

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

General Comments

We appreciate the invitation to comment on this draft and our inputs in the next days will focus on:

- the welcomed change in the title from ‘can arise’ to ‘arising’, which we suggest mainstreaming into the text and spirit to recognize that such consequences *do* arise from the use of explosive weapons in populated areas.
- strengthening the text’s focus on the humanitarian consequences of explosive weapons and the complementarity of International Humanitarian Law and International Human Rights Law.
- A focus on explosive weapons impacts beyond the right to life, while noting with stronger references to arms control that all weapons, legal, diverted and illicit have a direct and indirect impact on civilians.

Language Proposals and Comments :

Part A: Preamble

Section 1

- 1.1 As armed conflicts become more protracted, complex, and urbanised, the risks to civilians have increased. This is a source of major concern and must be addressed. The causes of these risks 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 The use of explosive weapons ~~can have has~~ a devastating impact on civilians and civilian objects in populated areas. Blast, debris and fragmentation effects cause deaths and injuries, including lifelong disability. Beyond these direct effects, civilian populations are exposed to severe and long-lasting indirect effects – also referred to as ‘reverberating effects’. Many of these indirect effects stem from damage to or destruction of critical civilian infrastructure. When critical civilian infrastructure, such as energy, food, water and sanitation systems, are damaged or destroyed the provision of basic needs and essential services, such as healthcare and education are, 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 a ~~weapon’s~~ direct impact area.
- 1.3. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, and the ~~natural~~-environment ~~can~~ is also ~~be~~ impacted by the use of explosive weapons, leading to the contamination of air, soil, water, and other resources. The use of explosive weapons in populated areas can also result in psychological and psychosocial harm to civilians.
- 1.4 These effects often result in the displacement of people within and across borders, and have a severe impact on progress towards the Sustainable Development Goals and the Sustaining Peace Agenda adopted by the Security Council resolution 2282 and General Assembly resolution /70/262. Following the conduct of hostilities, unexploded ordnance impede the return of displaced persons and cause casualties long after hostilities have ended.
- ~~1.4.1.5~~ The facilitation of arms transfers is directly linked to the use of explosive weapons which impacts the protection of civilians and the full enjoyment and fulfilment of human rights. Human Rights Council Report 44/29 has noted the impacts that the diversion, unregulated or illicit arms transfers have on human rights, including the right to life. In efforts to strengthen the protection of civilians arising from the use of explosive weapons, there is significant scope for States to take steps to refrain from arms transfers and commit to implementation of other relevant multilateral

Commented [MS1]: The suggestion in this paragraph that the use of EWIPA “can” have the impacts described is insufficient; it will have these effects and that should be stated clearly.

Commented [MS2]: addition of the word direct (for clarity, based on the distinction between direct and indirect in this paragraph). to read: ‘causing harm to civilians that can extend far beyond a weapon’s direct impact area.’

Commented [MS3]: suggested deletion of natural as natural limits the scope whereas environment recognises the natural and urbanised environment, where water and sanitation, as mentioned above, is affected. This also in line with comments raised by WILPF and the Conflict and Environment Observatory

Commented [MS4]: the use of EWIPA “can” have the impacts described is insufficient; it will have these effects and that should be stated clearly’

Commented [MS5]: Addition of reference to the Sustaining Peace Agenda which is impacted by the use of explosive weapons and is mutually reinforcing to the SDGs and takes a preventative approach to the impacts of hostilities on displaced people.

Commented [FF6R5]: You may want to put the founding resolutions of 2016 of the SC and GA as references for the agenda.

Commented [MS7]: an addition of a reference to the Sustaining Peace Agenda which is impacted by the use of explosive weapons and is mutually reinforcing to the SDGs. Which would read: and the Sustaining Peace Agenda adopted by the Security Council resolution 2282 and General Assembly resolution 70/262

Commented [MS8]: Following from points 1.2, 1.3 and 1.4 that recognises the direct and indirect impacts of EWIPA, add a new 1.5 that recognises the facilitation of arms transfers is directly linked to the use of explosive weapons and contributes to the impacts on civilians in populated areas and their human rights and the protection of civilians and welcome HRC report 44/29 on this matter.

mechanisms such as the Arms Trade Treaty.

~~4.5~~1.6 Many militaries already implement operational policies and practices designed to avoid, and in any event minimize, civilian harm, which include a detailed understanding of the anticipated 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 to achieve the full and universal 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. Further, recognizing that the facilitation of arms transfers is directly linked to the use of explosive weapons, there is scope for engagement of all actors to refrain from arms transfers and commit to instruments such as the Arms Trade Treaty to better protect civilians and prevent, mitigate and avoid civilian harm.

~~4.6~~1.7 We recognise the importance of efforts to record and track civilian casualties, and the use of all practicable measures, in line with data protection and best practice, to ensure appropriate data collection, including, ~~where feasible,~~ data disaggregated by sex and age. ~~Where feasible,~~ this data should be shared and made publicly available. Improved data on civilian casualties would help to inform policies designed to avoid, and in any event minimize, civilian harm, aid efforts to investigate harm to civilians, support efforts to determine or establish accountability and enhance lessons learnt processes in armed forces.

~~4.7~~1.8 We stress the imperative of addressing the short and long-term humanitarian consequences resulting from armed conflict involving the use of explosive weapons in populated areas. We welcome the on-going work of the United Nations, the International Committee of the Red Cross

Commented [MS9]: Suggested line within this para at the end that would further strengthen efforts to mitigate, avoid and minimise civilian harm by recognising the impacts of arms transfers on civilians and scope for improvement in the engagement and implementation of the ATT

Commented [MS10]: the use of 'all practicable measures' implies certain practices in data collection that can be harmful. there should be an addition of, in line with data protection or best practice.

Commented [MS11]: This paragraph should also include a need for data on the types, locations, and effects of weapon(s) used, to strengthen efforts to record and track the impacts of weapons that are causing harm This is imperative to understanding the impacts of particular weapons as well as for strengthening arms transfer assessments as mandated by the Arms Trade Treaty and other relevant instruments.

(ICRC) and civil society on the impacts and long-term humanitarian consequences arising from the use of explosive weapons in populated areas.

- 1.7bis We also welcome work to empower and amplify the voices of all those affected, including women and girls. We also welcome work to address gendered impacts of the use of explosive weapons and we encourage further research into the gendered impacts of the use of explosive weapons.

Commented [MS12]: The language here is passive and needs to focus on the purpose of the following lines i.e it should read 'we also welcome work to address gendered impacts of the use of explosive weapons and we encourage further research and developments on the gendered impacts of the use of explosive weapons.' Rationale: the work is not to amplify voices, it is to address gendered impacts

Section 2

- 2.1 We reaffirm our obligations and commitments under applicable international law, including International Humanitarian Law and International Human Rights Law, including our obligation to hold accountable those responsible for violations, and our commitment to end impunity.
- 2.2 Existing International Humanitarian Law provides the legal framework to regulate the conduct of armed conflict, and is applicable to the use of explosive weapons 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 avoid, and in any event minimize, 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 under 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 civilian objects and military objectives, and to direct operations only against military objectives; the prohibitions against indiscriminate and disproportionate attacks; and the obligation to take all feasible precautions in attack and against the effects of attacks. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations, and to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.
- 2.4 We condemn tactics designed to exploit the proximity of civilians or civilian objects to military objectives in populated areas, as well as the use of improvised explosive devices directed against civilian or civilian objects, and other violations of International Humanitarian Law, including by non-State armed groups, which further exacerbate the risks to civilians and are of grave concern.
- 2.5 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 International Human Rights Law, and recall to that end UNSC Resolutions on the protection of civilians in armed conflicts and UNHRC Resolutions such as 24/35, 32/12, 41/20, 29/10 and 38/10 that concern the impact of arms transfers and civilian acquisition and their impact on human rights.

Commented [MS13]: We align ourselves with the addition of a new 2.2 suggested by WILPF that recognizes that states continue to have obligations to respect, protect and fulfil human rights in armed conflict and must exercise human rights due diligence related to the use of weapons and further must assess the human rights impacts of such

Commented [MS14]: Addition of HRC resolutions such as 24/35, 32/12 and 41/20, 29/10 and 38/10 that concern the impact of arms transfers and civilian acquisition of arms on human rights.

Part B: Operative Section

Committed to strengthening the protection of civilians and civilian objects during and after armed conflict, strengthening compliance with applicable International Humanitarian Law, and addressing the humanitarian consequences arising from armed conflict involving the use of explosive weapons in populated areas, we will:

Section 3

- 3.1 Review, implement, and, where necessary, develop or improve national policy and practice with regard to the protection of civilians during armed conflict in populated areas. And review, implement, develop or improve national control mechanisms with regard to the transfer of arms.
- 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.

Commented [MS15]: removal of "where necessary," as it is necessary to continuously improve national policy in response to growing understandings of harm and ways to prevent it

Commented [MS16]: Recognising that the protection of civilians is directly linked to arms proliferation, an inclusion of national control mechanisms which will strengthen efforts to mitigate and avoid civilian harm

3.3 Ensure that States, ~~our~~ armed forces and other relevant stakeholders adopt and implement a range of policies and practices to avoid civilian harm, such as commitments to the implementation of the Arms Trade Treaty, including by ~~restricting or refraining from~~ the use of explosive weapons in populated areas, ~~when the effects may be expected to extend beyond a military objective, in accordance with International Humanitarian Law.~~

~~3.3.4~~ Urges all States to refrain from transferring arms when they assess, in accordance with applicable national procedures and international obligations and standards, that there is a clear risk that such arms might be used in the commission or facilitation of serious violations or abuses of international human rights law or serious violations of international humanitarian law:" (Verbatim A/HRC/RES/41/20, operative paragraph 3)

~~3.4.3.5~~ 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, and conduct battle damage assessments, to the degree feasible, to identify lessons learned.

~~3.5.3.6~~ 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.

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

~~3.6.3.8~~ Ensure that States commit to the strengthening of prevention and diversion of explosive weapons in the export and import chain, as all arms transfers and acquisitions have impacts on civilians and human rights, recognizing that diversion has been identified as one of the main sources of the supply of arms to non-state actors.

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, and humanitarian impact assessments, in order to develop good practice to enhance the protection of civilians, particularly with regard to the use of explosive weapons in populated areas.

4.2 Collect and, where feasible and appropriate, share and make publicly available disaggregated data, on the direct and reverberating effects on civilians of ~~military operations~~ involving the use of explosive weapons in populated areas.

4.3 Facilitate 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 in populated areas, as appropriate.

4.4 Provide, facilitate and support assistance to - people critically injured, survivors, families of people killed and/or injured - and communities affected by armed conflict in a holistic, integrated, gender-sensitive and non-discriminatory manner, taking account of the rights of persons with disabilities, and supporting post-conflict recovery and durable solutions.

4.5 Facilitate the work of the United Nations, the ICRC, other relevant international organisations and civil society organisations aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact arising from the use of explosive weapons in populated areas, as appropriate.

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 armed conflict involving the use of explosive weapons in populated areas. As a starting point, a group of interested States, with the participation of the United Nations, the ICRC, other qualified relevant international organisations and civil society organisations, could develop a compilation of good practice, which could form the basis for ~~exchanges between humanitarian actors, structured military-to-military, civil society and other exchanges, workshops, and seminars between all relevant stakeholders.~~

4.7 Actively promote this Declaration, distribute it to all relevant stakeholders and seek its adoption

Commented [MS17]: suggest addition of national control mechanisms, recognising that the protection of civilians is directly linked to arms proliferation, an inclusion of national control mechanisms which will strengthen efforts to mitigate and avoid civilian harm, that supports the focus of national policy, in this paragraph. As this paragraph currently frames the commitments in terms of armed forces, the refraining from the use of explosive weapons needs broadening to beyond armed forces and explicit focus on which mechanisms or entities are responsible for implementation of this such as states under IHL, IHRL and those engaging and implementing the Arms Trade Treaty.

Commented [MS18]: good to see this addition of refraining from but would like to see removal of 'restricting' as this legitimises use of EWIPA.

The commitment should be to stop or end the use of explosive weapons in populated areas rather than to restrict such use. The declaration must promote the imperative of non-use of EWIPA rather than normalise or legitimise it or suggest that certain use is acceptable, which will only undermine existing IHL and lead to civilian harm

Commented [MS19]: Removal of this line as it legitimises use of EWIPA in other circumstances in military objectives. Furthermore, the points in Section 1.2, 1.3 and 1.4 highlight the direct and indirect impacts of explosive weapons to civilians in highly populated areas that occur within military objectives.

Commented [MS20]: We support the ICRC 2022 comment has issue with the addition of in accordance with IHL. Which states the following:

"in accordance with IHL" may be read to limit the scope of the commitment to restricting or refraining from the use of explosive weapons only in cases where IHL would so require. This would essentially reduce the scope of the commitment to the implementation of existing legal obligations, notably in relation to distinction, proportionality and precautions in the conduct of hostilities. In the ICRC's view, such an approach would significantly reduce the added value of the Political Declaration and constitute an underwhelming outcome of a several years-long multilateral process."

Commented [MS21]: Suggested addition of a new 3.4 that calls upon full implementation of the ATT to follow on from 3.3 which calls for armed forces and other relevant actors to restrict or refrain use of explosive weapons in line with international human rights law and international humanitarian law (Verbatim A/HRC/RES/41/20, operative paragraph 3)

Commented [MS22]: Addition of International Human Rights Law which is mentioned in Section 2.1

Commented [MS23]: recognising the need for strengthened prevention and diversion of explosive weapons and their impacts on all human rights, a suggested addition of 3.8 (based on Mozambique's statement in EWIPA consultations from 2019, which suggested a focus on 'the strengthening of prevention of diversion of explosive

Commented [MS24]: suggest deletion of military operations as it reduces the scope, rather it should read 'reverberating effects on civilians of the use of explosive weapons in populated areas

Commented [MS25]: this needs to be clarified. good practice of what? of reviewing the declaration? of implementation? of monitoring humanitarian consequences of EWIPA? of compliance of IHL? it should explicitly state that meetings of good practice is on the declaration and implementation. Further, a rationale is needed on what

Commented [MS26]: implementation is wider than military actors so 'other exchanges' should explicitly reference humanitarian actors, civil society.

and effective implementation by the greatest possible number of States.

ENDS