

Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas

Comment [A1]: Replace "on strengthening" by "to ensure", "to protect" or, at least, "to strengthen". (There needs to be a clear indication that there is a necessity for this declaration.)

Part A: Preamble

Section 1

- 1.1 As contemporary conflicts become more protracted, complex and urbanised, the proportion of civilian casualties is increasing. The causes involve a range of factors, including the use of explosive weapons 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 reverberating effects. These occur in particular when critical civilian infrastructure 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 civilian and civilian objects, and 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 many militaries implement good operational policies and practices designed to protect civilians, there is scope for practical improvements in the universal implementation of, and compliance with, International Humanitarian Law, and in such 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 practical 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 in populated areas. 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. We stress the imperative of addressing the short and long-term humanitarian consequences that can result from the conduct of hostilities in urban areas.

Comment [A2]: EWIPA in general cause harm to civilians. It is therefore necessary to leave it general and, if necessary, specify, particularly those with wide area effects,.

Comment [A3]: "can" should be deleted, or at least be replaced by "are likely to". The impact of the use of these weapons has been widely recorded.

Comment [A4]: This could be spelled out in a separate sentence, including a possible reference to the 20,000 deaths and injuries from EWIPA, mentioned in the UN SG report on the protection of civilians in armed conflicts.

Comment [A5]: Markets should also be included as their destruction affect access to food, especially by the most vulnerable.

Comment [A6]: Schools should be in the same sentence as hospitals. In fact, a specific and separate mention to the protection of both would seem appropriate in the declaration, given the wide acknowledgement of their need for special protection.

Comment [A7]: The use of the term urban warfare should be reviewed, as the declaration deals with the use of EWIPA.

Comment [A8]: The following phrase should be added "in particular to people with disabilities."

Comment [A9]: Mention should also be made to the environmental impact of the use of these weapons.

Comment [A10]: The paragraph needs to be reworded and possibly separated, as it includes specific violations to IHL together with a general reference to IHL.

Comment [A11]: This sentence could be further elaborated. In any case, "can" needs to be deleted.

Comment [A12]: The section on sharing military policies doesn't belong in the preamble. It could be moved to section 3.

Comment [A13]: This part of the paragraph should be moved to section 4, as it talks about possible measures. Also, there is an imbalance in qualifying as "good" the current policies and practices; this word should therefore be deleted. Furthermore, "scope" should be replaced by "necessity".

Comment [A14]: It is also important to collect data on "disabilities", as well as types of weapons used and their impact."

Section 2

- 2.1 We recall the obligations and commitments under applicable international law, particularly International Humanitarian Law and 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 regulate 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. 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 prohibitions against indiscriminate and disproportionate attacks 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.
- 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).

Comment [A15]: Here, no reference is necessary to wide area effects as IHL applies to the use explosive weapons in general. If desired, one could include after environments “, including in populated areas”.

Comment [A16]: The express reference to the SC could be deleted and a more general reference to the “United Nations and its main organs” inserted in its place.

Comment [A17]: Insert a reference to the UNGA.

Comment [A18]: Insert a reference to UNGA resolution 3102(XXVIII) “Respect for human rights in armed conflict” and then add the UNSC resolutions.

Comment [A19]: The mentioning of additional international instruments may be useful here.

Part B: Operative Section

Section 3

Committed to strengthening the protection of civilians and civilian objects in armed conflict, strengthening 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:

- 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 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.
- 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, 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 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 and understanding of International Humanitarian Law by all parties to armed conflict.

Comment [A20]: It should be changed to “, particularly those with wide area effects”, as the declaration is about EWIPA in general.

Comment [A21]: The expression “where necessary” should be deleted, as it implies that civilians are already adequately protected, at least in some places. There is always room for improvement in this matter.

Comment [A22]: Insert “, policies set out in this declaration,”.

Comment [A23]: This is the most important paragraph in the Declaration and is in our view still too weak. The document should be more ambitious and propose “stopping” the use of EWIPA’s, or at least a commitment/policy to avoid (not just to restrict) the use of EWIPA, particularly those with wide area effects. The implementation of this commitment into policy and practice is a second step.

Comment [A24]: This paragraph implies that there is legitimacy in conducting military operations in urban areas. It would be necessary to consider whether its inclusion its indispensable in a text that deals specifically with EWIPA.

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 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 rapid and unimpeded access for humanitarian relief to all persons in need.
- 4.6 Support the United Nations, the ICRC, other international organisations and relevant civil society organisations in actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact of the use of explosive weapons with wide area effects in populated areas.
- 4.7 Encourage appropriate cooperation with local stakeholders, civil society experts, and humanitarian organisations specialised in this field.
- 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.
- 4.9 Actively promote this declaration, distribute it to all relevant stakeholders and seek adherence to it by the greatest possible number of States.

Comment [A25]: This conditionality doesn't seem to be necessary in the context of a political declaration. It should be deleted.

Comment [A26]: The inclusion of "our military operations" is restrictive, unnecessary, and implies that all armed forces use these type of weapons. It could therefore be deleted.

Comment [A27]: It should be populated areas, for coherence with the title of the declaration.

Comment [A28]: This paragraph is in our view still too weak. Although the suggestion for the use of language from the CRPD was not accepted, the commitment should be stronger (not just making every effort). Also, the support for post conflict peace building and development should be a separate point.

Comment [A29]: It should be all explosive weapons in populated areas, not only with wide area effects.

Comment [A30]: Even though Ecuador is flexible on the specific timing, "periodically" seems too general and could be reviewed.

Comment [A31]: The following phrase should be added at the end of the paragraph: "including progress made in stopping/avoiding their use".

ENDS