Declaration include something slightly more ambitious by way of a forward looking element. In this regard, we wonder if the reference to reviewing the Political Declaration’s implementation in **paragraph 4.7** might perhaps be able to be built on

slightly, to include an intention to meet and report back on progress. New Zealand is flexible about how this could be done and we are certainly not suggesting a heavy forward-looking commitment for states in this regard. Perhaps these discussions could take place in the margins of another regular meeting in the disarmament calendar.

- Finally, with respect to paragraphs **4.2 and 4.3**, we would also want to better understand what these commitments would mean in practice before incorporating them in our political declaration – including (as others have noted) how data would be collected in partnered operations.