

Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm ~~that can arise~~ arising from the use of Explosive Weapons with Wide Area Effects in Populated Areas

Part A: Preamble

Section 1

- 1.1 As contemporary conflicts become more protracted, complex and urbanised, the proportion risk [or occurrence] of civilian casualties is increasing. The causes involve a range of factors, including the unlawful use of explosive weapons with wide area effects 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 indirect reverberating effects – also referred to as ‘reverberating effects’. These occur in particular when critical civilian infrastructure such as hospitals, energy networks, and water and sanitation systems is damaged or destroyed, such as hospitals, energy networks, and water and sanitation systems. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering. Urban warfare can also result in psychological and psychosocial harm to civilians.
- 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.
- 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 civilians 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 mMany militaries implement good operational policies and practices designed to protect civilians, including a detailed understanding of the effects of weapons on both a target and its surrounding area and the associated potential for civilian harm. However, there is scope for practical improvements in the universal implementation of, and compliance with, International Humanitarian Law, and the application and sharing of 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.
- 1.6 We recognise the importance of efforts to record civilian casualties, and the use of all practicable 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 with wide area effects in populated areas. We also welcome work to empower and amplify the voices of all 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.

Commented [DW1]: We (and others) have previously stipulated a need for a distinction between lawful and unlawful use of EWIPA. The solution across this draft is acceptable: adding the qualifier “can” (or similar) leaves room for an acceptance that explosive weapons are not inherently unlawful, which is in line with IHL. It should be adopted throughout, including the title.

Commented [DW2]: Is the proportion increasing, or is the likelihood increasing? We would argue it’s the latter.

Commented [DW3]: The way this sentence is constructed precludes the modifier mentioned in comment 1 (“can” or equivalent), requiring the insertion of a different caveat to differentiate between use of EWIPA which is in accordance with IHL and that which is not.

Commented [DW4]: ‘Explosive weapons’ would include grenades, direct fire projectiles etc – effectively bringing almost all weapons into scope, which is unacceptably limiting. The qualifier ‘...with wide area effects’ is required throughout.

Commented [DW5]: ‘Reverberating effects’ has no definitional underpinning outside EWIPA debates. If this PD is to influence multilateral operational policy and practice, it needs to establish – briefly – what is meant by the term. The suggested formulation would be acceptable in the context of the rest of the para.

Commented [DW6]: Recommend rearranging the sentence to make it clearer and more accessible.

Commented [DW7]: This formulation tacitly supports the suggestion made by some agencies that use of EWIPA in almost always indiscriminate and presents a significant problem for us. The suggested edit acknowledges that weapon effects may exceed the boundary of a target, but that responsible militaries take that possibility into account. It should be noted that collateral damage is not a contravention of IHL *per se*.

Commented [DW8]: The issue here is over what is practicable not what is practical. Under circumstances such as those wherein states are supporting indigenous security forces rather than fielding ground forces of their own, the measures available will be more limited.

Section 2

- 2.1 We recall the obligations and commitments under [International Humanitarian Law and other applicable bodies of international law](#), [particularly International Humanitarian Law and including 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~~ regulates 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 – [including both state and non-state actors](#). We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and mitigate civilian harm.
- 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 obligation to provide civilians with general protection against dangers arising from military operations, including through the prohibitions against indiscriminate and disproportionate attacks, and particularly through not placing military objectives within densely populated areas and not using human shields](#); 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, particularly through not placing military objectives within densely populated areas and not using human shields.~~
- 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).

Commented [DW9]: This draft is less explicit in the applicability of international norms to non-state actors – this edit would restore some of that balance.

Commented [DW10]: Edit intended to improve readability and coherence.

Part B: Operative Section

Section 3

[Committed to strengthening](#) the protection of civilians and civilian objects in armed conflict, [particularly by strengthening-promoting](#) 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, [as appropriate](#):

- 3.1 Develop, review, implement, and, where necessary, improve national policy and practice 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 [Implement policies and practices to ensure that, where we are party to armed conflict, our armed forces shall take all feasible precautions to avoid, and in any event to minimize, civilian harm – in particular by carefully assessing the use of explosive weapons with wide area effects in populated areas. 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.](#)

Commented [DW11]: In the current format it's unclear whether this chapeau is intended to apply to all of Part B (i.e. both sections 3 and 4) or just to section 3. If it applies to both, it would be clearer if the heading "Section 3" sat after the chapeau. If the chapeau applies to Section 3 only, Section 4 may benefit from its own chapeau. Alternatively, number the current chapeau as paragraph 3 to make the distinction clear.

Commented [DW12]: We continue to request this addition on the grounds that certain parts of the operative section will require further discussions on implementation, which should not prejudice negotiation of the PD as a whole. In addition, 'as appropriate' obviates any problems with para 3.5 for states not party to CCW Protocol V, such as the UK.

Commented [DW13]: This amendment is intended to make clear that the obligations described in 3.3 apply only to parties to conflict.

Commented [DW14]: This para is the major stumbling block in the new draft. The extant language on 'restricting' use of weapons is unacceptably prescriptive. Similarly, without a definitional basis, there are major questions over how we define 'effects' and 'immediate area'. The language suggested draws directly from API A 57 (2)(a)(ii).

- 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 and, 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 our obligations under 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.
- 3.7 Facilitate the dissemination ~~to~~ and understanding of International Humanitarian Law by all parties to armed conflict.

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-baseline compilation of good practice, which could form the basis for structured military-to-military exchanges, workshops, and seminars.
- 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,
- 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 Support rapid and unimpeded access for humanitarian relief to all persons in need.
- 4.5.4.6 Support the United Nations, the ICRC, other international organisations and relevant civil society organisations as appropriate in actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impacts that can arise from the use of explosive weapons with wide area effects in populated areas.
- 4.6.4.7 Encourage appropriate cooperation with local stakeholders, civil society experts, and humanitarian organisations specialised in this field.
- 4.7.4.8 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.
- 4.8.4.9 Actively promote this declaration, distribute it to all relevant stakeholders and seek adherence to it by the greatest possible number of States.

ENDS

Commented [DW15]: This suggested revision clarifies that 3.5 – which seems to be restating provisions in CCW Protocol V - is not creating any new obligations on non-parties to PV.

Commented [DW16]: ‘Toolbox’ seems like too much of a colloquialism for a Pol Dec; alternative formulation suggested.

Commented [DW17]: ‘Provide and facilitate’ could be read in this context as constituting a priority military task, with attendant resourcing issues – this could have attendant humanitarian impacts if clearance ops are curtailed in one area to provide security for humanitarian access in another.

Commented [DW18]: Consistency (see opening change/comment).