

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~~ parties to the conflict use explosive weapons in populated areas (EWIPA) have been used in an indiscriminate manner and in violation of international humanitarian law (IHL).

POL comment: The text of the Political Declaration should identify real problems we are trying to solve. First, we suggest to clearly define the term EWIPA, and use this very term consistently throughout the text, without creating any subcategories of EWIPA. The main goal of the declaration should be to condemn unlawful use of explosive weapons in populated areas, without trying to condemn the use of such weapons entirely. When explosive weapons are used in urban operations in accordance with IHL principles, and they meet the proportionality test, we are on the safe side, acting in accordance with the law.

1.2. ~~Explosive weapons~~In such cases EWIPA with wide area effects are having~~may have~~ 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.

POL comment: We recommend to use consistent terminology throughout the text.

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

POL comment: We suggested to use consistent terminology throughout the text. We also recommend to use expression "unexploded ordnance" rather than "explosive remnants of war" which we think is more adequate here as referring to a wider spectrum of explosive devices than the ones used during wartime.

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, if operationally possible including data disaggregated by sex and age, on the impacts of ~~explosive weapons in populated areas~~EWIPA.

POL comment: We think that collection of data, especially aggregated by sex and age, is extremely difficult (if possible at all) to implement. We recommend to use consistent terminology throughout the text.

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.

POL comment: We recommend that this provision be moved from this section. Perhaps it should be included in a preamble stating general political objectives and containing references to other documents or processes.

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.

POL comment: We do not see the reason for referencing gender-related issues in the declaration. Alternatively, this provision could be moved, as containing a general, guiding principle, from this section to the preamble.

1.7. We express concern about ~~erosion in~~lack of respect for international humanitarian law by some actors and deliberate violations of the law during armed conflict, and recall that international humanitarian law applies to all parties to conflict, including non-state armed groups.

POL comment: We suggested to move this provision from this section to the preamble. We also recommend to use expression “lack of” rather than “erosion” which we think is more adequate in this context and to add expression “by some actors” to underline that not all actors disrespect the IHL.

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 sufficient legal framework to regulate the conduct of armed conflicts and applies fully to the use of ~~explosive weapons with wide area effects in populated areas~~EWIPA. 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~~EWIPA 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.

POL comment: We suggest to add expressions “sufficient legal” and “fully” to stress that by this declaration we do not will to create new legal obligations, and that EWIPA is already covered by IHL, which seems to be more adequate here as a starting point to discuss policy and implementation of IHL We also recommend to use consistent terminology throughout the whole text.

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~~EWIPA. ~~Institutionalising the~~Any initiatives aimed at 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.

POL comment: We suggest to use consistent terminology throughout the whole text. We also recommend to use expression “Any initiatives aimed at” rather than “Institutionalising the” which may suggest new international structures are to be established.

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 the civilian population and combatants and between civilian objects and military objectives and directing operations only against military objectives.~~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.

POL comment: We suggest to use expression “between the civilian population and combatants and between civilian objects and military objectives and directing operations only against military objectives” rather than “between combatants and civilians as well as between military objectives and civilian objects” which is more adequate here from an our perspective.

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~~EWIPA, we will:

POL comment: We recommend to use consistent terminology throughout the whole text.

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~~EWIPA, to ensure full compliance with international humanitarian law;

POL comment: We recommend to use consistent terminology throughout the whole text.

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 by restricting the use of explosive weapons with wide area effects in populated areas when indiscriminate effects may be expected;

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

3.7 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 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 ~~data, disaggregated by sex and age, information~~ on the impact of ~~explosive weapons with wide area effects in populated areas~~EWIPA, if operationally possible;

POL comment: We suggest to replace expression “data” with “information” because it can give a better awareness about the situation, as “data” may suggest that only quantitative measures should be collected and shared, excluding qualitative assessments. We also recommend to use consistent terminology throughout the whole text and add expression “if operationally possible” because data collection it is not always possible during military operations.

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~~EWIPA;

POL comment: We recommend also to use consistent terminology throughout the whole text.

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 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~~EWIPA;

POL comment: We recommend also to use consistent terminology throughout the whole text.

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

ENDS