

Report on the March 2021 consultations on a political declaration on the use of explosive weapons in populated areas

12 March 2021

Editorial: Stigmatising and stopping explosive violence for the protection of civilians

By Ray Acheson

The bombing of towns and cities has resulted in catastrophic civilian harm. [Ninety per cent](#) of casualties from the use of explosive weapons in populated areas (EWIPA) are civilian; critical infrastructure is damaged and destroyed leading to [further harm](#) and displacement; and the psychological, socioeconomic, and environmental impacts last long after the conflict has ended. This is why survivors, activists, and humanitarian agencies have pushed for states and other parties to conflict to stop the use of EWIPA—a charge which the Irish government has taken up by establishing a [diplomatic process](#) for the development of a political declaration.

Initiated in 2019, this process has led to several rounds of consultations on the content of a declaration. While the COVID-19 pandemic delayed the process last year, Ireland hosted a new round of talks online from 3 to 5 March 2021 to discuss a [revised draft declaration](#). While the timetable for concluding this process remains unclear, the Irish are planning to issue another draft and hold further negotiations later this year. In the meantime, bombing and shelling in populated areas continues to kill and injure civilians and damage homes, schools, hospitals, markets, and other civilian infrastructure, driving home the importance of setting strong new standards and commitments to end this horrific practice.

The callous indifference of bombers

Unfortunately, not everyone wants the declaration to end the use of explosive weapons in populated areas, or even to curtail it at all. A few of the states participating in the talks seem to actually want the declaration to endorse or legitimise their bombing practices.

Israel, which argued that civilian harm is not a “defined term” and that the idea that international human rights law (IHRL) is applicable during armed conflict is “controversial,” said the declaration should only encourage states to “avoid indiscriminate attacks” rather than restrict their use of explosive weapon in populated areas. Belgium, Canada, Colombia, France, and Lithuania also want the declaration to only address what they refer to as “indiscriminate use” of explosive weapons—which [would not actually afford any additional protection for civilians](#). Indiscriminate attacks are already prohibited by international humanitarian law (IHL), and those that bomb towns and cities routinely claim they are in compliance with said law—yet the magnitude and gravity of civilian harm, even from such supposedly lawful strikes, continue to reach unacceptable levels.

The United States even told participants of the consultations that it bombs civilians to protect civilians. It argued, “In some circumstances, the use of explosive weapons with wide area effects could actually be the best means for minimizing civilian casualties” and called for the declaration to recognise this as part of the “full range of good policies and practices that contribute to such protection.”

It should go without saying, but those who have experienced the effects of any of the [326,000 bombs](#) dropped by the United States and its allies since 2001 would likely beg to differ that this has afforded them any protection. The UN found, for example, that the US-led coalition that bombed Raqqa, Syria resulted in a “[staggering loss of civilian life](#),” while the US bombing of Mosul, Iraq [destroyed](#) large parts of the city and displaced nearly two million people. [Airwars](#), [Action on Armed Violence](#), the [Bureau of Investigative Journalism](#), [Human Rights Watch](#), and other organisations have tracked extensive civilian harm from a range of actors engaged in bombing populated areas.

“Not all EWIPA”

Despite the well-documented evidence of human suffering and [environmental damage](#) caused by the use of explosive weapons in populated areas, the United States and a few other delegations argued that “not all explosive weapon use” harms civilians—and therefore, no restrictions are necessary. These countries, including Australia, Canada, France, Israel, Lithuania, and the United Kingdom, also supported qualifiers throughout the text indicating that harm “can” potentially arise from the use of EWIPA—not that it does.

The “not all EWIPA” line sounds hauntingly familiar to the “not all men” or “not all white people” lines that are relentlessly used to challenge anyone speaking about systemic sexism and racism. And, just as with those shallow, infuriating arguments, the claim is meant to shut down critique of structural violence and calls for any meaningful change.

The claim that not every single bomb lobbed into a populated area hurts people or damages infrastructure—which is already a stretch of the imagination—is meant to prevent any critique of operational practice or political policy. If one in a thousand, one in a hundred, even one in ten bombs somehow does not cause any damage or harm, should we just keep allowing the bombs to rain down on populated areas? This argument rests on the same logic as those who argue we don’t need to defund, demilitarise, and disband the police, because there might be a few “good cops,” even though structurally speaking the entire concept of police in settler colonial societies is built on genocide of Indigenous people and enslavement of Black people. It’s the same logic as those who demand we stop talking about violent masculinities or patriarchy and what it means for sexual assault, abuse, harassment, and discrimination because “not all men” engage in such behaviour.

As the Palestinian delegation noted at the consultations, the world is full of hypotheticals. We could all sit in a room together without masks and if no one is infected with COVID-19, then it won’t spread. But we don’t then claim that this is proof there’s no point in wearing masks. We know that wearing masks prevents the spread of COVID-19 and have policies that mandate mask-wearing in order to prevent harm and suffering.

The long road from rubble to rhetoric

The interventions by Palestine and others throughout the consultations made it clear that there is a serious disconnect between states that are conducting bombing and those that are experiencing it. There are many layers of abstraction and removal—from the streets filled with rubble, to the soldiers dropping the bombs, to the commanders giving the orders to drop the bombs, to those strategising and planning the strikes and military lawyers assessing and greenlighting the strikes, to the government officials setting the policies, to the politicians urging for those policies (especially those being lobbied by military contractors eager to make some money, who “need” the bombs to be dropped so they can make more bombs and more money), to the civil servants that come to meetings like this one and defend these policies and practices.... There is a long road from rubble to rhetoric, from the death and destruction in the streets to the people in suits in a room in Geneva or on a webcam saying: it’s actually good we drop bombs in populated areas, it’s how we protect you.

States that bomb want to be able to continue to bomb, and they don’t want to be shamed for it—they want to be able to say that it’s for our own good, just as the nuclear-armed states say about their possession of nuclear weapons. Thus, the Arab Group, Belgium, Canada, France, Israel, United Kingdom, and United States expressed alarm that bombing civilians would be stigmatised by the declaration. But as Chile and Mexico pointed out, stigmatisation would not be the fault of the declaration, but rather is a consequence of their actions.

The purpose of the declaration articulated by the majority of participants in this process is indeed to not just stigmatise the use of explosive weapons in populated areas, but to end it. Most states, survivors, activists, and humanitarian agencies advocated for strong regulations to stop, avoid, or restrict bombing in order to protect civilians. They argue that the declaration is necessary to clarify that implementing IHL and IHRL and endeavouring to protect civilians means not bombing towns and cities. (It says a lot about the way militaries operate that this is not already “clear,” but there you have it.)

Going beyond “compliance with existing law”

Simply asserting a need for compliance with existing law does not represent effective action to address civilian harm. As the International Network on Explosive Weapons (INEW) has [pointed out](#), the rules of IHL represent the minimum standards of behaviour and does not in itself indicate either the technical characteristics of specific weapons systems or the characteristics of operational contexts that should be factored into the application of the law. Stronger standards are both possible and necessary to increase civilian protection.

INEW believes that a declaration can be a mechanism that can help to instigate change, including by shaping operational policies and changing military practice and behaviour. Although some actors may ignore stronger standards at first, and may not endorse the declaration immediately, over time even a small group of states can change the behaviour of the majority. We have seen this with the prohibitions on landmines and cluster bombs, and now with nuclear weapons, as well as the [Safe Schools Declaration](#).

Listen to survivors, not perpetrators

While the “militarily active” states may want a declaration to be dictated by their terms, the most violent and destructive governments of the world must not be the arbiters of what is acceptable or appropriate behaviour in armed conflict. Allowing them to determine the scope and content of the declaration would be like allowing police forces to “reform” themselves or allowing men to make laws about women and LGBTQ+ rights. (Which is basically what we do and look how far it’s gotten us.)

Instead, just like we need to listen to the survivors of sexual violence and police brutality in order to most effectively shape our policies to prevent further harm in these areas, in the context of the use of EWIPA it is imperative to listen foremost to the civilians that have experienced harm from explosive weapon use, and from the governments and humanitarian agencies that have tried to grapple with this harm.

Women Now for Development, a Syrian women’s rights organisation, has [explained](#) how its staff have been killed by bombing of its centres; how its staff has had to repeatedly scout new locations to rebuild its women’s centres in Daraya, Eastern Ghouta, and Idlib after they have been bombed; how it starts its programmes at 06:30 to allow women to travel at dawn when the bombing is quietest; how they often have to evacuate in the midst of bombing campaigns. Women Now argues, “the use of explosive weapons in populated areas has restricted women’s freedom of movement more than patriarchal structures in society.”

Stop bombing, save civilians

This reality has led Women Now, [WILPE](#), and [INEW](#) to call for an outright commitment to stop the use of explosive weapons in populated areas. Speaking from the perspective of humanitarian agencies that deal with the impacts of explosive weapons use daily, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), UN Children’s Fund (UNICEF), and the UN Office for Disarmament Affairs (UNODA) jointly amplified the UN Secretary-General and International Committee of the Red Cross (ICRC)’s [appeal](#) to all parties to conflict to avoid the use of explosive weapons in populated areas. The three agencies expressed concern that anything less than a presumption of non-use of such weapons will fall short of protecting civilians.

This call is reflected in the regional communiqués from [Santiago, Chile](#) and [Maputo, Mozambique](#), and in the language suggested by Austria, Chile, Ecuador, Mexico, Namibia, Peru, Palestine, Panama, South Africa, and Uruguay, as well as Amnesty International, Article 36, Human Rights Watch, PAX, Project Ploughshares, and SEHLAC at this most recent round of consultations (as well as others in the [previous round](#) in February 2020). As can be seen from the reporting on various themes and issues in this report, the majority of participants in this process seek a strong declaration that will have a meaningful impact in the lives of civilians by developing a presumption of non-use of EWIPA.

This would be an important contribution to our world. As the government of Ireland moves ahead to develop a new draft declaration and as participants to this process prepare for the next round of negotiations and for the declaration’s adoption, they would do well to keep in

mind the words of prison abolitionist Mariame Kaba, who [urges](#) us to not just ask, “What do we have now and how can we make it better?” but instead to ask, “What can we imagine for ourselves and for the world?” If we do that, she says, “then boundless possibilities of a more just world await us.”

Positions: Report on participant statements at the consultations

By Jillian Rafferty, Katrin Geyer, and Ray Acheson

Table of contents

<i>Urban warfare vs. use of EWIPA.....</i>	<i>6</i>
<i>Qualifiers.....</i>	<i>7</i>
“Can arise” vs. “Arising from”	7
“EWIPA” vs. “EWIPA with WAE”	7
“Where appropriate”	8
“Indiscriminate use”	8
“Unlawful use”	9
<i>Humanitarian consequences and description of harm.....</i>	<i>9</i>
Types of harm	11
Direct, indirect, and reverberating effects.....	11
<i>Environmental harm</i>	<i>12</i>
<i>Relationship between international humanitarian law (IHL) and the declaration</i>	<i>13</i>
Limiting to existing IHL vs. going beyond existing IHL	13
Stigmatisation.....	14
<i>Characterising IHL obligations.....</i>	<i>14</i>
Paragraph 2.1	14
Paragraph 2.2	15
Paragraph 2.3	16
Paragraph 2.4	17
Additional proposed paragraphs in Section 2	17
IHL and Section 3	17
IHL and Section 4	17
<i>Core commitment</i>	<i>18</i>
Proposals to strengthen the core commitment	18
Proposals to weaken the core commitment	20
<i>Non-state armed groups (NSAGs).....</i>	<i>21</i>

<i>Gender</i>	<i>21</i>
<i>Data collection</i>	<i>22</i>
<i>Victim assistance (VA)</i>	<i>23</i>
<i>Military practices and armed forces</i>	<i>25</i>
<i>International cooperation</i>	<i>25</i>
<i>References to instruments, processes, and stakeholders</i>	<i>26</i>
<i>Follow-up process</i>	<i>27</i>

Urban warfare vs. use of EWIPA

Most delegations opposed the use of the term “urban warfare” throughout the declaration, preferring instead that it keep its focus specifically on the use of EWIPA. A handful of others argued the opposite, wanting the declaration to address all aspects of armed conflict in populated areas rather than just explosive weapon use.

- The Arab Group said there is no agreed definition of populated areas.
- The Netherlands requested to add “densely” for all references to “populated areas” throughout the political declaration (PD).
- Finland said that “populated areas” and “urban areas” are used interchangeably but they shouldn’t be.
- Chile + Mexico and Human Rights Watch (HRW), amongst others, opposed the inclusion of “urban warfare” in 1.3, as explosive weapons by themselves produce psychological harms. Chile + Mexico raised a related issue in 3.1, suggesting that rather than referring simply to “conflict in populated areas,” the text should read “in particular with regard to the use of explosive weapons in populated areas.”
- Israel argued that humanitarian implications of “urban warfare” are based on a variety of factors and thus the declaration should not only focus on explosive weapons.
- Israel argued that humanitarian consequences of “urban warfare” arise to a great extent from non-state armed groups (NSAGs) that use human shields and operate in urban areas, which should be reflected in the PD. The United States (US) made similar observations. The Arab Group also argued the PD overlooks use of human shields.
- Canada said the title should be “Strengthening the protection of civilians in urban warfare” and argued that a focus on urban warfare is better than stigmatising a class of weapons.
- Poland argued that the concept of EWIPA rather than of urban warfare must be applied throughout the text.
- Australia preferred to avoid the terms “urban warfare” and “hostilities” in Section 1, suggesting “urban warfare” be replaced with “armed conflict in populated areas,” and that “hostilities” be replaced with “armed conflict.”
- Though Turkey did not address the distinction between the terms directly, Turkey did repeatedly offer language that included the phrase “urban warfare” rather than

“EWIPA” or “conduct of hostilities/armed conflict in populated areas” (including for 2.1).

- The US expressed concern with the use of the phrase “populated areas,” as it is not defined under IHL. The US further noted the importance of protecting civilians outside of populated areas as well.
- Austria spoke to the importance of clearly focusing on populated areas in the declaration, including the chapeau to Part B, noting that even though IHL of course applies to all areas of conflict, this declaration is focused on the use of EWIPA.

Qualifiers

The vast majority of participants opposed the use of qualifiers in the title (i.e. “can arise”) and throughout the text to reflect the well-documented humanitarian consequences of the use of EWIPA. A small minority, such as the United Kingdom, the United States, France, and Australia, supported the insertion of qualifiers, arguing that this issue is “complex” and that the use of explosive weapons (EW) with wide area effects (WAE) doesn’t automatically lead to the described effects.

“Can arise” vs. “Arising from”

- Austria, Ecuador, Holy See, Malta, Mexico + Chile, New Zealand, Norway, Palestine, Panama, Switzerland, UNICEF + UNODA + UNOCHA, ICRC, INEW, HRW, Mines Action Canada (MAC), and WILPF opposed the use of qualifier “can” in the title.
- Norway specifically noted the title as the most striking use of “can” to weaken the message, arguing that the “arising from” construction in the prior draft was better and was factually correct.
- Austria noted that it was important to remember that this is a PD and not law and should therefore be ambitious.
- Austria, Ecuador, the Holy See, Palestine, Panama, Peru, Norway, New Zealand, Mexico + Chile, the ICRC, INEW, HRW, MAC, and WILPF also opposed qualifiers throughout the text, including but not limited to 1.2, 1.3, 1.8, where humanitarian impacts are described, as well as the chapeau for Section 3.
- Norway was troubled by the qualifiers (such as “can”) in Section 1 that appeared to weaken the causal connection between the use of EWIPA and civilian harm, arguing that the premise of the declaration is that EW *do* cause harm, even if not every time, often enough. Many other states and civil society groups made similar comments.
- Uruguay specifically disliked “can” in 1.3. Similarly, the ICRC and Amnesty International agreed that civilian harm is real, not hypothetical, and argued “can” should therefore be deleted in 1.3 and elsewhere.
- Australia, Canada, France, Israel, Lithuania, United Kingdom (UK), and US argued in favour of qualifiers like “can”—in the title, in Section 1, and in Section 3. Australia specifically argued that the declaration would require the support of key militaries that take part in armed conflict.

“EWIPA” vs. “EWIPA with WAE”

- Many participants, including Ecuador, Finland, Holy See, Mexico + Chile, New Zealand, Panama, Switzerland, UNICEF + UNOCHA + UNODA, ICRC, INEW, HRW,

Humanity & Inclusion, and WILPF pointed out that the term EWIPA should be used in the title, as the declaration applies to the use of EWIPA more generally in some instances, for example with respect to data collection and victim assistance.

- France called for deletion of WAE in the entire text and argued the text should deal with all EW. It argued that otherwise, the scope of the PD is too narrow and would exclude improvised explosive devices (IEDs). The US agreed with France.
- Other countries, including Ecuador for example, noted that WAE should simply be removed wherever it is too limiting to the scope of the declaration—such as in 2.2.
- Mexico + Chile opposed certain uses of “with wide area effects,” including in 2.2, when the qualifier would appear to limit the scope of the statement.
- Palestine, INEW, and WILPF argued “with wide area effects” should be removed from the title and most places in the text. Norway echoed this point, in particular with respect to 2.2, as IHL applies to all weapons.
- France, Palestine, Panama, and Peru agreed that WAE should be deleted in 2.2.
- The ICRC recommended resolving this particular issue in 2.2 with language such as “... applies to all weapons, including EW and EW with WAE,” to clarify that the obligation extends beyond those particular weapons while still highlighting those weapons given the topic of the declaration.
- Some participants, including Spain, Hole See, INEW, HRW, and Humanity & Inclusion said the term “wide area effects” required further explanation. Chile + Mexico for instance suggested that the term WAE should be explained in the text itself to have a basis for operationalisation of commitments.
- HRW offered a definition of WAE.
- Israel argued that because EW with WAE is not a commonly accepted term, the term “urban warfare” should be used instead.
- Colombia agreed with concerns raised about the lack of definition of EW with WAE.
- Australia agreed with suggestions that “WAE” be deleted in many places for the sake of clarity.

“Where appropriate”

- The US argued in favour of qualifiers in various instances, including adding “appropriate” before “facilitation” in 3.6, as facilitation may not always be appropriate or practical.
- Canada supported adding qualifiers in various places, including suggesting adding “where appropriate” to the beginning of 3.1.

“Indiscriminate use”

- Belgium and France suggested to add “indiscriminate” before each use of EW, arguing that civilian harm is caused by indiscriminate use of EW.
- Canada said “indiscriminate” should go before “use of EWIPA” or “use of EW with WAE” in the title and throughout the text, including in 3.3. Colombia echoed this point, especially with respect to the Part B chapeau.
- The ICRC argued that the distinction between lawful and unlawful use of EWIPA is unhelpful as there is no clarity how IHL rules are applied with respect to EWIPA and that there is lack of clarity how states interpret and apply the rules.

- In line with its position that EW can be used in compliance with IHL, Colombia supports the addition of “indiscriminate” before EWIPA in 1.1.
- Lithuania argued that in the declaration as a whole, and especially in Section 3, the declaration must distinguish clearly between discriminate and indiscriminate uses of EWIPA.
- INEW rejected the argument that “indiscriminate use” should be the focus of the declaration, as such uses are already illegal, and harm is caused even when the weapons are not used indiscriminately. INEW argued that sticking only to indiscriminate use would not meaningfully enhance civilian protection, would undermine the declaration’s humanitarian value, and would make the declaration a mere reminder to states of existing law.

“Unlawful use”

- Belgium said that the PD should explicitly distinguish between the lawful and unlawful use of EWIPA, otherwise its absence would stigmatise these weapons.
- Canada said “unlawful” should be added before destruction in 1.3.
- Poland argued that the declaration should clarify that it is only the “unlawful” use of EWIPA that it seeks to condemn.
- INEW argued that asserting that civilian harm only results from illegal use is simply not supported by the facts. InterAction reiterated this point, noting that parties can be compliant with IHL and still cause civilian harm from the use of EW.
- The US argued that, unlike certain other weapons (e.g., chemical weapons), explosive weapons are not unlawful under IHL; it is their *misuse*, not their *use*, that is problematic.
- Lithuania argued that in the declaration as a whole, and especially in Section 3, the declaration must distinguish clearly between lawful and unlawful uses of EWIPA.
- Switzerland spoke strongly in its concluding remarks *against* focusing only on the unlawful uses of weapons, as IHL envisions proactive obligations to do everything feasible. Switzerland argued that this is necessary in order to fully address the humanitarian consequences arising from the use of EW.

Humanitarian consequences and description of harm

While many participants welcomed the focus of the broad scope and gravity of reverberating effects of the use of EWIPA and the enhanced description of civilian harm, many continued to argue that the humanitarian consequences of the use of EWIPA have to be highlighted more in the PD. INEW argued that the pattern of harm has been well documented and that adopting unnecessary qualifying language dismisses the lived experience of millions who are suffering through conflict. INEW, other civil society groups, and many states highlighted the importance of encompassing direct, indirect, and reverberating harms in this declaration. Mahpekay Sidiqi, survivor of the use of EWIPA in Afghanistan, urged states for the text to better reflect the extensive harm caused to civilians, and to do justice to the experiences of so many who have already suffered.

- The Netherlands preferred the phrase “humanitarian consequences” in the place of “civilian harm,” especially in Section 2.

- Mexico + Chile said that the PD must ascertain without a doubt that EW with WAE present complex challenges to the protection of civilians, and suggested including a reference to the increase of civilian deaths as a result of the use of EW with WAE in populated areas in 1.1.
- UNICEF + UNOCHA + UNODA stressed that the PD should promote high standards and policies to protect civilians.
- Switzerland suggested an addition in 1.1 to express that the use of EW with WAE becomes “a major source of concern,” and that 1.8 should be clear of the acuteness of this issue. Austria and the Holy See supported this and made similar remarks. Austria further suggested that it be added that risks have “significantly” increased. Uruguay and Ecuador expressed support for Switzerland’s and Austria’s remarks.
- Many participants, including Mexico + Chile, Ecuador, and New Zealand, said that 1.4 should change the wording so that it doesn’t read as though only all factors mentioned in 1.3 *together* impact the Sustainable Development Goals (SDGs) and lead to displacement.
- The Netherlands asserted that there is a lack of accurate data on the number of civilian casualties and therefore suggested deletion of “increasing risk of civilians” in 1.1.
- Canada suggested adding a reference to “local populations” in 1.4 to explain how unexploded ordnance can impact populations in their immediate vicinity, in addition to impeding return.
- Austria argued for making the underlying rationale of the operative commitments clear in the chapeau to Part B. With this in mind, Austria suggested adding “and humanitarian consequences” after “civilian harm.” Switzerland echoed this suggestion, suggesting references to “humanitarian consequences” to ensure a broad scope.
- Mexico + Chile agreed the chapeau to part B should be clearer to establish a direct linkage between the problem from the preamble (i.e. the use of EWIPA and harms caused) and the clear and concrete political measures to tackle the problem. They suggested reverting to earlier wording, “strengthening compliance with IHL” (rather than “improving compliance with IHL”); changing the phrase “in armed conflict” to “during and after armed conflict”; and rephrasing the final part to read, “... civilian harm that arises from the use of EW, in particular those with WAE, in populated areas.”
- Ecuador echoed Mexico + Chile’s argument regarding the importance of underscoring the rationale for the declaration, the gravity of harm, and the urgency of dealing with it in the chapeau to part B and suggested the following language: “Deeply concerned by the devastating effects and unacceptable levels of civilian harm and humanitarian consequences recorded by the use of EWIPA, particularly those with WAE, and therefore commit to take urgent actions to strengthening the protection...”
- The UK raised concerns that not every measure is appropriate for every actor, and therefore suggested adding “where appropriate” to the end of the chapeau to Part B. Lithuania and Colombia echoed this point.

Types of harm

- Various states called for an expansion of the list of direct effects, including New Zealand and Spain. Spain suggested to add “communication networks” and “education services” in 1.2. Uruguay supported this.
- New Zealand, Palestine, Panama, and HRW called for the re-insertion of destruction of hospitals in 1.2.
- Austria suggested that the notion of impacts of reverberating effects on humanitarian access and socioeconomic development should be added.
- Italy said that the destruction of “cultural heritage” should also be added.
- InterAction called for reference to impacts on food systems and food security.
- INEW said that displacement should be recognised as stand-alone point. Panama made similar suggestions.
- Save the Children called for the inclusion of a specific reference to children, highlighting that children bear the brunt of war and of the immediate and long-term effects of EW, and so they should be more clearly referenced throughout the text—including, for example, in 2.3, by means of a reference to special protection for children.
- Palestine and Uruguay suggested including other vulnerable groups in 1.8, including children. Norway echoed this point, noting that the affected population is not a homogenous mass, that there are particular risks to children, and that the declaration should clearly acknowledge this reality..
- Israel argued that “civilian harm” is not an established phrase under IHL and suggested alternative phrasing repeatedly throughout the consultations, including with respect to Section 3.
- The US argued that damage to infrastructure doesn’t automatically impact essential services.

Direct, indirect, and reverberating effects

- Numerous participants spoke to the importance of addressing the direct, indirect, and reverberating effects on civilians of the use of EWIPA.
- Humanity & Inclusion stressed that reverberating and domino effects of the humanitarian impacts of the use of EWIPA aren’t sufficiently reflected in the current draft.
- Malta praised the draft’s acknowledgement of reverberating effects.
- In contrast, the US argued that “direct and reverberating effects” of the use of EW referred to and proscribed particular operational practices—a process that should be left for the follow-up to the declaration rather than the declaration itself.
- Israel repeatedly objected to the phrase “reverberating effects,” including in Section 3, where Israel suggested replacing the phrase with “expected risks”. Israel also opposed this term as it said it would promote a legal argument that all reverberating affects have to be included in proportionality assessments.
- Norway raised concerns about the “relatively new” term “reverberating effects.” Norway stressed that both direct and indirect effects are already part of their own operational decision-making, but that reverberating effects were less familiar. As such, Norway suggested references to “reverberating effects” be moved to Section 4, as they and their mitigation are nonetheless important.

- Canada also repeatedly raised concerns about how effects are described, objecting to both “direct effects” and “reverberating effects.” Canada suggested that, wherever those terms appear, they be replaced by “indirect effects” (including, for example, in 3.4).
- Chile + Mexico acknowledged that the three categories of effects (direct, indirect, and reverberating) should merit further discussion. Spain and Belgium made similar remarks, highlighting the lack of clarity of the term “reverberating”.
- The UK argued that the term should be clarified further so that states have an informed view of the scope of it.
- The US opposed inclusion of this term as the PD should not promote “novel legal concepts”.
- Canada agreed reverberating effects are not defined under IHL.
- Palestine supported including reverberating effects. It also suggested changing the phrase “in armed conflict” to “during and after armed conflict” in the chapeau to part B, to better reflect the reverberating effects of the use of these weapons.
- Chile + Mexico said it was open to consider different classifications as long as they are broad enough to encompass all effects, and said that UNIDIR’s terminology could also be used (secondary, primary, and tertiary effects).

Environmental harm

Paragraph 1.3 of the revised draft declaration mentions the “natural environment” for the first time, which several delegations supported. Most of these want to see the reference strengthened, while only one delegation spoke against it.

- Finland, Holy See, Mexico + Chile, Palestine, Panama, INEW, the Conflict and Environment Observatory (CEOBS), MAC, and WILPF welcomed the inclusion of the environment in 1.3.
- Palestine, INEW, CEOBS, MAC, and WILPF called for the deletion of “natural” in reference to the environment, as it doesn’t reflect the contemporary understanding of the relationship between humans and the environment.
- CEOBS further called for a stronger focus of the long-term damage to the environment by the use of EWIPA, which should be reflected throughout the text. In particular, CEOBS suggested a new operative paragraph in Part B that would encourage states to support the work of the UN and other stakeholders in identifying and implementing best practices regarding the management of conflict-related debris and pollution.
- The ICRC and MAC echoed this proposal. PAX echoed similar sentiments, noting the acute and long-term environmental challenges and public health risks caused by EW, as did Panama and Malaysia.
- Finland said “WAE” should be removed, as all EW impact the environment.
- Panama also suggested including mentions of environmental harm in Section 3.
- Israel wanted to see the reference to environment removed, arguing that any type of weapon can impact the environment, and that there exists “legal controversy” about the protection of the environment under IHL.

Relationship between international humanitarian law (IHL) and the declaration

While all participants agreed that compliance with and implementation of IHL are necessary to protect civilians, the core tension is that most see the declaration as a way to clarify and strengthen commitments and practical measures by providing restrictions on the use of explosive weapons, while others object to the idea that any further guidance or obligations should be “imposed” on them in order to protect civilians.

Limiting to existing IHL vs. going beyond existing IHL

- The Arab Group argued existing IHL rules and principles must be applied fully and effectively to protect civilians. The Netherlands made similar remarks.
- The Arab Group said the aim of this declaration is to strengthen protection of civilians through enhancing existing IHL, not by establishing new rules, concepts, or mechanisms. The US made similar arguments, as did Turkey. The US further argued that restrictions on use of explosive weapons in 3.3 exceed what's required by IHL. Similarly, Turkey suggested alternative phrasing for 2.1: “We urge states to comply with their obligations under IHL, in particular their obligations under the Geneva Conventions of 1949 and their Additional Protocols, to ensure the protection of civilians from humanitarian harm during conflict, including urban warfare.”
- The Arab Group argued the use of EW with WAE is already subject to IHL rules of distinction, proportionality, precaution and that the contradiction with these principles, not the weapons themselves, is what makes some attacks unlawful.
- Germany said the PD should acknowledge that lack of compliance with IHL is primary cause for civilian casualties and harm of civilian infrastructure. The Netherlands made similar remarks.
- Canada recommended deleting “direct effects” in 1.2, since IHL prohibits direct attacks on civilians or civilian objects.
- Canada said beginning of 1.6 should be changed to “Many militaries are already complying with IHL...” to ensure greater precisions re: compliance vs. implementation of IHL, to reflect that many militaries go beyond what IHL requires.
- Japan stressed its commitment to initiatives that seek to improve IHL compliance through diplomacy and argued that IHL already provides a robust legal basis for the protection of civilians during armed conflict.
- Colombia said this process should provide added value to agreed-upon IHL obligations.
- Australia argued that strengthening compliance with existing IHL would go a long way to more effectively regulate the use of EW and reduce incidents of civilian harm; therefore, the declaration should promote existing IHL rather than new obligations.
- Italy stressed that the core of the issue is properly implementing IHL given challenging dynamics on the ground and noted that states' duty is to recall the key principles of IHL.
- The US repeatedly raised concerns that language in Sections 2 and 3 could be read as setting new standards under IHL, including in 3.4.
- Austria said the PD's intention isn't to set new legal norms but to enhance protection of civilians by strengthening commitments against the use of EWIPA. It argued the

PD should enhance compliance with IHL through political commitment and practical measures.

- The ICRC underscored that the application of IHL is the minimum and that civilian harm can also arise from lawful attacks. Peru made similar observations. The ICRC also argued that the declaration must make reference to the limits and obligations already imposed by existing law, while also not limiting itself to solely repeating existing obligations.
- INEW stressed that while better compliance with existing IHL is necessary, it is not the full answer to the humanitarian harm being caused by the use of EWIPA, as that harm also happens when civilians are not themselves targeted, and during strikes which actors claim are in compliance with IHL. INEW noted that even when attacks are not judged to be illegal, the reality for civilian victims of those attacks is the same.

Stigmatisation

- The Arab Group, Belgium, Canada, France, Israel, UK, and US expressed concern that the declaration would stigmatise EW use.
- Colombia argued that the declaration should *not* stigmatise weapons that can be used in compliance with existing IHL obligations.
- Japan argued EW can be used in full compliance with international and national laws and regulations, and that care must be taken to avoid stigmatising EWs, so long as they are used in compliance with international norms.
- Mexico + Chile, in contrast, argued that the stigmatisation of EW is a practical consequence of the indiscriminate effects of those weapons, and is not attributable to any political declaration or commitment to avoid their use. WILPF agreed.
- Similarly, HRW argued that any stigmatisation of EW would only occur if appropriate, because of the grave harm those weapons cause.

Characterising IHL obligations

This section is organised by paragraph in order to capture specific language suggestions in Section 2 in relation to characteristics and descriptions of IHL obligations. The core tension throughout this section, as indicated above, is that while most states see the declaration as a way to clarify and strengthen obligations under IHL to protect civilians, a few states want to limit this as much as possible.

Paragraph 2.1

- Mexico + Chile called for strengthening Section 2, in particular by starting 2.1 by “reaffirming” states’ obligations under existing law. This was echoed by numerous states, including Austria, Panama, Uruguay, Peru, and Palestine.
- The US said that the phrase “and commitments” weakened the statement, and suggested deleting those two words.
- The UK argued that there is no obligation to hold to account those responsible for violations of international law, and suggested replacing this with “the importance of holding to account” instead.

- The ICRC objected to the UK's proposal, noting that there is an obligation to hold perpetrators accountable for serious violations of the law and arguing that this reference must be underscored and retained.
- Palestine likewise echoed that "obligation" was the correct and appropriate word in this respect.
- Mexico + Chile also proposed clarifying, in contrast to the UK's position, that there *is* a clear obligation to investigate violations of international law, and to do so with due diligence and within a reasonable time frame. They proposed the following wording of 2.1: "We reaffirm our obligations and commitments under applicable international law, including international humanitarian law and international human rights law, including the obligation to conduct investigations with due diligence and within a reasonable time frame and, when it proceeds, to prosecute and hold accountable those responsible for violations, and therefore to end impunity."
- France submitted its own proposal regarding the impunity language, noting that it is an important point: "We reaffirm our obligations in regard to the investigation and prosecution of grave breaches of IHL and our commitment to end impunity."
- On the accountability point, Sweden said 2.1 should be clarified with respect to what kind of violations are relevant. Canada echoed this, asking for greater clarity regarding what kind of impunity the paragraph seeks to address.
- Italy welcomed the reference to a commitment to end impunity, as those responsible for perpetrating violations should be held responsible. Austria agreed that the impunity point was important but should be clarified and suggested the following language, which Palestine endorsed: "... hold accountable those responsible for violations of IHL and IHRL."
- Germany argued that, because failure to comply with IHL is the primary cause of civilian harm, 2.1 should condemn blatant disregard for IHL by state and non-state actors.
- Israel objected to the specific reference to "international human rights law" (IHRL) in 2.1, arguing that the applicability of IHRL during armed conflict is a controversial matter attracting different views. As such, Israel suggested replacing the reference to IHRL with "all other applicable international law."
- Others specifically objected to the deletion of IHRL from 2.1. In particular, Panama argued that it is a well-established principle that IHRL continues to apply in armed conflict, complementarily with IHL, as confirmed by international jurisprudence on the topic.
- Germany proposed changing "our obligations" in 2.1 to "the obligations" to reflect that IHL obligations are binding on those that do not sign the declaration.

Paragraph 2.2

- InterAction argued that the measures adopted by states in the declaration regarding the use of EWIPA should not be pursued solely for the sake of legal compliance with IHL, but to avoid civilian harm. InterAction asked that this priority be woven into 2.2 and 2.3 (as well as 1.6).
- Canada suggested that 2.2 eliminate the phrase "EWIPA" and replace it with "all weapons," because IHL is applicable to all weapons. On a related note, the US took issue with the phrasing of 2.2, as IHL addresses attacks by whatever means they are

conducted. The United States suggested the following language: "... provides obligations applicable to conducting and defending against attacks, including those that use explosive weapons, in all operating environments."

- Germany suggested that the phrase "full compliance" in 2.2 be changed to read "full and universal compliance with IHL" to reflect that all parties to armed conflict—not just those that sign the declaration—are bound.

Paragraph 2.3

- The UK argued that 2.3 should be brought more closely in line with the text of Article 48 of Additional Protocol I to the Geneva Conventions, suggesting the language "direct only against military objectives." Canada echoed this sentiment.
- In addition, Canada requested clarification in 2.3 regarding the definition of "disproportionality" to better reflect the precise language of Article 57 of Additional Protocol I to the Geneva Conventions.
- Austria suggested bringing 2.3 in line with customary international law rule 7 and the obligation to distinguish between military objectives and civilians and civilian objects *at all times*.
- Sweden suggested amending 2.3 to read "*including* in populated areas," to avoid the impression that the obligations only apply in populated areas. Others, including INEW, Panama, and the US, echoed this sentiment, stressing the importance that the law be equally complied with regardless of where fighting takes place. Switzerland likely emphasized the same point, suggesting the phrase read "... to comply with IHL under all circumstances, including when conducting hostilities in populated areas...." Italy supported both of these proposals.
- The UK stressed the importance of adding "in attack" to the end of 2.3. Israel and France supported.
- INEW argued that the phrase following "feasible precautions" should instead read "in attack and against the effects of attack."
- The ICRC flagged that different obligations apply in attack versus against the effects of attack and recommended that this is clarified with greater precision in the declaration.
- Israel additionally objected to the phrasing of the last sentence of 2.3, arguing that it suggested a positive obligation not reflective of Article 51 of Additional Protocol I to the Geneva Conventions. Israel suggested it be replaced by the following phrasing: "We also recall the obligation under IHL concerning the general protection of civilians against dangers arising from military obligations."
- The US raised its own objections to 2.3, arguing that selectively mentioning legal obligations could inadvertently suggest changes to their requirements. The US suggested the following language: "... the principles and requirements of proportionality, military necessity, and precautions; we also recall the obligations under IHL relating to the protection of civilians."
- The Netherlands made a related but distinct proposal, arguing that the use of IHL's original terminology regarding its principles would avoid obfuscations or reinterpretations of IHL: "We recall the obligations of all parties to armed conflict to comply with IHL when conducting hostilities in populated areas, and recall in particular the obligations of all parties to armed conflict to comply with the rules and

principles of IHL, including those of distinction and proportionality, and the obligation to take all feasible precautions.”

Paragraph 2.4

- As in other places, Israel advocated that this section must acknowledge the importance that all parties to armed conflicts comply with IHL and suggested adding “by all parties to armed conflict” to 2.4 to reflect that.

Additional proposed paragraphs in Section 2

- The US suggested adding a paragraph between 2.3 and 2.4 to address the legitimacy of EW as a means of warfare and to reflect the US position that EW use may protect civilians from harm: “We recognise that under IHL, explosive ordnance is a legitimate means of warfare, whose use may be needed to protect civilians. We also recognise that efforts to strengthen the protection of civilians, including their protection in urban warfare, must involve the full range of good policies and practices that contribute to such protection.”
- China’s sole statement during the consultations advocated for a direct reference to the UN Charter its principles in Section 2, arguing that the declaration would be “imbalanced” or “incomprehensive” if it did not reference the UN Charter. In particular, China suggested adding a paragraph after 2.3 that reads as follows: “We recall that every state has the duty, in conformity with the UN Charter, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity, or political independence of any state, or in any other manner inconsistent with the purposes of the UN Charter.”
- Switzerland raised concern that the original draft’s paragraph 4.5, on humanitarian access, was deleted entirely in this draft. Switzerland asked that the paragraph be re-added and moved to Section 2, as it refers to a legal obligation established under IHL. Numerous participants supported this proposal, or a proposal to re-insert the paragraph into Section 4, including Austria, Panama, Finland, Palestine, UNOCHA + UNODA + UNICEF, Canada, Belgium, Humanity & Inclusion, INEW, and the ICRC.

IHL and Section 3

- Mexico + Chile noted that the dissemination of IHL, which is currently referenced in 3.6, is an IHL commitment and that this commitment should therefore be moved to Section 2. Relatedly, New Zealand and Palestine suggested adding “urgent” before “dissemination.”
- Canada also raised a concern regarding 3.6, noting that, in Canada’s view, the obligation to “ensure respect” for IHL is limited to states that are parties to armed conflict ensuring respect by third parties (under Common Article 1 of the Geneva Conventions of 1949).

IHL and Section 4

- Switzerland suggested adding two additional paragraphs to Section 4—a proposal which Palestine spoke in support of. Those paragraphs include 1) “In cases of allegations of violations of IHL, seek clarification and ensure the facts are established, including through fact-finding mechanisms;” and 2) “Use domestic and

international measures to hold to account those responsible for serious violations of IHL and collect, compile, retain, and preserve relevant information to support the efforts to hold those responsible accountable.”

Core commitment

As expected, the core commitment, which appears in paragraph 3.3 of the declaration, attracted a variety of comments, as did the rest of Section 3.

On one hand, many participants, including Austria, Ecuador, Mexico + Chile, Palestine, Peru, INEW, WILPF, and others stressed the imperative of a clear commitment in 3.3 that would meaningfully improve the protection of civilians from the grave harms caused by the use of EWIPA. Participants raised a variety of suggestions and arguments to that end—including shifting to language to “stop” or at least “avoid” the use of EWIPA, and to phrasing that would establish a presumption against the use of EWIPA, given their likelihood of causing serious harm to civilians and civilian objects.

Many participants with these and similar positions argued that the inclusion of such provisions in the declaration would not serve to stigmatise explosive weapons—rather, that the weapons stigmatise themselves through the unacceptable harm they cause. Key to these arguments is the understanding that current conduct of hostilities factually causes unacceptable harm, and that even those that claim to act in compliance with IHL are causing harm that states should work together, including through this declaration, to avoid and prevent. In addition, these participants often stressed that such a commitment would not create new obligations beyond existing IHL, but rather would provide guidance on how states can best comply with IHL in the context of the use of explosive weapons.

On the other hand, a few states—including Canada, France, Israel, UK, US, and a few others—argued against any phrasing in 3.3 that would commit states to changing their existing behavior and decision-making with respect to the use of EWIPA. Central to these states’ arguments are the claims that (1) there are many legitimate and lawful uses of EW; (2) many states with military experience behave responsibly and act in compliance with IHL, and their experience should be valued and prioritised; (3) the possibility of harm from EW does not justify blanket changes in policy or practice; and (4) any commitment to change behaviour would constitute an obligation beyond existing IHL.

Other participants spoke to the importance of compromise on this point. Switzerland, for example, argued that the measures currently suggested do not represent a new restriction, but simply ask states to limit the use of EWIPA to situations in which the necessary measures and precautions have been taken.

Proposals to strengthen the core commitment

- Austria argued that the point of 3.3 was to outline signatories’ commitment to strengthen the observance of IHL. It suggested adding “to a civilian or civilian objects” at the very end of 3.3 to clarify that not *all* effects are problematic—only those that cause civilian harm.

- New Zealand said the phrase “when the effects may be expected to extend beyond a military objective” is unhelpful, highlighting that the inclusion of the phrase “with wide area effects” already covers the substantive concern. Peru, Palestine, INEW, PAX, WILPF, and others echoed this sentiment, suggesting that the final phrase acts as a caveat rather than a clarification.
- Chile + Mexico strongly advocated for a core commitment to *avoid the use of EWIPA with WAE*. They argued that such a policy would neither stigmatise EW nor create new obligations, as it is not a prohibition, but rather a regulation. Panama and South Africa echoed this argument.
- Chile + Mexico also raised questions regarding how *existing* IHL rules, especially regarding distinction, proportionality, and precautions, are already being applied in the context of the use of EW, and ultimately argued that simply declaring respect for IHL would not suffice—instead, the declaration must provide clarity on how to apply IHL in the context of EW, given the wealth of data available on the direct, indirect, and reverberating effects of those weapons.
- With that in mind, Chile + Mexico also proposed the following changes in 3.3: Delete “a range of” and “including”; and replace “may be expected” with “should be anticipated”.
- Ecuador and Peru echoed Chile + Mexico’s argument, adding that 3.3 as it stands is weak and serves to undermine the central purpose of the declaration. Specifically, Ecuador and Peru both argued for a *presumption of non-use of EWIPA* and for replacing “restrict” with “avoid.”
- Namibia, South Africa, Uruguay, UNOCHA + UNODA + UNICEF, Amnesty International, Article 36, PAX, and Project Ploughshares + Seguridad Humana en Latinoamérica y el Caribe (SEHLAC) echoed this point.
- Ecuador additionally argued for clarifying that the avoidance policy must *always* be implemented.
- UNOCHA + UNODA + UNICEF reiterated the call from the ICRC President and UN Secretary-General for parties to conflict to avoid the use of EW with WEA in populated areas, warning that anything less would fall short of providing civilian protection.
- Panama argued that Section 3, and especially 3.3, should start with a strong commitment based on a presumption of non-use of EWIPA, in line with prior ICRC and UNSG comments.
- WILPF echoed key points from Mexico + Chile, Ecuador, Panama, and Peru, arguing that 3.3 must be stronger to prevent human suffering and environmental degradation caused by the use of EWIPA.
- WILPF and INEW argued for a commitment to “stop” or “end” the use of EWIPA with WAE, saying it is imperative to promote non-use rather than normalising the use of these weapons.
- Palestine echoed WILPF’s points, suggesting that “restricting” should be changed to “ending”—or at least to “avoiding”—the use of EWIPA and should establish a clear presumption against the use of EWIPA.
- The ICRC also echoed these key points, arguing that an avoidance policy is the appropriate commitment for this declaration.
- Norway raised specific concerns with the phrase “restrict use,” as it may imply a commitment to reduce use *relative to* existing/prior use. Norway suggested

replacing “restrict” with “minimise,” which clearly asks for as little use of EWIPA as possible. In addition, Norway noted that 3.3’s most important added value is in developing policies and practices to avoid civilian harm, for which IHL already “provides a solid toolbox”.

- Italy had generally positive feedback on the text of Section 3, but suggested referencing measures that already exist to take all feasible precautions and to avoid and in any event minimise civilian harm, including battle damage assessments and strict adherence to IHL. In addition, Italy suggested that the text of the declaration better reflect the importance of cooperation and the exchange of expertise. Switzerland echoed Italy on these points; InterAction and Article 36 also echoed the point on after-action reports/battle damage assessments.

Proposals to weaken the core commitment

- Belgium argued that the reference in 3.3 to avoid the use of EW with WAE would “hinder operational planning”.
- Colombia, Spain, Sweden, and the UK raised concerns that the current wording (“restrict”) could be interpreted as requiring states to take precautions that go beyond existing IHL. To mitigate this concern, Sweden suggested adding “in accordance with IHL” to 3.3. The Republic of Korea (ROK) supported the Swedish proposal.
- Canada made similar suggestions, suggesting that 3.2 be modified to clarify that the commitment does not go beyond IHL by deleting “and” (after “IHL”) and replacing it with “including on the appropriate measures....”
- The Netherlands raised concerns about ambiguity in 3.3, and suggested rephrasing the paragraph to focus on avoiding and minimising civilian harm *when using EWIPA with WAE*, rather than stating a policy regarding when (not) to use those weapons. ROK supported these comments.
- The US argued that, in 3.3, “avoid” should be changed to “mitigate,” as harm cannot always be avoided.
- The US also argued for deleting two phrases in 3.3: (1) “by restricting the use of explosive weapons with wide area effects” and (2) “when the effects may be expected to extend beyond a military objective.” The US reiterated its position that these commitments would stigmatise EW when, it asserted, EW can be used to protect civilians.
- France suggested new specific language: “Ensure that our armed forces adopt and implement a range of policies and practices to avoid civilian harm in accordance with IHL, including by refraining from using EWIPA when it may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which will be excessive in relation to the concrete and direct military advantage anticipated.” Belgium proposed essentially identical language. ROK expressed support.
- Germany proposed language closer to the draft text of 3.3, but with (1) greater specificity as to the harms that must be considered, including reverberating effects, and (2) language that tied 3.3 more closely to IHL: “... to avoid civilian harm, including by restricting the use of EWIPA with WAE, when the effects, including foreseeable reverberating effects, would cause civilian damage that would be excessive in relation to the concrete and direct military advantage anticipated.”

- Israel argued that this should be a “high-level declaration,” and that any specificity must be clearly within the parameters of existing law. Israel raised concerns that the current wording of 3.3 introduced legal standards that do not exist in IHL by conflating distinction and proportionality. It suggested: “... ensure that our armed forces adopt and implement a range of policies and practices to avoid indiscriminate attacks and avoid incidental loss of civilian life [and rest of Israel’s phrase to replace “civilian harm”] which could be disproportionate relative to the military advantage anticipated.”
- Canada similarly argued that 3.3 does not accurately reflect proportionality as defined in IHL and proposed the following language. It suggested: “Ensure ... to avoid civilian harm, including by restricting the use of EWIPA with WAE, when the *incidental effects to the civilian population or civilian objects are excessive in relation to the military advantage anticipated, and to ensure no indiscriminate use of explosive weapons in populated areas.*”
- Japan suggested including the word “minimise” in 3.3—but with respect to civilian harm (rather than the use of EWIPA).

Non-state armed groups (NSAGs)

A handful of delegations made comments on the ways in which NSAGs should be referred in the declaration.

- The Arab Group said any reference to NSAGs should be confined to IHL, without prejudice of self-determination and resistance to foreign occupation and aggression.
- Germany said the preamble should call on NSAGs to adhere to IHL.
- Turkey said a distinction should be made between NSAGs and terrorist groups and said that terrorist groups shouldn’t be considered as party to armed conflict. With this in mind, Turkey repeatedly suggested deleting references to NSAGs entirely, including in 2.2.
- Belgium argued that the reference to avoid the use of EW with WAE will not have an impact on NSAGs that are responsible for most violations of IHL.
- Japan stressed the importance of ensuring that NSAGs comply with international law, including IHL.
- Germany suggested adding the phrase “combatants, fighters, and civilians” in 2.3.
- Israel repeatedly stressed the importance of referencing the obligations of “all parties to armed conflict.” The ICRC and the Netherlands supported Israel’s statements on this point in Section 2.
- Lithuania argued that the declaration must make clear that IHL applies equally to all parties in armed conflicts, included NSAGs, and that NSAGs pose the greatest challenge to IHL implementation.

Gender

The use of EWIPA is known to have gendered impacts, wherein people are differentially affected by the direct, indirect, and reverberating effects of explosive weapons use based

on sex, gender, and sexual orientation. The declaration references gendered impacts, but several participants urged further elaboration of this issue.

- Many participants welcomed the reference to gender in 1.8, which calls for the empowerment of women and girls and encourages further research into the potential gendered impacts of the use of EW with WAE.
- Panama, MAC, WILPF, and others argued that “potential” should be deleted as the use of EW with WAE has documented gendered impacts.
- Most of those welcoming gender references called for a separate para on the gender dimension of EWIPA, including Canada, Italy, Mexico + Chile, and Spain. Colombia, Panama, Peru, ICRC, MAC, and WILPF supported this and WILPF stressed that references to gender should be inclusive.
- Canada also specifically suggested adding to the victim assistance provision in 4.4 “participatory, gender-sensitive” to better reflect and address diverse needs. MAC supported this.
- Belgium suggested to replace gendered impacts of weapons from the use of EW with WAE with “of urban warfare”.
- While it welcomed the reference to women and girls in 1.8, the Holy See would like to see references to “gender” deleted to focus on impacts of all those affected.
- Poland praised the inclusion of “women and girls” in the declaration, but noted that it would prefer if the text referred to *all* affected groups—including elderly people, disabled people, boys, etc.

Data collection

Data collection is addressed in various parts of the declaration—most notably in 1.7 and 4.2. In general, participants agreed on the importance of data collection, and most participants acknowledged the value and importance of collected disaggregated data along a number of axes. Some states raised concerns regarding the feasibility of collecting disaggregated data, as well as regarding the appropriateness of sharing data under certain circumstances.

- UNOCHA + UNICEF + UNODA suggested including a reference to SDG 16.1.2 in 1.7 on data collection. Italy welcomed this.
- Turkey said that only the UN and UN agencies should be assigned to disseminate data.
- Israel said that disaggregated data collection isn’t always feasible, and therefore called for the removal of “disaggregated” to be replaced with “appropriate data collection” in 1.7 and 4.2. France echoed these remarks with respect to 4.2, suggesting adding “where possible and appropriate” at the start of the paragraph. Colombia reiterated the French suggestion. The US also stressed the importance that data collection be “operationally feasible”.
- Netherlands and Italy made similar remarks, arguing that data collection must be “realistic and implementable”.
- Belgium said that the current language might imply new obligations for states and that it doesn’t sufficiently consider confidentiality of data and stressed that there is no obligation under IHL to share data.

- In contrast, Chile + Mexico asked for references to sharing data “where appropriate” be deleted, arguing that data sharing is always appropriate.
- While Austria acknowledged that data collection may be sometimes challenging, and support the addition “as appropriate,” it emphasised that data collection should be undertaken at the greatest disaggregated level.
- Chile + Mexico, Panama, INEW, Airwars, Mines Advisory Group (MAG), PAX, WILPF, and others emphasised the importance of disaggregated data collection by sex, ability and age, type of weapon, location, and other factors.
- WILPF said that tracking civilian harm can also help to better understand the harm and responses, not just to inform “mitigation strategies,” as currently suggested.
- WILPF observed that data collection and sharing promote transparency and will also help states to implement arms embargoes and conduct arms exports risk assessments.
- Malaysia echoed the importance of strengthening data collection.
- The Holy See suggested that, in both Section 1 and Section 4, language be added to broaden the scope of harm accounted for when collecting data. In 4.2, for example, the Holy See suggested the following language: “... involving the use of EW, as well as their impacts on schools, hospitals, places of worship, and other critical civilian infrastructure.” Palestine and Austria echoed this suggestion.
- Palestine called for data collection on reverberating effects and types of weapons used. It also suggested disaggregation by disability status.
- Humanity & Inclusion stressed that data should be collected and shared, and disaggregated by sex, age, and disability status.
- Palestine said the widest possible sharing of data should be encouraged, so “where appropriate” in Section 1 and “where possible and appropriate” in Section 4 should be removed. Panama echoed this suggestion. Similarly, MAC and Ecuador suggested deleting “where possible” in 4.2, as data is crucial to understanding impacts and providing life-saving services.
- Colombia stressed the difficulty of collecting data during conflict and welcomed the suggestion to add “where possible” to 1.7 to mitigate this concern.
- The Center for Civilians in Conflict (CIVIC) recommended strengthening language in 1.7 to ensure that militaries’ efforts to track civilian casualties are supplemented by information collected by media and NGOs, in order to allow for comprehensive analysis and the development of appropriate remedial measures. Airwars raised related points in discussion Part B, arguing that data collection by many actors is crucial to understanding and therefore avoiding civilian harm.
- InterAction commented on the importance that data be collected and continuously fed back into internal decision-making processes and suggested adding language to that effect in 4.2.

Victim assistance (VA)

In general, participants spoke in favour of a strong and clear provision on victim assistance (VA). Still, many participants noted that the current language on VA does not go far enough and is not nearly specific enough. Numerous states, as well as the ICRC, INEW, Humanity &

Inclusion, and others, made clear and specific recommendations for how to provide greater specificity and granularity to the VA commitments in Section 4.

- Germany welcomed the “strong call” for VA in 4.4 and stands ready to fund VA activities.
- Canada supports references to mental health and psychosocial support in 1.2 but said these should be moved to end of para.
- Humanity & Inclusion (HI) made clear and compelling arguments related to the need for greater specificity on VA—and for clearer obligations (rather than voluntary commitments). HI reiterated many of the comments it has made in the past, including that “victims” include many parties (those injured, survivors, family members, and affected communities), that the declaration must establish an inclusive framework of VA obligations, and that it must clearly define what must be included in VA efforts.
- Uruguay argued that Section 4 would benefit from much more detail on assistance during and after armed conflict. In particular, Uruguay suggested mentions of special assistance for children, women, and other vulnerable groups, with a focus on social reintegration. Chile + Mexico echoed these comments, pointing to other international legal efforts that have taken into account such differences and discussed VA with greater specificity as to the type and scope of measures required. In addition, Uruguay also suggested that “make every effort to assist” be replaced with “ensure assistance is provided.” Panama echoed this sentiment, suggesting that states should do the utmost to ensure that assistance is provided.
- The Holy See echoed these concerns, noting that for a declaration focused on protecting civilians, 4.4 is “quite generic and weak”. Palestine made similar comments and pointed to HI’s prior suggestions on VA. Austria supported greater specificity on VA as well, referring to the current drafting as reflecting a “minimum threshold”.
- Airwars suggested adding language that would set common, minimum standards for VA. InterAction made similar comments, noting the importance of addressing the range of measures that states should take to address and respond to civilian harm, including post-harm amends, redress, restitution, and reconstruction. InterAction also noted the importance of context-specific, accessible, and culturally appropriate assistance.
- Canada suggested adding to the VA provision in 4.4 “participatory, gender-sensitive” to better reflect and address diverse needs. MAC supported this.
- Namibia also argued that the VA provisions should be strengthened, by better defining VA, what assistance is needed, and taking into account families and others affected. South Africa, Malaysia, and Germany echoed Namibia’s arguments.
- Ecuador suggested making the VA provision more direct by deleting language such as “make every effort to”.
- Finland said it is important to take “all vulnerable groups” into account in the VA provision.
- Italy supported other proposals to add greater specificity to the VA provision, as did the ICRC and MAC.
- France spoke in favour of the VA provision in 4.4, but suggested adding “in accordance with relevant IHL commitments” at the end of the paragraph.

- The US suggested limiting 4.4 by removing “every.” In addition, the US suggested removing references to disabled persons and replacing them with references to “vulnerable persons”.
- MAC also noted the importance of risk education to the protection of civilians, suggested it be added in 3.5. Other attendees, including Panama, echoed this proposal.
- Many participants, including Chile + Mexico and the Holy See, suggested removing 4.4’s reference to “post-conflict stabilisation.”

Military practices and armed forces

Throughout the declaration there are references to the conduct of militaries and armed forces. Participants provided a few comments on existing practice, with most urging language that indicates there is room for improvement while a few wanted current conduct to be casted in a favourable light, despite the catastrophic harm to civilians.

- Germany said sharing military practices is essential to reducing civilian harm.
- Austria made a textual proposal that reflects the fact that many militaries do have sophisticated policies but that the realities in the battlefield show that further improvements are necessary.
- The US argued that if the PD promoted a broad range of practical measures, it could yield immediate and concrete results to strengthen support for civilians.
- INEW warned against overstating the military’s effecting of military policies and said that it should read “some” instead of “many” in 1.6.
- Switzerland suggested replacing “mitigate” with “avoid” in 1.6.
- Several participants, including Mexico + Chile, stressed the importance that militaries be given not only training, but also the *means* to conduct hostilities in PA in a way that minimizes civilian harm in 3.2 and 3.4.
- CIVIC reiterated this sentiment, as did the ICRC and Belgium.
- Others, such as InterAction, touched on related points, arguing for the inclusion of language around “adequate preparation and planning before the conduct of hostilities to anticipate and minimize civilian harm.”
- With respect to 3.4, New Zealand suggested that states should not simply commit to “take into account” the harmful effects of explosive weapons, but rather should make every effort to limit that harm. Ecuador, INEW, and Palestine echoed this point, suggesting that “take into account” is too weak.

International cooperation

In discussions on Section 4, most participants spoke clearly in favor of international cooperation—and specifically inclusive, transparent cooperation—in carrying out the commitments and work set out in the declaration.

- France spoke in favour of international cooperation, but suggested references to such cooperation in 4.1 be qualified with “where appropriate,” given the ambiguity of the phrase “other relevant stakeholders”.

- New Zealand and Austria spoke in favour of inclusive international cooperation that goes beyond military-to-military exchanges and consistently reserves space for civil society actors.
- Similarly, Chile + Mexico spoke in favour of international cooperation and stressed the importance that those cooperative efforts remain open and inclusive.
- Project Ploughshares + SEHLAC spoke to the importance of an implementation process that has high standards of inclusivity, transparency, and regularity. Panama echoed this point and suggested that “relevant” be removed before “stakeholders”.
- Canada specifically suggested referring to civil society “at all levels” in 4.5, to reflect the importance of local and national stakeholders in addition to international ones and to emphasize keeping civilians and communities at the center of the work.
- Turkey, on the other hand, was wary of generic references to “other relevant stakeholders” in 4.1, asking for greater specificity on who or what would be included.
- Like Turkey, Israel raised concerns about the inclusion of “other relevant stakeholders” in 4.1, suggesting that 4.1 should focus *only* on cooperation among armed forces. Relatedly, Colombia asked for greater clarity on which stakeholders would be included in the efforts outlined in 4.1.

References to instruments, processes, and stakeholders

Some participants called for the political declaration to reference other instruments and processes as well as specific stakeholders.

- Many participants welcomed the references to the role of United Nations agencies, the ICRC, and civil society organisations in addressing the use of EWIPA, and suggested adding greater reference to that work.
- Various participants, such as Austria, Uruguay, and UNOCHA + UNICEF + UNODA suggested including the UNSG’s calls to avoid the use of EW with WAE, including through his joint appeal with the ICRC’s president.
- Others, including Mexico + Chile, Panama, and Uruguay, highlighted the UNSG’s reports on the protection of civilians, noting that they have played an important role in raising awareness around this issue and documenting harm.
- Similarly, several participants, including Austria, Mexico + Chile, Panama, Peru, Uruguay, UNOCHA + UNICEF + UNODA, recommended highlighting regional and similar efforts to address this issue, including the Maputo and Santiago communiqués, the 2019 Vienna Conference on Protecting Civilians, and recent EWIPA-focused seminars hosted by Germany.
- Humanity & Inclusion raised attention to a recent joint parliamentary call by 210 parliamentarians from France and Germany requesting a strong PD that calls on avoiding the use of EW with WAE in populated areas.
- Palestine welcomed proposals to recognise efforts of civil society organisations and UN entities, including UNIDIR, in addition to existing references to the UN Security Council.

- Some participants called for the inclusion of specific UN Security Council resolutions in 2.4. Save the Children, for example, advocated for a reference in 2.4 to UNSCR 1261.
- Switzerland and Italy said that Section I should reference other types of explosive weapons, including mines and ERW. Italy said while these types of explosive weapons are covered by other conventions, it's not a problem that there's an overlap, and called on states that haven't yet done so to join the relevant conventions.

Follow-up process

Many participants spoke about the importance of the follow-up to this declaration, with the vast majority speaking clearly in favour of a regular and inclusive follow-up process once the declaration is finalised and signed. That said, there was some disagreement as to whether the follow-up process should review states' work to implement the declaration itself or only on states' efforts to uphold and further compliance with IHL.

- New Zealand spoke about the importance of any and all follow-up processes retaining inclusivity toward and participation of civil society organizations, as Ireland has done throughout the consultations process.
- Austria, Canada, Chile + Mexico, Italy, Palestine, Peru, Switzerland, UNOCHA + UNODA + UNICEF, ICRC, INEW, and Airwars all clearly echoed this point, calling for an open, transparent, and inclusive follow-up process.
- Project Ploughshares + SEHLAC spoke to the importance of an implementation framework that has high standards of inclusivity, transparency, and regularity. They also advocated for greater specificity in 4.6 regarding the structure and implications of the follow-up process.
- Germany spoke to the importance of a follow-up process in operationalising the commitments undertaken in the declaration.
- The Netherlands and Sweden suggested that the follow-up process/review mechanism must be voluntary, and so the language of 4.6 should read, "Meet regularly on a voluntary and informal basis...."
- France spoke in support of the importance of the follow-up process, including the usefulness of that process in reviewing the declaration itself, the exchange of good practices, and improved implementation of IHL.
- Chile + Mexico, as well as Palestine and Panama, suggested greater specificity regarding the follow-up process and its purpose, which should be to review the humanitarian consequences of the use of EW and assess the operationalisation and universalisation of the declaration—not to simply review compliance with IHL.
- Peru also requested greater specificity regarding the follow-up process, and urged that the declaration specify the schedule of meetings (i.e. "annually" or "biennially" rather than simply "regularly"). Norway also spoke to its support for a regular schedule of meetings to ensure the declaration remains relevant. Palestine spoke on this topic, as well, specifically suggesting annual meetings.
- Switzerland stressed the importance of ensuring that the review process is adequate to meet the needs of the declaration.

- Several participants, including the Netherlands, Norway, and Sweden, raised concerns regarding the inclusion of the “working group” proposed in the second half of 4.6, though they did not object to the actual subject matter or mandate of such a group—just its inclusion in the declaration and as part of the declaration’s follow-up mechanism.
- Despite liking the idea of the working group, France suggested it be explicitly informal.
- Colombia spoke to the importance of greater clarity regarding the level, status, and composition of the review process, and stressed that it must be a “positive” process.
- Israel suggested significantly softened language regarding the follow-up process, specifically objecting to any follow-up process that would serve as a review procedure looking at states’ compliance with IHL. It suggested the following language: “Explore the possibility to meet on a regular basis to discuss challenges in the implementation of IHL by all parties in the spirit of this declaration, and any relevant additional measures that may need to be taken in order to improve compliance with IHL and strengthen the protection of civilians and civilian objects in urban warfare. For example, a working group of interested states could agree to a baseline composition of good practice, which could form the basis for structured military-to-military exchanges, workshops, and seminars.”
- Unlike other participants, the US specifically spoke *against* a review mechanism, and Spain questioned the utility of a standalone follow-up process, suggesting instead that it be embedded within an existing framework.