

**Elements of a political declaration to ensure the protection of civilians from humanitarian ~~harm~~ consequences arising from the use of explosive weapons in populated areas.**

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The text below draws on the interventions made at the first consultation on the elaboration of a political declaration to address the humanitarian harm arising from the use of explosive weapons in populated areas held in Geneva on 18 November 2019 and the written submissions subsequently received.

**Part A:**

**Section 1 - Identifying the problem and challenges**

1.1 The increasing urbanisation and protracted nature of armed conflict pose complex challenges for the protection of civilians. A large proportion of casualties in today's armed conflicts are civilians, especially casualties in ~~urban contexts~~ populated areas where explosive weapons have been used.

**Commented [u1]:** It would be useful to include in this section the definition of "explosive weapons", "wide area effects" and "populated areas", since these are key terminology for the declaration and it will be important to have a common understanding on those issues. We could look at the definition provided by the ICRC in its publications.

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1.2 Explosive weapons with wide area effects are having a devastating impact on civilians and civilian objects in populated areas. Beyond the immediate deaths, injuries, physical disabilities and psychological trauma, social exclusion, economic loss, environmental degradation, displacement of people within and across borders, the use of such weapons in populated areas is likely to have significant indirect (reverberating) effects on civilians well beyond the weapon's impact area, in particular when critical infrastructure (such as hospitals, energy networks, and water and sanitation systems) enabling the provision of essential services is damaged or destroyed. The destruction of housing, schools cultural heritage sites, transport infrastructure and other related services further aggravates civilian suffering and prevents humanitarian assistance from reaching people in need ~~the civilian population can be exposed to severe and long-lasting harm as a result of the destruction of housing, schools, hospitals, energy networks, water and sanitation systems, cultural heritage sites and infrastructure.~~

**Commented [u2]:** Proposal made by ICRC, with some additional elements.

1.3 ~~This devastation often results in the displacement of people within and across borders. We recognize also note~~ that the use of explosive weapons results in contamination by explosive remnants of war, including hazardous chemicals, heavy metals and fuel hydrocarbons, impeding the return of displaced persons and causing casualties and long-term harm to human health long after hostilities have ended.

**Commented [u3]:** We suggest to address the question of displacement in 1.2.

1.4 We underline the imperative of addressing ensuring the protection of civilians from the short and long-term humanitarian consequences of arising from the conduct of hostilities- use of explosive weapons in populated areas. ~~We recognise the importance of casualty recording and the need to ensure appropriate data collection, including data disaggregated by sex and age, on the impacts of explosive weapons in populated areas.~~

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1.4.(bis) We recognise the importance of casualty recording and the need to ensure appropriate and reliable data collection and data sharing, including data disaggregated by sex, age and disability, on the impacts of explosive weapons in populated areas and on the type of weapons used.

**Commented [u5]:** We are flexible on the inclusion of other types of data, but at least disability must be reflected.

1.5. 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 ~~longterm~~long-term humanitarian consequences arising from the use of explosive weapons in populated areas.

1.6. We also welcome work to empower, integrate and amplify the voices of those affected, including women and girls, and we encourage further research into the ~~potential~~ gendered impacts of the issue, as well as their participation in the decision-making processes.

1.6.(bis) We stress the importance of considering other factors, *inter alia* the age, race, disability status, ethnicity and economic status, in order to have a better understanding on how civilians are affected by the use of explosive weapons in populated areas;

1.7. We ~~express concern about erosion in respect for~~ condemn the violation of international humanitarian law ~~and deliberate violations of the law during armed conflict~~, and recall that international humanitarian law applies to all parties to conflict, including non-state armed groups.

1.8. We also condemn the use of improvised explosive devices to target civilians and civilian objects, the use of civilians as human shields and other tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas.

## Section 2 - legal framework

New paragraph: We recall the obligations under international law, particularly international humanitarian law and international human rights law, and reaffirm our commitment to uphold these obligations by protecting civilians and civilian infrastructure, including the need to comply with relevant obligations to end impunity;

2.1 We reiterate that existing IHL provides the framework to regulate the conduct of armed conflicts and applies to the use of explosive weapons ~~with wide area effects~~ in populated areas. We stress the importance of full compliance with international humanitarian law as a means to protect civilians and civilian objects and mitigate civilian harm. We ~~recognise the difficulty in directing explosive weapons with wide area effects against specific military objectives within populated areas, and we~~ note that while good policy and practices designed to protect civilians exist, there is considerable scope for concrete improvements in the ~~implementation-compliance~~ of international humanitarian law in this respect.

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2.2 We welcome initiatives designed to foster clarity and enhance the implementation of existing obligations under IHL, in particular with regard to the use of explosive weapons with wide area effects in populated areas. ~~Institutionalising~~ ~~(~~The convening of these initiatives for, *inter alia*, sharing of policy and good practice among States in minimizing civilian harm by avoiding the use of explosive weapons with wide area effects in populated areas can aid in the promotion, respect and compliance ~~better implementation~~ of international humanitarian law in this context, thereby strengthening the protection of civilians and civilian objects during armed conflict.

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2.3 We recall the obligations on all States and parties to armed conflict to adhere to IHL ~~when conducting hostilities in populated areas~~, including the requirement to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions of indiscriminate and disproportionate attacks and the obligation to take all

feasible precautions in attack. We also recall the obligation under IHL to provide civilians with general protection against dangers arising from military operations are crucial in order to protect civilians during the conduct of hostilities in populated areas.

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2.4 We welcome the work of the Secretary General and the United Nations Security Council to enhance the protection of civilians during armed conflict and to strengthen compliance with IHL.

#### Part B:

Committed to enhancing the protection of civilians and civilian objects in armed conflict, strengthening compliance with International Humanitarian Law, and addressing the humanitarian harm consequences arising from the use of explosive weapons with wide area effects in populated areas, we will:

#### Section 3. Operational commitments: existing legal framework, military policy and practice, sharing good practice on the protection of civilians

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3.1 Comply with, and promote respect for, all obligations under international humanitarian law in all circumstances and adhere to all other applicable international law, including obligations under international human rights law;

3.2 ~~Refrain from any~~ Adhere to existing prohibitions on the use of weapons that are prohibited as inherently indiscriminate;

3.3 Develop, review, ~~and, where necessary,~~ improve and implement policy and practice, and, in particular, military rules of engagement and other military policy and doctrines, with ~~regard~~ the aim to avoid or, at a minimum, limit the use of explosive weapons with wide area effects in populated areas, to ensure full compliance with international humanitarian law and to maximize the protection of civilians. This will require the assessment of possible area effects of the explosive weapons and the operational factors that may influence them in different circumstances, ensure operational and contextual factors (presence of civilians and foreseeable reverberating effects) are reflected in the planning of military operations and the decision-making process on the use of such weapons;

3.3(bis) Seek to establish national mechanisms to monitor and investigate the uses of explosive weapons in populated areas to ensure accountability.

~~3.4 Ensure that our armed forces, in the conduct of military operations, will, in accordance with IHL, take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects. In fulfilling existing obligations under IHL, we will ensure that our armed forces adopt policies and practices to avoid civilian harm by restricting the use of explosive weapons with wide area effects in populated areas when indiscriminate effects may be expected; We commit to avoiding the use of explosive weapons with wide area effects in populated areas. We will implement this commitment by ensuring that explosive weapons with~~

**Commented [u6]:** We support the call for the adoption of an avoidance policy made jointly by the ICRC and the Secretary General. For this reason, we would like to see ICRC's proposal reflected in this section.

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wide area effects are not used in populated areas unless sufficient mitigation measures have been taken to limit their area effects and the consequent risk of civilian harm.

3.5 Strengthen international cooperation and assistance with respect to the identification, development and exchange of good practices to enhance the protection of civilians ~~in~~ from the use of explosive weapons in populated areas ~~urban warfare~~. This commitment would include the organisation of the chain of command; rules of engagement; weapon-target matching; targeting procedures, planning and training; real-time information sharing; collateral damage estimates; ~~and~~ battle damage assessments; civilian casualty tracking mechanisms and the consideration including the need to take account of foreseeable direct and reverberating effects on civilians and civilian objects in populated areas, as well as the systematic assessment of the new trends ~~urban populations and infrastructure~~;

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3.6 Ensure the marking and clearance, removal or destruction of explosive remnants of war in accordance with applicable international law, as well as the promotion of risk education;

3.7 Ensure adequate training of armed forces on international humanitarian law, including on the measures, operational tools, procedures and good practices to be applied during the conduct of hostilities in populated areas to effectively protect civilians and civilian objects;

3.8 Strengthen cooperation between armed forces and facilitate the exchange of technical and tactical expertise, such as through structured military to military dialogues, workshops, seminars and other initiatives to develop a community of good practice to enhance the protection of civilians;

3.8(bis) Take further action to deal effectively both with the supply of, and the demand for, explosive weapons. This includes implementing fully existing instruments, such as the Arms Trade Treaty, the maintenance of the highest possible standards on the exports of conventional weapons and the development specific guidelines to restrict or stop the transfer of certain types or categories of conventional weapons to State and non-State actors.

#### Section 4:

4.1 Condemn the ~~deliberate-direct~~ targeting of civilians and civilian objects, the indiscriminate and disproportionate attacks using ~~of~~ improvised explosive devices and the use of human shields, and call on all parties to put an end to such practices and support measures to hold those responsible for violations of international law accountable;

4.2 Collect and share reliable data, disaggregated by sex, ~~and~~ age and disability, on the impact of explosive weapons ~~with wide area effects~~ in populated areas, the type of weapons used and location,

~~4.3 Make every effort-Do our utmost~~ to provide age and gender-sensitive assistance to victims -the persons critically injured, survivors, families of those killed and injured, and affected communities-, including medical care, physical rehabilitation, psychological support, social and economic inclusion, in a nondiscriminatory manner and taking account of the rights of persons with disabilities, as well as support towards the full enjoyment of their rights and full participation in the societies ~~supporting post-conflict stabilisation~~;

Commented [u7]: We propose to split the paragraph in two parts.

4.3 (bis) Support post-conflict stabilization efforts in consultation with affected communities;

4.3 (ter) Prevent and remediate the environmental impacts and the infrastructure-related damage caused by the use of explosive weapons in populated areas;

4.4 Urge all parties to armed conflict to facilitate rapid and unimpeded passage for humanitarian relief to civilian populations in need;

4.5 Support the United Nations, the ICRC, other international organisations as well as civil society organisations in addressing the direct and indirect humanitarian ~~impact~~ consequences of the use of explosive weapons with wide area effects in populated areas;

4.6 Encourage cooperation with local stakeholders, civil society experts, and humanitarian organisations specialised in this field;

4.6(bis) Promote bilateral and regional cooperation, and encourage States and organizations in a position to do so to provide to endorsing States assistance and international cooperation, including technical, material and financial assistance, in order to fulfill their commitments made in the context of this declaration;

4.7 Meet biannually, with the participation of endorsing States, those yet to endorse, the UN, the ICRC, relevant international organisations and civil society, in order to promote its universalization, assess its status and remaining challenges, ~~Review~~ review the implementation of this declaration, ~~and share lessons learned,~~ identify good practices and policies adopted as well as any additional measures that may need to be taken to improve compliance with IHL and to strengthen the protection of civilians and civilian objects with regard to from the humanitarian consequences arising from the use of explosive weapons ~~with wide area effects~~ in populated areas;

4.8 Actively promote this declaration, distribute it to all relevant stakeholders and seek the adherence of the greatest possible number of States.

**ENDS**