

REV 1
29/01/2021

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

Part A: Preamble

Section 1

1.1 As armed conflicts become more protracted, complex, and urbanised, the risks to civilians have increased. The causes can involve a range of factors, including the 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. Blast and fragmentation effects cause immediate deaths and injuries. Beyond these direct effects, civilian populations can also be exposed to severe and long-lasting indirect effects – also referred to as ‘reverberating effects’. When critical civilian infrastructure is damaged or destroyed, such as hospitals, energy networks, water and sanitation systems, the provision of essential services such as healthcare is disrupted. These services are often interconnected and, as a result, damage to one component or service can negatively affect services elsewhere, causing harm to civilians that can extend far beyond the weapon’s impact area.

1.3. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, and the natural environment can also be impacted by the use of explosive weapons with wide area effects, leading to the contamination of air, soil, groundwater, and other resources. Urban warfare can also result in psychological and psychosocial harm to civilians.

1.4 Together, these effects often result in the displacement of people within and across borders. When these effects occur they have a negative impact on progress towards the Sustainable Development Goals. Following urban armed conflict, unexploded ordnance can also impede the return of displaced persons and cause casualties long after hostilities have ended.

1.5 Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, as well as the use of improvised explosive devices directed against civilian and civilian objects, and other violations of International Humanitarian Law, including by non-State armed groups, all exacerbate the risks to civilians and are of grave concern.

1.6 Many militaries already implement operational policies and practices designed to mitigate civilian harm, which include a detailed understanding of the effects of explosive weapons on a military target and its surrounding areas and the associated risk to civilians in populated areas. However, there is scope for practical improvements in the full implementation of, and compliance with, obligations under International Humanitarian Law, and the application and sharing of good practices. Broadening and strengthening initiatives designed to share military policies and practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

1.7 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. Where possible and appropriate, this data should be shared and made publicly available. The data on civilian casualties can help inform policies designed to mitigate civilian harm, aid efforts to investigate harm to civilians, support efforts to determine or establish accountability and enhance lessons learnt processes in armed forces.

Commented [NZ1]: We welcome Ireland’s work on this Political Declaration and believe it is tracking in a positive direction and is overall in very good shape. Our specific comments are indicated below. Where we have not made specific comments, you should assume that we are comfortable with the current text.

Commented [NZ2]: We continue to support a title similar to your previous draft: *Draft Political Declaration on Strengthening the Protection of Civilians from Harm arising from the use of EWIPA*.

We are not supportive of changing “harm” to “consequences” and including “can” in the updated title, which imports more conditionality.

We are also keen to understand why the title of the declaration is now limited to EWIPA only with “wide area effects” when parts of the declaration (e.g. 1.6 and 1.8) are broader than this.

Commented [NZ3]: Paragraphs 1.2 and 1.3 include a lot of conditionality (e.g. “can”). We are concerned that this may not accurately reflect the well documented pattern of harm caused by EWIPA.

Commented [NZ4]: We would suggest re-inserting reference to ‘hospitals’ – it seems odd that it’s been removed from the list of critical civilian infrastructure (especially when housing, schools and cultural heritage sites are all mentioned at para 1.3). This appears inconsistent with the specially recognised protective status of hospitals under the Geneva Conventions. You could also add civil defence, or other objects indispensable to the survival of the civilian population.

Commented [NZ5]: Previous drafting suggestion for clarity.

Commented [NZ6]: We’d suggest deleting “together” as it can be read as misleading with respect to the various elements in the previous paragraph.

1.8 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 of the use of explosive weapons with wide area effects. We stress the imperative of addressing the short and long-term humanitarian consequences that can result from the use of explosive weapons with wide area effects arising from the conduct of hostilities, including in urban warfare.

Section 2

2.1 We recall our obligations and commitments under applicable international law, including International Humanitarian Law and International Human Rights Law, and reaffirm our obligation to hold accountable those responsible for violations and our commitment to end impunity.

2.2 Existing International Humanitarian Law provides the framework to regulate the conduct of armed conflict, 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 armed groups. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and to mitigate civilian harm when conducting hostilities, in particular within populated areas.

2.3 We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law when conducting hostilities in populated areas, and recall in particular the obligation to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions against indiscriminate and disproportionate attacks and the obligation to take all feasible precautions. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

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).

Part B: Operative Section

Committed to strengthening the protection of civilians and civilian objects in armed conflict, improving compliance with applicable International Humanitarian Law, and addressing the civilian harm that can arise from the use of explosive weapons with wide area effects in populated areas, we will:

Section 3

3.1 Review, develop, implement, and, where necessary, improve national policy and practice, as and when necessary, with regard to the protection of civilians and civilian objects during armed conflict in populated 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 Ensure that our armed forces adopt and implement a range of policies and practices to avoid

Commented [NZ7]: Drafting suggestion for clarity. IHL doesn't just provide the framework to regulate IHL, but actually regulates it – this wording may risk watering down IHL's binding effect

Commented [NZ8]: It isn't immediately clear what 'precautions' are meant here. Suggest it could read "all feasible precautions in choice of means and method of attack, as required under IHL".

Commented [NZ9]: We'd suggest that this paragraph may be better to include, or to add, a general reference to relevant UNGA resolutions (without referencing specific ones), in order to broaden the impact but not render the text time-bound to specific resolutions.

Commented [NZ10]: Suggest that 'ensuring' be a better choice of word than 'strengthen', given that what this is seeking is improving compliance with existing IHL, rather than seeking to strengthen that body of IHL itself.

Commented [NZ11]: Previous drafting suggestion, suggested for clarity.

Commented [NZ12]: Suggest including "protection and civilians and civilian objects during armed conflict in populated areas" to align with rest of the Declaration.

civilian harm, including by restricting the use of explosive weapons with wide area effects in populated areas, when the effects may be expected to extend beyond a military objective.

3.4 Ensure that our armed forces take into account the direct and reverberating effects on civilians and civilian objects which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas.

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 Facilitate the urgent dissemination and understanding of International Humanitarian Law and promote its respect and implementation by all parties to armed conflict, including by non-State armed groups.

Section 4

4.1 Strengthen international cooperation and assistance among armed forces, and other relevant stakeholders with respect to exchanges of technical and tactical expertise in order to develop good practice to enhance the protection of civilians in urban warfare.

4.2 Collect and, where possible and appropriate, share and make publicly available disaggregated data, on the direct and reverberating effects on civilians of our military operations involving the use of explosive weapons with wide area effects.

4.3 Support the work of the United Nations, the ICRC and relevant civil society organisations collecting data on the impact on civilians of military operations involving the use of explosive weapons with wide area effects, as appropriate.

4.4 Make every effort to assist victims, their families and communities affected by armed conflict in a holistic, integrated and non-discriminatory manner, taking account of the rights of persons with disabilities, and supporting post-conflict stabilisation.

4.5 Support the work of the United Nations, the ICRC, other qualified international organisations and relevant civil society organisations as appropriate aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact that can arise from the use of explosive weapons with wide area effects in populated areas.

4.6 Meet on a regular basis to review the implementation of this Declaration and identify any relevant additional measures that may need to be taken to improve compliance with 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. As a starting point, a working group of interested States and other stakeholders could agree a baseline compilation of good practice, which could form the basis for structured military-to-military and other exchanges, workshops, and seminars.

4.7 Actively promote this Declaration, distribute it to all relevant stakeholders and seek its adoption by the greatest possible number of States.

ENDS

Commented [NZ13]: We are not sure whether this clause is helpful since the effects are often not known until after the weapon is used. In our view, this could be deleted as "wide area effects" already covers off the substantive concern.

Commented [NZ14]: It seems odd to refer only to "taking into account" the effects on civilians and civilian objects, but not making every effort to limit such harm. We would suggest including some reference to what the aim of the 'taking into account' is.

Commented [NZ15]: Previous drafting suggestion.

Commented [NZ16]: Previous suggestion.

Commented [NZ17]: Could this be changed to "to ensure respect for and protection of"? 'Enhance' is vague in terms of how and what standard it refers to.

Commented [NZ18]: "Ensure" may also be a better word choice than "strengthen" here.

Commented [NZ19]: Any such working group should also include other stakeholders such as NGOs and civil society given the crucial role they have played in drawing attention to this issue and the development of this political declaration. We'd also suggest broadening this out beyond military-to-military interactions. Alternatively, perhaps this sentence could be deleted as this level of specificity is probably not necessary in the Declaration.