



## **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**

### **Comments by the International Committee of the Red Cross (ICRC)**

#### **Addendum**

The ICRC submits the present addendum to its [written submission](#) 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*.

This addendum summarizes the ICRC's position on four key questions and concerns raised by several delegations during the informal consultations of 3-5 March 2021.

#### **(1) On the argument that the Political Declaration should not focus on “explosive weapons with wide area effects”**

While there are many factors causing or aggravating civilian harm in urban warfare, the use of explosive weapons with wide area effects in populated areas (EWIPA) is one of the main causes of civilian suffering and destruction, as evidenced by consistent data during the past decade. In the ICRC's view, focusing on the use of these weapons is not a stigmatization, but an adequate reflection of an evidence-based analysis: when used in a populated area where military objectives are intermingled with civilians and civilian objects, explosive weapons with wide area effects are much more likely to harm such civilians and civilian objects than explosive weapons that do not have wide area effects. For a more detailed explanation of the correlation between wide area effects and civilian harm, see the ICRC's latest [written submission](#) (pp. 1-2). The ICRC's understanding of concepts such as “explosive weapons”, “wide area effects” and “populated areas” can be found in the briefing note [Scope of EWIPA](#).

#### **(2) On the argument that the Political Declaration should only address the unlawful use of explosive weapons.**

The ICRC does not believe that a distinction between “lawful” and “unlawful” use of explosive weapons with wide area effects is appropriate in the context of the Declaration, for the following reasons:

- Firstly, such a distinction would imply that there is a common understanding on when the use of such weapons would be in conformity with IHL. However, as the ICRC has observed, there is insufficient clarity on how States interpret and apply key rules of IHL with regard to the use of EWIPA.
- Secondly, the distinction would imply that only “unlawful” use of EWIPA is of concern, when in reality significant civilian harm may also result from attacks that appear lawful. In the ICRC's view, the devastating humanitarian consequences of the use of EWIPA actually raise serious questions regarding how States and parties to armed conflicts interpret and apply key rules of IHL – notably, the prohibitions of indiscriminate and disproportionate attacks – when using such weapons.

- Thirdly, a commitment against the “indiscriminate or disproportionate use” of EWIPA would be of no added value, as it would restate an existing legal obligation – the prohibition of indiscriminate or disproportionate attacks.

**(3) On the argument that the Political Declaration should only aim to strengthen compliance with IHL and should not create new legal obligations or standards.**

IHL regulates the use of EWIPA through the key rules on the conduct of hostilities: the prohibitions of indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack. For an analysis of key IHL rules applicable to EWIPA see the Briefing Note [IHL and EWIPA](#).

The ICRC agrees that efforts are needed to strengthen compliance with IHL, and welcomes that the draft Political Declaration underscores this. This is critical given the particular challenges in using these weapons in populated areas in conformity with IHL.

In the ICRC’s view however, to achieve its purpose the Political Declaration should not be limited to restating existing legal obligations, including the obligation to comply with IHL, considering in particular the lack of clarity on how States interpret and apply IHL when using EWIPA, and the fact that significant civilian harm may also result from attacks that appear lawful. The Political Declaration is indeed based on the recognition that much more needs to be done to effectively protect civilians from the grave civilian harm caused by the use of EWIPA. What is urgently called for in view of the evidence and lessons learned from recent conflicts is a shift in mindset, policies and practices. In the ICRC’s view, the Declaration’s added value will consist in committing States to take action through policy commitments and good practices in a number of areas to strengthen the protection of civilians, regardless of whether such policies and good practices are considered to be required by IHL.

**(4) On the argument that a commitment to limit, restrict or avoid the use of explosive weapons with wide area effects in populated areas is problematic because it would create a new legal obligation.**

In the view of the ICRC, the most realistic and effective way to protect civilians from the high risk of harm posed by the use of EWIPA is to adopt policies that avoid their use. An avoidance policy would entail a political commitment not to use EWIPA unless sufficient mitigation measures have been taken to reduce the weapon’s area effects and the consequent risk of civilian harm. Such a commitment would not extend to all explosive weapons’ use in populated areas, but only to those having wide area effects in the circumstances, i.e. whose effects would be expected to go beyond the military objective. Whether this is the case will depend both on the technical characteristics of the weapon, on the manner in which it is used, and on the size of the military objective.

In the ICRC’s view, an avoidance policy does not mean that parties to a conflict may never use EWIPA – such as for instance, and depending on the circumstances, their possible use against a large enemy military headquarters located in a city. Rather, it requires that mitigation measures are put in place at all levels and in all aspects of military decision-making to avoid that the effects of attacks would go well beyond the target and risk affecting civilians and civilian objects indiscriminately, with devastating and often long-term consequences.

By undertaking *political* commitments to adopt policies and practices that restrict or avoid the use in populated areas of weapons that entail unacceptably high risks for civilians, States do not create new *legal* obligations. They do not undermine IHL either, but on the contrary facilitate respect for IHL and effectively enhance the protection of civilians in challenging environments such as populated, and in particular urban, areas.