



Comments of the Kingdom of the Netherlands on the 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

26 March 2021

The Netherlands commends Ireland for the hard work that went into this revised “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”, and thanks Ireland for organising informal consultations from March 3 till March 5. The Netherlands takes this opportunity to share some general observations as well as some comments and suggestions in writing on the latest draft text.

General observations

The Netherlands shares the concern about the humanitarian consequences resulting from the urbanization of armed conflicts and acknowledges that the use of explosive weapons with wide area effects may bring significant risks to civilians and civilian infrastructures. The Netherlands values the excellent work that has been done by all involved states, NGO’s and international organizations during the last round of consultations on this extremely important subject matter. Good progress has been made on the draft text. There are, however, still some outstanding issues on which further agreement must be found.

In the view of the Netherlands, any improvement of the protection of civilians lies first and foremost in compliance and reinforcement of the existing norms of international humanitarian law (IHL) by all parties to a conflict. IHL is based on a careful balance between military necessity and humanity and provides a strong legal framework for the protection of civilians in any environment, including in urban warfare. Better implementation of the existing IHL rules and principles, in particular those of distinction, proportionality and precautions, by all parties to an armed conflict, including non-State actors, can further reduce humanitarian consequences. It is therefore important that the text of the present political declaration avoids obfuscations of existing IHL rules.

The latest round of consultations have again shown that there is a common desire and will from all actors involved to further enhance the protection of civilians. In the view of the Netherlands, the way forward is a strong and unambiguous political commitment to strengthen the implementation of and respect for existing IHL. Compliance with IHL can be improved through a number of practical measures and commitments, as outlined in section 4 of the present political declaration, ultimately aimed at enhancing the protection of civilians in urban areas.

Comments and suggestions

Section 1

- 1.1 The Netherlands notes that by adding the word “densely” to “populated areas”, which is intended to be used in combination with those terms (i.e. “wide area effects” and “explosive weapons”), more clarity is provided in light of a (realistic) scope of application of this Declaration in line with IHL

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~~ the use of explosive weapons with wide area effects in densely populated areas, ~~and poses~~ complex challenges for the protection of civilians in line with international humanitarian law.

- 1.2 The current descriptions of ‘direct effects’ and ‘indirect effects’ suffice. The Netherlands requests to include the word ‘can’ since blast and fragmentation effect do not inherently cause immediate deaths and injuries.

Explosive weapons with wide area effects can have a devastating impact on civilians and civilian objects in densely populated areas. Blast and fragmentation effects can 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 Netherlands welcomes the insertion of the impact on “the natural environment” in section 1.3.

The 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 The use of “urban armed conflict” is not in line with IHL.

Together, these effects often result in the displacement of people within and across borders. When these effects occur they can have a negative impact on progress towards the Sustainable Development Goals. Following urban warfare ~~urban armed conflict~~, unexploded ordnance can also impede the return of displaced persons and cause casualties long after hostilities have ended.

- 1.5 The Netherlands requests the replacement of the word *armed groups* with *actors*, which encompasses a broader range of actors than organized armed groups alone. Also, it is suggested to rephrase a part of the sentence because the current draft implies that the use of improvised explosive devices (IEDs) as such is a violation of IHL. This is only true when they are used to launch attacks against civilians or civilian objects. Furthermore, this applies not only for IEDs, but for any type of (explosive) weapon.

Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, as well as launching attacks against civilian and civilian objects using explosive weapons, including the use of improvised explosive devices

~~directed against civilian and civilian objects~~, and other violations of International Humanitarian Law, including by non-State ~~actors armed groups~~, all exacerbate the risks to civilians and are of grave concern.

- 1.6 In line with our comments under 4.2, a commitment to data collection must be realistic, implementable, and must have a clear goal. Therefore, the Netherlands suggests a shorter more concise wording.

We recognise the importance ~~of efforts to record civilian casualties, and the use of all practicable measures to ensure appropriate~~ ~~of~~-data collection, including, where possible, data disaggregated by sex and age. 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.

Section 2

- 2.2 For consistency reasons the Netherlands suggest to amend this paragraphs as follows, to bring it in line with the remaining text:

Existing International Humanitarian Law provides the framework to regulate the conduct of armed conflict, 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, 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~~ humanitarian consequences when conducting hostilities, in particular within densely populated areas.

- 2.3 The Netherlands is of the view that the obligation to adhere to IHL falls on all parties to an armed conflict irrespective of the context. More importantly, the Netherlands recommends to use the original terminology of the basic principles of IHL to avoid obfuscations or reinterpretations of existing IHL.

We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law when conducting hostilities in populated areas, and recall in particular the obligations to comply with the rules and principles of international humanitarian law, including those of distinction and proportionality, and the obligation to take all feasible precautions. ~~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~~ We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

Part B: Operative Section

Section 3

- 3.3 The Netherlands is of the view that any policies and practices to avoid or minimize incidental civilian harm should be anchored in existing IHL obligations instead of creating new obligations. We wish to underline that existing IHL provides clear guidance and restrictions on the means and methods of warfare that may be employed. Any efforts to protect civilians and mitigate harm, should thus be anchored in the obligations

set by IHL. In particular, the absence of an agreed understanding within IHL on “explosive weapons”, “wide area effects” and “populated areas” used in the declaration, will make any new commitments beyond existing IHL ambiguous. Therefore, the Netherlands suggests replacing this language with an unambiguous commitment to strengthen the implementation of existing IHL.

Ensure that our armed forces ~~comply with international humanitarian law and continue endeavouring to~~ adopt and implement ~~a range of policies and practices to avoid, and in any event minimize incidental loss of civilian life, injury to civilians and damage to civilian objects when civilian harm, including by 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.~~

3.4 For consistency reasons, and as explained under paragraph 1.1, the Netherlands suggests to include the word “densely”.

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 densely populated areas.

Section 4

4.2. The Netherlands recognizes the potential of data gathering and sharing in avoiding effects of explosive weapons on civilians in armed conflicts in populated areas. A commitment to data collection must be realistic and implementable and it remains the prerogative of States to decide if they share their data.

~~Collect and, Ww~~ where possible and appropriate, 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.

4.4. The Netherlands proposes new wording that is more in line with IHL.

Where possible and appropriate, Mmake 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. For consistency reasons, and as explained under paragraph 1.1, the Netherlands suggests to include the word “densely”.

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 densely populated areas.

4.6 At this time the Netherlands is not in a position to commit itself to a mandatory review mechanism, but supports the idea of sharing good practices on an informal basis.

Meet regularly on a voluntary and informal 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 densely 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.~~