

Rev1

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 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 unlawful 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.

Commented [MM1]: We suggest to reintroduce the term « Harm » as it is clearer.

Commented [JD-M2]: The word “indiscriminate” before “use of EWIPA” can be removed provided that the word “can” stays in the sentence. The same reasoning can be applied to the rest of the document.

Commented [MM3]: We suggest to continue to focus in this declaration on the explosive weapons with wide area effects in populated areas, as those are the most problematic ones in terms of civilian harm

Commented [JD-M4]: « Can » should be maintained as it shows there is no automatic link between the use of EWIPA and the consequences described

Commented [JD-M5]: This concept should be defined if it is to stay in this document. Otherwise, it should be removed.

Commented [DGL6]: Suggest to add the word « unlawful » here, as civilian houses, schools and cultural goods are protected objects under IHL.

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 and feasible, data disaggregated by sex and age. Only 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.

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

Commented [DGL7]: We suggest to add these words to take into account operational constraints regarding data collection.

Commented [DGL8]: We suggest the following addition to take into account the legal obligations of States and the operational constraints regarding data sharing and public disclosure of data.

Commented [DGL9]: We would suggest to broaden the scope of this research to the gendered impact of urban warfare in general and not to limit it to the use of EWIPA.

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 [all weapons, including 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.

Commented [DGL10]: We suggest the addition of these words to reaffirm the fact that IHL rules apply to the use of all weapons and not only to EWIPA.

2.3 We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law [in all circumstances, including](#) 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 [in attacks or against the effects of an attack.](#) We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

Commented [DGL11]: We suggest the addition of these words to reaffirm the fact that IHL applies in all circumstances, not only in populated areas..

[We suggest to add here a para on the obligation under IHL to grant access to humanitarian relief organizations.](#)

Commented [DGL12]: We suggest the addition of these words as the obligation of precaution under IHL encompass both of those aspects.

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 with regard to the protection of civilians 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 and in any event minimize civilian harm when conducting an attack, including by refraining from 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 and are likely to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

3.4 Ensure that our armed forces take into account the incidental direct and reverberating effects on civilians and civilian objects which can reasonably be foreseen, based on available information at the time, 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 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.

We suggest to add, in this section, a para on risk education activities, as this will undoubtedly contribute to the strengthening of civilians protection in populated areas.

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

Commented [DGL13]: We support the additional language proposed by the ICRC in this para. 3.2: especially the addition of a specific reference to armed forces training on “ *the application of International Humanitarian Law in populated areas*, and on the *policies*, measures and good practices, including means and equipment that enhance their ability to conduct hostilities in populated areas”, as these are essential aspects to enhance the protection of civilians and IHL compliance while conducting urban warfare .

Commented [DGL14]: The words « to extend beyond a military objective and are likely » might also be deleted if the term explosive weapons « with wide area effects » is defined in this declaration.

Commented [DGL15]: We suggest using the specific language contained in art. 57 of AP I to the Geneva Conventions para 2 (a) (ii) and (iii) here to correctly reflect IHL rules and obligations and to correctly translate the inherent balance between military necessity and humanitarian considerations contained in its rules, as well as, in particular, the principles of military necessity, proportionality and precaution.

Commented [DGL16]: We suggest this change as the new concept of reverberating effect is not defined in IHL nor in this declaration.

in urban warfare.

4.2 ~~Collect and~~, Where possible and appropriate, and subject to States' obligations, collect, 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 in populated areas.

Commented [DGL17]: We suggest to introduce these words to take into account the legal obligations of States and therefore possible limitations regarding data sharing.

Commented [DGL18]: We suggest this deletion, as this new concept of "reverberating effects" is not defined in IHL nor in the declaration.

Commented [DGL19]: We suggest to focus data collection and sharing on the scope of this declaration, namely the use of explosive weapons with wide area effects in populated area.

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. Provide and facilitate rapid and unimpeded access for humanitarian relief to all persons in need and urge all parties to armed conflicts to facilitate humanitarian access as well.

Commented [DGL20]: We suggest to reintroduce an additional para in this section on humanitarian access and a call on all parties to facilitate such access.

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 could agree a baseline compilation of good practice, which could form the basis for structured military-to-military 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.

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