



NPA comments on the draft political declaration, REV1:

Norwegian People's Aid (NPA) appreciates the opportunity to contribute to this process and would like to submit comments to the declaration, summarizing and building on interventions given during the online consultations 3-5 March 2021. NPA delivered a statement on behalf of INEW discussing IHL and the notion of "indiscriminate use", as well as one on risk education and contamination in our own capacity, the content of which are reflected below. As a member of INEW, we fully endorse INEW's submission and its specific suggestions.

1) International humanitarian law (IHL) and EWIPA

Better compliance with IHL is necessary and desirable, but not the full answer to the challenge this political process was set to address. We would like to reiterate that the main goal of the political declaration is to improve the protection of civilians, against the backdrop of a well-documented protection deficit and immense human suffering.

The rules of IHL represent the minimum standards of behavior even in the most desperate circumstances of armed conflict and thereby serve to curb the most brutal types of violence, but certainly not all harm that is experienced by civilians.

This political declaration process is, in NPA's view, an acknowledgement of the imperative to continuously strive to reduce the harm to civilians resulting from violent conflicts.

When faced with a great variety of interpretations of IHL, merely stating that IHL is enough, does not seem to sufficiently acknowledge the protection challenge we need to address, nor the positive steps that can and should be taken to reduce humanitarian consequences of armed conflicts and the use of explosive weapons in particular.

We would like to stress that the interpretation and application of the law is done through military policies and procedures at the operational level. The operationalization of the law is not to be found in existing treaties. The law in itself does not indicate *what* technical characteristics of specific weapons systems, and *what* characteristics of operational contexts, should be factored into the application of the law nor *how* this should be done in practice – but these are factors that have a fundamental bearing on the likely harm to civilians.

Stronger standards are both possible and necessary to increase civilian protection, what is needed is political will. There are examples of states and non-state actors adopting stronger standards in certain conflicts coupled with the success of other civil society initiatives to curb violence, provide a basis for confidence that change can be achieved. This includes campaigns on landmines and cluster munitions where states agreed to commitments that originally were thought impossible.

A political declaration can set and communicate a strong common international standard at which expected behavior is measured, which must go beyond reaffirming the need to comply with the law.



A declaration should have practical value. It should promote concrete actions and good practice that reduce harm to civilians from explosive weapons and provides better protection. This should be done by establishing clear commitments to avoid the use of explosive weapons in populated areas, and guidance to militaries on the necessity of understanding the effects of weapons, including area effects, and the contexts of use. By doing this, a declaration can be a mechanism that can help to instigate change, including by shaping operational policies, and changing military practice and behavior.

Avoiding the use of explosive weapons with wide area effects in populated areas will help states comply with IH. It is not unlikely that many attacks involving EWIPA could be considered indiscriminate as the wide area effects cannot be limited to the military objective, which leads us to question the interpretation and application of the law.

All states should embrace clearer, stronger standards for civilian protection – this process provides an opportunity to strengthen the authority of those that are committed to responsibility and accountability.

2) A comment on “indiscriminate use”

During the informal consultations in March 2021, we again have heard several delegations speak of the issue in question as one of “*indiscriminate use*” of explosive weapons only. NPA finds it deeply concerning to reduce this serious initiative to better civilian protection to merely claiming that what is already illegal, is still illegal.

Indiscriminate use is already unlawful, as reflected by a prohibition in IHL. And secondly, even lawful attacks cause harm. Those are two fundamental reasons why it is not useful to limit the declaration in this way.

As most states tend to argue that they sufficiently comply with IHL already, the notion of indiscriminate use seems to be directed towards adversaries. This risk politicizing the harm experienced by civilians, by disregarding harm caused by one party to a conflict - or its allies - and placing the label of illegality or indiscriminate use on attacks carried out by an adversary. This would not serve the purpose of the declaration which is to enhance civilian protection more generally.

Even when an attack is not judged illegal, the reality for civilian victims of that very attack, is still the same.

We recall that states already have a legal obligation not only to avoid illegal attacks, but also to take feasible precautions to avoid or in any event to minimize harm to civilians and damage to civilian objects. If states and parties to conflict see the issue as a matter of indiscriminate attacks only, they would be diverting the attention away from the practical measures that a declaration should promote towards avoiding or minimizing civilian harm in all situations.

In conclusion, narrowing the focus of the declaration to cover “indiscriminate use” would undermine the humanitarian value of a future declaration, making it a mere reminder of states’ obligations to follow



the law, and in doing so would severely limit its effectiveness. Furthermore, assertions that harm only results from illegal use is not supported by facts.

3) Clearance of explosive remnants and risk education:

NPA would like to suggest, in line with INEW's comments, to insert a reference to the need for "appropriate risk education" to be given to affected populations in point 3.5. This paragraph already speaks about the need for marking, removal and clearance of *explosive remnants of war*, which is welcome.

It is essential that context-specific and appropriate risk education is given to the civilian population in conflict affected areas so that harm to civilians is minimized and accidents, injuries and deaths avoided to the largest extent possible.

Caring for victims of armed conflict can be challenging, especially during the fighting, and humanitarian clearance of explosives mostly takes place only after the fighting has ceased. However, with many conflicts lasting for years, and bombardment and complex contamination being a threat for extended periods of time, risk education cannot wait until the conflict is over. NPA sees a clear need for doing risk education, including in active conflict environments, through activities that seek to empower civilians to not only have basic knowledge on risk related to all sorts of explosive ordnance, but also how to minimize the risk of being harmed or injured from incoming explosive weapons and other conflict related threats.

Appropriate data collection on the use of explosive weapons and its effects in populated areas, and the sharing of such data, is extremely important to facilitate and render more effective both risk education and clearance. The references to data collection should be interpreted as yet another tool to strengthen protection of civilians.

Lastly, NPA welcomes that Section 4 calls for regular meetings. A strong and concrete commitment to implement the text is immensely important in order to put the words and intentions of the declaration into action. Meetings should review the humanitarian consequences arising from the use of explosive weapons in populated areas and specific steps taken by states to achieve better protection. Productive engagement from states (and their militaries) is important. However, all relevant actors, including but not limited to local and international civil society organizations, should be included in the efforts to achieve positive change.