



Permanent Mission of Israel to the UN
GENEVA

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Statement by

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Deputy Permanent Representative to the Conference on Disarmament

EWIPA Political Declaration

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Thank you, Mr. Chairperson.

Israel would like to take this opportunity to thank you and your team for all your efforts in leading this process. Israel believes that the issue of protection of civilians in urban warfare is of great significance, and already takes policy measures, above and beyond the Law of Armed Conflict, and will continue to do so, in order to promote this protection. It was important to us to take an active and constructive role in the consultations over the past few years. We would like to thank you for the opportunity to discuss this important issue.

Mr. Chairperson,

We are still reviewing the updated text as part of an internal interagency process. At this point, we would like to offer some general comments on the current draft of the political declaration, and remarks on a few specific paragraphs.

First, it is important to note that, as this is a political declaration, it does not create any new legal obligations, nor is it intended to change, interpret, or otherwise implicate existing legal obligations, including customary international law. In this regard, we note that in several instances, the declaration does not use the accepted legal terms (for example, by using the non-legal terms “civilian harm”, “critical infrastructure”, “reverberating effects” and others). The use of these terms in the declaration, and the declaration as a whole, have no bearing on international law. In this regard, the declaration should not be read as changing legal views previously expressed by States, and specifically does not implicate in any way Israel’s legal obligations or positions.

Secondly, although this declaration focuses on the use of 'explosive weapons', we believe that the humanitarian implications of urban warfare and their root causes, span across a wide range of factors, rather than just the use of certain types of weapons. As Israel reiterated throughout the process, the declaration’s scope should have been broader, in order to more effectively serve the underlying goal of protection of civilians in urban warfare. Most notably, the declaration should have addressed much more prominently the common root cause of urban warfare, which is the reality of non-state armed groups who often deliberately conduct their operations from within populated areas, while making use of human shields and other tactics designed to intentionally exploit the proximity of civilians and civilian objects to military objectives. Without this deliberate strategy applied by those groups, the worldwide scale of urban warfare would decrease dramatically. It is

unfortunate that the declaration insufficiently addressed this issue, without taking a more significant and practical approach. In any event, it is important to read this declaration as referring only to a specific aspect in the protection of civilians during urban warfare, and not as an exhaustive document on this crucial issue.

Mr. Chairperson,

I will move on to our remarks on specific paragraphs.

Regarding paragraph 2.1 – the issue of the applicability of international human rights law during armed conflicts, is a controversial matter which attracts divergent views. Due to the reference to international human rights law in the text, we reiterate Israel's position in this regard, that the Law of Armed Conflict and international human rights law, which are codified in separate instruments, remain distinct and apply in different circumstances.

Regarding paragraph 2.5 - we welcome the addition of this paragraph, and believe that recognizing the lawfulness in principle of the use of explosive weapons in populated areas or otherwise, is important in recalling the basic legal situation which underlies the whole declaration; still, such weapons must be used in accordance with the law of armed conflict. It is in this light that relevant provisions in the declaration, including paragraph 3.3, need to be read.

Regarding paragraph 2.6 – this is a new paragraph which was added to the last draft of the declaration, without being previously discussed during the consultation process. This is an important paragraph, as it clearly stipulates the prohibition on conducting attacks that make civilians or civilian objects the object of attack. In this regard, we read the references to indiscriminate “shelling” or “use” of explosive weapons in the context of conducting attacks.

Regarding paragraph 3.3 – we think the text has generally improved in comparison to its previous version. However, we have a few remarks: first, as indicated by the words “as appropriate”, by the use of non-legal terms and by additional indications, the current wording should be understood as a policy undertaking, which does not reflect a legal obligation under the Law of Armed Conflict. This understanding is also consistent with the general remark we provided at the outset, regarding the overall political nature of the declaration.

Second, Israel reads the words “as appropriate” in paragraph 3.3 as referring to both alternatives of restricting and refraining from the use of explosive weapons. In other words, endorsing States have discretion on whether to impose any policy limitations on top of their legal obligations regarding the use of EWIPA, and as such, they may decide, as appropriate, regarding the option of imposing policy restrictions on the use of EWIPA, or even refraining from such use. In cases they decide it would not be appropriate to impose such limitations, they must still comply with their obligations under the Law of Armed Conflict. Third, this undertaking should be taken in light of military considerations and the alternatives to the use of EWIPA, including alternative means that are reasonably available and achieve the same military advantage. In this regard, we recognize that the use of explosive weapons may be the only lawful available means to accomplish the military mission.

Regarding paragraph 4.5 – different states have different obligations under international law regarding assistance to victims affected by armed conflict, and this issue is also subject to specific regulation in national laws and policies that diverge between States. Therefore, this paragraph should be read while recognizing that the assistance or support to victims may vary, in accordance to the different national laws and policies of the State in question.

Regarding paragraph 4.7– we believe that the recent changes in the wording of the paragraph improved it to some extent, most notably by focusing on exchange of good practices and policies among states, which we believe has great value, as well as the addition of the phrase "a collaborative spirit". We believe that any such potential discussions must adhere to the imperatives of being State-driven, professional, non-political and non-contextualized, that States would address only their own practices and policies, and also that they will not be intended to develop new law. We believe these principles reflect the purpose of such discussions, and are essential for their success to allow for productive and constructive work to be done.

As we previously mentioned, we are still reviewing the text and these remark are not exhaustive.

Mr. Chair, we would like to thank you and your team, once again, for all your work and efforts invested in this process.

Thank you.