



# A Commitment to Civilians

## Precedent for a Political Declaration on Explosive Weapons in Populated Areas

November 2019

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## Summary and Recommendations

States are currently engaged in a political process to address the consequences of using explosive weapons in populated areas. That process was launched in October 2019 when more than 130 states gathered in Austria for the Vienna Conference on the Protection of Civilians in Urban Warfare.<sup>1</sup> Over the coming months, states will convene in Geneva to negotiate the text of a political declaration to reduce the civilian harm caused by the use of explosive weapons in populated areas, also known as EWIPA.

Political declarations are documents in which states commit to achieving political goals through individual and coordinated action. Although not legally binding, these political commitments carry significant weight. They outline standards for state conduct and clarify existing international law. They shape state behavior and advance a common goal.

The current process toward a political declaration aims to address the use of explosive weapons in populated areas, particularly weapons with wide area effects. When explosive weapons are used in populated areas, they cause immediate and long-term harm to the civilian population and civilian infrastructure.<sup>2</sup> In particular, the use of EWIPA kills and injures large numbers of civilians and causes psychological harm. Hundreds of thousands of civilians across almost 120 countries have been killed or injured by explosive weapons in the past decade alone, and 90 percent of those civilian casualties occurred in populated areas.<sup>3</sup> Reverberating effects include damage to critical infrastructure and displacement of the local population, among other adverse impacts.<sup>4</sup>

To inform the content of a new political declaration, Human Rights Watch and Harvard Law School's International Human Rights Clinic have conducted a study of existing declarations. Focusing on political declarations related to the conduct and consequences

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<sup>1</sup> "Vienna Conference on Protecting Civilians in Urban Warfare," <https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/conventional-arms/explosive-weapons-in-populated-areas/protecting-civilians-in-urban-warfare/protecting-civilians-in-urban-warfare/> (accessed November 4, 2019).

<sup>2</sup> "Unacceptable Harm," International Network on Explosive Weapons (INEW), <http://www.inew.org/unacceptable-harm/> (accessed November 4, 2019).

<sup>3</sup> INEW, "Protecting Civilians from the Use of Explosive Weapons in Populated Areas," October 2019, <http://www.inew.org/wp-content/uploads/2019/10/INEW-briefing-on-protecting-civilians-EWIPA-UNGA2019.pdf> (accessed November 4, 2019), p. 1.

<sup>4</sup> *Ibid.*

of armed conflict (see appendix for a complete list), they assessed the structure and components of these documents. This report identifies seven key components that are common to armed conflict-related political declarations: an introduction identifying the problem of concern and six categories of commitments.

This report examines each of these components. It describes what the component entails; lays out the precedent, found in existing conflict-related declarations, for including it; discusses how that component could be applied in the forthcoming political declaration on the use of EWIPA; and explains the value of the component in bolstering political declarations and states' movement toward common goals. The commitments proposed by the International Network on Explosive Weapons (INEW), a civil society coalition co-founded by Human Rights Watch and other nongovernmental organizations (NGOs) in 2011, parallel the structure identified in this report.<sup>5</sup>

Based on their study, Human Rights Watch and the Harvard Law School International Human Rights Clinic recommend that a political declaration on the use of EWIPA draw on the model of previous conflict-related declarations and include the following components:

- An introductory section identifying the problem at hand and situating it in the context of existing international law and parallel efforts to address the issue;
- A general commitment to address the harm caused by the use of EWIPA by stopping the use of explosive weapons with wide area effects in populated areas; and
- Specific commitments within each of the following categories:
  - Adoption of practical measures that concretely address EWIPA-related harms;
  - Assistance for victims of past and future explosive weapons use;
  - Adoption and promulgation of laws and policies to prevent and remediate the harm caused by explosive weapons;
  - Gathering and sharing of disaggregated data to track the problems associated with use of EWIPA and progress toward addressing them; and
  - Establishment of a framework for continued engagement around the use of EWIPA.<sup>6</sup>

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<sup>5</sup> "About INEW," <http://www.inew.org/about-inew/> (accessed November 4, 2019).

<sup>6</sup> Each of the five specific commitments represents a category of commitments rather than a single commitment. For example, "Adoption of practical measures" might include three, five, or even ten separate, concrete measures that states commit to adopt in pursuing the general commitment to address the problem.

# Introductory Section

## Description and Precedent

Each of the armed conflict-related political declarations reviewed for this report includes an introductory section that provides context for the declaration and that is followed by a series of commitments. The introduction usually includes a statement of the problem the declaration aims to alleviate and refers to existing international law and parallel efforts to address the problem.

The problem statements lay out the key issues the declarations seek to address and why those issues matter. The 2010 Oslo Commitments on Armed Violence, for example, begin by identifying armed violence as “a fundamental challenge to our common humanitarian and development goals.”<sup>7</sup> The 2013 Declaration of Commitment to End Sexual Violence in Conflict describes the “widespread use of rape and other forms of sexual violence in armed conflicts around the world [as] one of the greatest, most persistent and most neglected injustices.”<sup>8</sup> The 2015 Safe Schools Declaration highlights the “urgent humanitarian, development and wider social challenges” presented by the “impact of armed conflict on education,” and then elaborates on the many ways that the failure to protect educational infrastructure during war adversely affects children.<sup>9</sup>

Many political declarations dealing with armed conflict also cite widely endorsed treaties, especially the Geneva and Hague Conventions, in their introductions. These declarations tend to invoke international law in three different ways. First, they frequently highlight how the practice of concern in the declaration is already violating international law, and in so doing, bolster the case for a response. The 2013 Declaration of Commitment to End Sexual Violence in Conflict, for example, notes that “rape and other forms of serious sexual violence in armed conflict ... constitute grave breaches of the Geneva Conventions and

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<sup>7</sup> Oslo Commitments on Armed Violence, 2010, <http://www.sehlaac.org/wp-content/uploads/2012/06/98130251-Oslo-Commitments-on-Armed-Violence.pdf> (accessed November 4, 2019), p. 2.

<sup>8</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 1.

<sup>9</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019), para. 1.

their first Protocol.”<sup>10</sup> Second, declarations sometimes refer to international law in order to clarify the legal context behind a particular issue. The 2007 Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups recall “all the international instruments relevant to the prevention of recruitment or use of children in armed conflict, their protection and reintegration, and to the fight against impunity for violators of children’s rights, as well as relevant regional instruments.”<sup>11</sup> Finally, declarations encourage states to sign onto other relevant legal instruments. The 2007 Paris Commitments, for example, stress in particular the importance of ratifying the Convention on the Rights of the Child.<sup>12</sup>

Declarations also frequently note parallel efforts that advance the same objectives. The 2015 Safe Schools Declaration, for example, welcomes the non-binding Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, which “draw on existing good practice” and “provide guidance” to reduce the impact of armed conflict on education.<sup>13</sup> That declaration additionally “commends” other international bodies for their work on the topic, notably the United Nations for monitoring the effects of armed violence on education and children, and recognizes the importance of two UN Security Council resolutions that urge states to protect children and their educational facilities during armed conflict.<sup>14</sup>

## Application to an EWIPA Declaration

A problem statement on the use of EWIPA, especially those with wide area effects, should highlight the documented pattern of harm to civilians and civilian objects. In particular, the problem statement should spotlight the high incidence of civilian death and injury, infliction of psychological distress, damage to essential infrastructure, interference with health care and education, generation of displacement on a large scale, degradation of the

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<sup>10</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 1.

<sup>11</sup> Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, 2007, [https://childrenandarmedconflict.un.org/publications/ParisCommitments\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisCommitments_EN.pdf) (accessed November 5, 2019), p. 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019), para. 6 (citing the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf) (accessed November 15, 2019)).

<sup>14</sup> *Ibid.*, para. 5.

environment, denial of humanitarian access, and contamination of territory with explosive remnants of war.<sup>15</sup> This list would impress upon states the grave harms caused by the use of explosive weapons, especially those with wide area effects, in populated areas and the need for a declaration to increase protections for civilians.

An EWIPA political declaration should also include references to existing international law. International humanitarian law requires parties to a conflict to distinguish between civilians and combatants and prohibits the infliction of disproportionate harm.<sup>16</sup> As the International Committee for the Red Cross (ICRC) has noted, the use of explosive weapons with wide area effects in populated areas, which is a “major cause of harm to civilians and of disruption of services essential for their survival,” is “very likely to have indiscriminate effects” and to violate international humanitarian law.<sup>17</sup> Such a reference to existing law would underscore the problem of EWIPA and provide legal grounding for the declaration.

A political declaration could also note parallel efforts to recognize and address the problem of EWIPA. In particular, it could cite the UN Secretary-General’s annual protection of civilian reports and the recent Agenda for Disarmament, both of which recognize the harm caused by the use of EWIPA.<sup>18</sup> The latter also calls for development of a political declaration and “new efforts to rein in the use of explosive weapons in populated areas,

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<sup>15</sup> These harms caused by the use of explosive weapons in populated areas are widely recognized. See, for example, INEW, “A Declaration to Prevent Harm from the Use of Explosive Weapons in Populated Areas,” September 2019, <http://www.inew.org/wp-content/uploads/2019/09/A-declaration-to-prevent-harm-Sept-2019-2.pdf> (accessed November 5, 2019). See also INEW, “Elements for a Political Declaration: Vienna Conference on the Protection of Civilians in Urban Warfare,” October 1, 2019, <http://www.inew.org/wp-content/uploads/2019/10/Elements-of-a-declaration.pdf> (accessed November 5, 2019).

<sup>16</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978, arts. 48, 51, 52, 57, and 58; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, art. 13.

<sup>17</sup> “Explosive Weapons in Populated Areas,” International Committee of the Red Cross (ICRC), <https://www.icrc.org/en/explosive-weapons-populated-areas> (accessed October 25, 2019). Such a reference would be consistent with the first of the three types of reference to international law, as laid out above, i.e., references that highlight how international law is already being violated by the practice of concern in the declaration.

<sup>18</sup> The UN Secretary-General began addressing EWIPA in his annual protection of civilians in armed conflict reports in 2009 and has continued to do so almost every year since then. See, for example, “Report of the Secretary-General on the Protection of Civilians in Armed Conflict,” S/2009/277, May 29, 2009, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20S2009277.pdf> (accessed November 14, 2019), para. 36; “Report of the Secretary-General on the Protection of Civilians in Armed Conflict,” S/2018/462, May 14, 2018, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2018\\_462.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_462.pdf) (accessed November 14, 2019), paras. 5, 11, 41–45, 58, annex. See also United Nations Office for Disarmament Affairs (UNODA), *Securing Our Common Future: An Agenda for Disarmament* (New York: United Nations Publications, 2018), <https://www.un.org/disarmament/sg-agenda/en/> (accessed November 14, 2019), p. 34.

through common standards, the collection of data on collateral harm and the sharing of policy and practice.”<sup>19</sup>

## Value of Introductory Sections

The introduction of a political declaration provides a touchstone for the general and specific commitments that follow by describing the problem at issue and placing it in a legal context. The introduction allows states to unite around clear and common concerns while setting the stage for the work they agree to do separately and together in furthering their shared objective. The problem statement in particular can provide extra motivation for states to endorse and robustly implement the declaration. Finally, references to existing international law and parallel efforts bolster the political declaration by providing a strong grounding in states’ pre-existing commitments and situating new commitments in a broader context.

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<sup>19</sup> UNODA, *Securing Our Common Future: An Agenda For Disarmament*, pp. x, 36.

# General Commitment to Address the Problem

## Description and Precedent

Political declarations often include a general commitment to address the problem identified in the introduction. The broadest commitment of a declaration, it presents the document's primary objective. In so doing, it can help frame the remaining, more specific commitments that seek to advance that goal. General commitments sometimes appear as part of the introduction, and sometimes within the list of commitments that follows.<sup>20</sup>

General commitments in conflict-related political declarations take a variety of different forms. For example, countries can commit to “end” a problem, “spare no effort to end” a problem, or “promote” solutions to a problem.<sup>21</sup> In the 2006 Geneva Declaration on Armed Violence and Development, states resolve to “reduce armed violence and its negative impact on socio-economic and human development.”<sup>22</sup> The 2017 Political Declaration on the Protection of Medical Care in Armed Conflict includes an overarching commitment to “take practical measures to enhance the protection of, and prevent acts of violence against, the medical and humanitarian personnel.”<sup>23</sup> The declaration goes on to enumerate such practical measures.

Sometimes these general commitments include multiple parts that elaborate on how states will achieve a broader aim. For instance, in the 2013 Declaration of Commitment to End Sexual Violence in Conflict, countries state that “[b]y working together, sharing our knowledge and our experience, mobilising resources and committing our global political

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<sup>20</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 2.

<sup>21</sup> See *ibid.* (“we are determined to end”); Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, 2007, [https://childrenandarmedconflict.un.org/publications/ParisCommitments\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisCommitments_EN.pdf) (accessed November 5, 2019), para. 1 (“[w]e commit ourselves ... [t]o spare no effort to end the unlawful recruitment or use of children by armed forces or groups in all regions of the world....”); Geneva Declaration on Armed Violence and Development, 2006, <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf>, (accessed November 5, 2019), p. 1 (“[w]e will ... promote conflict prevention, resolution and reconciliation, and support post-conflict peace-building and reconstruction”).

<sup>22</sup> Geneva Declaration on Armed Violence and Development, 2006, <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf> (accessed November 15, 2019), p. 1

<sup>23</sup> Political Declaration on the Protection of Medical Care in Armed Conflict, 2017, <https://onu.delegfrance.org/Protection-of-medical-and-humanitarian-personnel> (accessed November 5, 2019), p. 1.

will we are determined to end the use of rape and other forms of sexual violence as weapons of war.”<sup>24</sup>

## Application to an EWIPA Declaration

In an EWIPA declaration, states should commit to stop the use of explosive weapons with wide area effects in populated areas. Wide area effects, which exacerbate the harm caused by the use of EWIPA, are attributable to the inaccuracy of a weapon, a large blast radius, and/or the delivery of multiple munitions at the same time. While the exact wording remains to be determined, a commitment to “stop” the use of EWIPA with wide area effects would have the greatest humanitarian impact because of the strength of the language.

Another proposal on the table is a general commitment to “avoid” the practice. The so-called avoidance policy proposed by the ICRC relates to international humanitarian law’s principle of proportionality. That principle prohibits attacks in which the expected harm to civilians and civilian objects would be excessive compared to the anticipated military advantage.<sup>25</sup> The ICRC suggests that a commitment to “avoid” would create a presumption that the use of heavy explosive weapons in a populated area would cause disproportionate harm and be unlawful “unless sufficient mitigation measures are taken to limit the ... consequent risk of incidental civilian harm.”<sup>26</sup> Under this presumption, a state would have to demonstrate that it has taken sufficient measures to limit civilian harm in order to prove that the presumption against the use of EWIPA can be overcome.

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<sup>24</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 2.

<sup>25</sup> “Rule 14. Proportionality in Attack,” in ICRC, Customary International Humanitarian Law Database, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14) (accessed October 22, 2019). See also Protocol I, Article 51(5)(b).

<sup>26</sup> ICRC, “Addressing the Civilian Harm Caused by the Use of Explosive Weapons in Populated Areas: Non-Paper by the International Committee of the Red Cross (ICRC),” October 1, 2019, para. 6.

## Value of General Commitments

A strong general commitment can be the most critical pledge within a political declaration. The general commitment serves as a core mission statement and focuses the efforts of endorsing countries. It can also create cohesion among countries that endorse the declaration and agree to work toward a common objective. This commitment can further influence non-endorsing states and non-state actors by clarifying and crystallizing norms while generating stigma around unacceptable behavior.

# Adoption of Practical Measures

## Description and Precedent

Commitments to adopt practical measures identify specific, concrete steps that states agree to take to implement the general commitment or achieve the broader goals of the political declaration. These commitments are more precise and action oriented than a general commitment.

Because of their specificity, commitments to adopt practical measures vary widely depending on the problem a declaration targets. Some are directed at national programs designed to advance the declaration's objective. For example, the 2013 Declaration of Commitment to End Sexual Violence in Conflict commits states to “[e]nsur[ing] that sexual violence prevention and response efforts are prioritised and adequately funded.”<sup>27</sup> Other commitments regarding practical measures deal with state conduct. In the 2006 Declaration on Anti-Vehicle Mines, states pledged not to “use any anti-vehicle mine outside of a perimeter-marked area if that mine is not detectable.”<sup>28</sup>

Political declarations also commit states to take practical steps at the international level. For example, in the 2015 Safe Schools Declaration, states pledge “where in a position to do so, [to] provide and facilitate international cooperation and assistance to programmes working to prevent or respond to attacks on education.”<sup>29</sup>

## Application to an EWIPA Declaration

Commitments to adopt practical measures could take various forms in an EWIPA declaration. To prevent the harm caused by the use of EWIPA and implement the general commitment, they should encourage states to exchange best practices and update training and equipment, steps that would help improve civilian protection in urban warfare. To

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<sup>27</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 2.

<sup>28</sup> Declaration on Anti-Vehicle Mines, 2006, <https://undocs.org/pdf?symbol=en/CCW/CONF.III/WP.16> (accessed November 5, 2019), para. 2(i).

<sup>29</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019), p. 1.

remediate harm that has occurred, the commitments should call on states to sponsor protection measures that enable communities to better reduce harm on their own, support the timely clearance of areas contaminated by explosive remnants of war, and promote and ensure unimpeded access to inclusive humanitarian aid. At an international level, the commitments should encourage states to provide international cooperation and assistance.<sup>30</sup> These examples are just some of the practical commitments that states could include in an EWIPA declaration.

## Value of Adopting Practical Measures

Commitments to adopt practical measures identify critical action areas that are designed to address the overarching problem. These types of commitments supplement the broad general commitment by specifying action areas for states to prioritize when working to address the problem.

Enumerating concrete actions to be taken makes it easier for states to implement the political declaration in an effective and timely manner. Furthermore, given that progress toward the general goals can be harder to assess, these specific commitments provide metrics against which countries can judge their progress and the progress of others.

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<sup>30</sup> See INEW, “A Declaration to Prevent Harm from the Use of Explosive Weapons in Populated Areas,” September 2019. See also ICRC, “Addressing the Civilian Harm Caused by the Use of Explosive Weapons in Populated Areas: Non-Paper by the International Committee of the Red Cross (ICRC),” October 1, 2019.

# Victim Assistance

## Description and Precedent

Most political declarations related to armed conflict include commitments to assist victims harmed by the activities or weapons that are the focus of the declaration. Victim assistance encompasses a wide range of measures devoted to remediating ongoing human suffering regardless of when it was caused. In particular, it includes emergency and continuing medical care, physical rehabilitation, psychological and psycho-social support, measures to ensure the social and economic inclusion of survivors, and the adoption or adjustment of relevant laws and public policies supported by data collection and analysis.<sup>31</sup>

An integrated approach realizes victim assistance through wider development, human rights, and humanitarian efforts, in addition to specific initiatives aimed at addressing the needs of survivors.<sup>32</sup> To recognize the dignity and rights of victims, such an approach also requires meaningful inclusion of victims, non-discrimination, and sensitivity to age and gender.<sup>33</sup>

The concept of victim assistance originated and has been codified in disarmament treaties. The 1997 Mine Ban Treaty commits states parties to provide assistance for people harmed by a specific type of weapon in its preamble and its provision concerning international cooperation.<sup>34</sup> The 2003 Protocol V on Explosive Remnants of War to the

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<sup>31</sup> Humanity & Inclusion, “Implementing Victim Assistance in the Context of the Use of Explosive Weapons in Populated Areas in Syria,” October 22, 2018, [https://handicap-international.fr/sn\\_uploads/fck/TORsconsultantEXTERNAL13122018.docx](https://handicap-international.fr/sn_uploads/fck/TORsconsultantEXTERNAL13122018.docx). (accessed November 2, 2019), p. 3.

<sup>32</sup> Humanity & Inclusion, “Guidance on an Integrated Approach to Victim Assistance,” 2016 <http://www.clusterconvention.org/wp-content/uploads/2016/11/here.pdf> (accessed November 2, 2019). Incorporating victim assistance into a broader framework is crucial to the long-term success of the strategy. See Humanity & Inclusion, “Study: Victim Assistance in the Context of the Use of Explosive Weapons in Populated Areas,” August 2016, [http://blog.handicap-international.org/influenceandethics/wp-content/uploads/sites/4/2018/01/Study2016\\_victimassistance\\_newcharte\\_EN\\_WEB.pdf](http://blog.handicap-international.org/influenceandethics/wp-content/uploads/sites/4/2018/01/Study2016_victimassistance_newcharte_EN_WEB.pdf) (accessed November 2, 2019), p. 5.

<sup>33</sup> Harvard Law School International Human Rights Clinic, “Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons,” April 2018, <http://hrp.law.harvard.edu/wp-content/uploads/2018/04/Victim-assistance-short-4-8-18-final.pdf> (accessed November 2, 2019), p. 3. The rights-based approach, in contrast with a charity-based approach, draws on principles established in the Convention on the Rights of Persons with Disabilities and seeks to protect survivors from objectification. Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary* (Oxford: Oxford University Press, 2010), p. 55.

<sup>34</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, adopted September 18 1997, entered into force March 1, 1999, pmb., art. 6(3).

Convention on Conventional Weapons and the 2008 Convention on Cluster Munitions include articles fully dedicated to the needs of victims and their rights to receive assistance.<sup>35</sup>

Victim assistance has also been incorporated in many political declarations. For example, in the 2010 Oslo Commitments on Armed Violence, states committed to “[r]ecognise the rights of victims of armed violence in a non-discriminatory manner, including provision for their adequate care and rehabilitation, as well as their social and economic inclusion, in accordance with national laws and applicable international obligations.”<sup>36</sup> In the 2013 Declaration of Commitment to End Sexual Violence in Conflict, states committed to “[p]rovide better, more timely and comprehensive assistance and care, including health and psychosocial care that addresses the long-term consequences of sexual violence in conflict, to female, male and child victims and their families, including children born as the result of sexual violence.”<sup>37</sup>

In addition to the provision of services for critically injured individuals,<sup>38</sup> survivors, and indirect victims, victim assistance can include support for the rebuilding of public infrastructure and compensation for the loss of property and livelihoods.<sup>39</sup> For example, the 2015 Safe Schools Declaration includes a commitment to “support the re-establishment of educational facilities.”<sup>40</sup> Reconstruction of infrastructure sometimes falls under the umbrella of victim assistance, although it can also be treated as one of the practical measures discussed above.

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<sup>35</sup> Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons), adopted November 28, 2003, entered into force November 12, 2006, para. 8(2); Convention on Cluster Munitions, adopted May 30, 2008, entered into force August 1, 2010, art. 5.

<sup>36</sup> Oslo Commitments on Armed Violence, 2010, <http://www.sehla.org/wp-content/uploads/2012/06/98130251-Oslo-Commitments-on-Armed-Violence.pdf> (accessed November 4, 2019), p. 2.

<sup>37</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 2.

<sup>38</sup> These people are not yet medically stable and may either die or survive depending on the availability of emergency and ongoing medical services.

<sup>39</sup> See Humanity & Inclusion, “Study: Victim Assistance in the Context of the Use of Explosive Weapons in Populated Areas,” August 2016, [http://blog.handicap-international.org/influenceandethics/wp-content/uploads/sites/4/2018/01/Study2016\\_victimassistance\\_newcharte\\_EN\\_WEB.pdf](http://blog.handicap-international.org/influenceandethics/wp-content/uploads/sites/4/2018/01/Study2016_victimassistance_newcharte_EN_WEB.pdf) (accessed November 2, 2019).

<sup>40</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019), p. 1.

## Application to an EWIPA Declaration

A political declaration on EWIPA should include a commitment to recognize the rights of victims, including individuals, their families, and affected communities, and to provide them services. Humanity & Inclusion, an NGO with particular expertise in this area,<sup>41</sup> has recommended specifically that states, while upholding the principle of non-discrimination, should commit to ensuring that victims have their basic needs met; access to mainstream services, personal support, and disability-specific services; and assistance to compensate for the loss of their homes and/or livelihoods due to the use of explosive weapons.

Humanity & Inclusion also recommends complementary remedial commitments on reconstruction of public infrastructure, unimpeded access to principled and inclusive humanitarian aid, international cooperation and assistance, risk education, and the clearance of explosive remnants of war.<sup>42</sup> Integrated support for affected communities is especially important in the EWIPA context, where damage to infrastructure often has severe reverberating consequences.

## Value of Assisting Victims

Including a robust commitment to victim assistance addresses the needs and protects the rights of those most affected by the harm addressed in a political declaration. It is also key to ensuring a comprehensive and long-term response to the problem.

At the same time, a commitment to assist victims can bolster cooperation and support for affected states. Effective victim assistance often relies on the mobilization of both national and international resources. Countries experiencing violence related to armed conflict are not always well-positioned to respond quickly to the needs of victims within their borders. A commitment to support affected states with the provision of victim assistance helps bridge that gap and ensure that services reach those who need it most.

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<sup>41</sup> Humanity & Inclusion, formerly Handicap International, is an international NGO that works with disabled and vulnerable people to promote respect for their rights and dignity. See “Our Mission,” Humanity & Inclusion, <https://humanity-inclusion.org.uk/en/our-mission> (accessed November 4, 2019).

<sup>42</sup> Humanity & Inclusion, “Implementing Victim Assistance in the Context of the Use of Explosive Weapons in Populated Areas in Syria,” October 22, 2018, [https://handicap-international.fr/sn\\_uploads/fck/TORsconsultantEXTERNAL13122018.docx](https://handicap-international.fr/sn_uploads/fck/TORsconsultantEXTERNAL13122018.docx). (accessed November 2, 2019), p. 2.

# Adoption and Promulgation of Laws and Policies

## Description and Precedent

Political declarations usually include commitments to adopt and promulgate laws and policies. This kind of commitment can involve national or international measures, or both.<sup>43</sup>

Many armed conflict-related political declarations include commitments for endorsing states to take action at the national level, including by ensuring that domestic law and policy are consistent with pledges made in the declaration. For example, the 2017 Political Declaration on the Protection of Medical Care in Armed Conflict includes an agreement stating that “[endorsing states will review] national legislation, policies and procedures relevant to the protection of medical care in armed conflict.”<sup>44</sup> The 2013 G8 Declaration on Preventing Sexual Violence in Conflict includes a commitment for “[g]overnments [to] review the doctrine and training provided to their national military and police where appropriate to ensure that it includes training for appropriate personnel deployed to relevant theatres on the implications of rape and other forms of sexual violence in conflict and post-conflict situations.”<sup>45</sup> Similarly, in the 2013 Declaration of Commitment to End Sexual Violence in Conflict, states agree to “[e]nsure our national military and police doctrine and training is in accordance with international law so as to enable a more effective prevention and response to sexual violence in conflict.”<sup>46</sup>

Commitments on laws and policies can, and usually do, encourage action at the international level, such as by calling for the development of new international law. For

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<sup>43</sup> Commitments to adopt and promulgate laws and policies can resemble and overlap with commitments to establish a framework for continued engagement. For example, a political declaration might include a commitment to work toward a more binding international protocol associated with the declaration. Such a commitment could be framed either as a promulgation of the laws and policies of the declaration in that future binding protocol, or as an effort of states endorsing the declaration to continue engaging with the problem at hand, or as both.

<sup>44</sup> Political Declaration on the Protection of Medical Care in Armed Conflict, 2017, [https://onu.delegfrance.org/IMG/pdf/political\\_declaration\\_-\\_31\\_october\\_2017\\_-\\_protection\\_of\\_medical\\_care\\_in\\_armed\\_conflicts.pdf](https://onu.delegfrance.org/IMG/pdf/political_declaration_-_31_october_2017_-_protection_of_medical_care_in_armed_conflicts.pdf) (accessed November 4, 2019), p. 1.

<sup>45</sup> G8 Declaration on Preventing Sexual Violence in Conflict, 2013, <https://www.un.org/ruleoflaw/files/G8%20Declaration%20Sexual%20Violence%20in%20Conflict%20-%20April%202013.pdf> (accessed November 5, 2019), para. 12.

<sup>46</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 3.

example, in the 2006 Geneva Declaration on Armed Violence and Development, parties agree to “[promote] the development of further international instruments, including legally binding ones.”<sup>47</sup> In the 2006 Declaration on Cluster Munitions, states “call for an agreement” to “prohibit the development, production, stockpiling, transfer and use of cluster munitions that pose serious humanitarian hazards.”<sup>48</sup>

## Application to an EWIPA Declaration

In an EWIPA political declaration, commitments to adopt and promulgate laws and policies could include a number of different items. For example, the declaration should include a commitment that endorsing states will review and adapt their domestic military policies to ensure they are in line with the principles of the declaration. Similarly, it should include a commitment that endorsing states adopt legal and administrative measures to provide victim assistance. On the international level, the declaration could encourage the development of other international agreements or guidelines down the road.

## Value of Adopting and Promulgating Laws and Policies

There are numerous reasons to include commitments to adopt and promulgate laws and policies in a political declaration. Whether legally binding or not, international agreements are most effective when they are accompanied by national implementation measures. For example, agreeing to review and, if necessary, amend national military codes and policies can help ensure the most relevant actors have internalized the political declaration’s commitments. By encouraging the development of law and policy at the national level, this kind of commitment shows respect for state sovereignty. It acknowledges that states may know best how to tailor the measures of the declaration to fit their own national systems and circumstances.

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<sup>47</sup> Geneva Declaration on Armed Violence and Development, 2006, <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf>, (accessed November 5, 2019), p. 2.

<sup>48</sup> Declaration on Cluster Munitions, in Third Review Conference of High Contracting Parties to the Convention on Conventional Weapons, “Final Document: Part III,” CCW/CONF.III/11 (Part III), November 7-17, 2006, p. 41.

A commitment to adopt and promulgate laws and policies at the international level can also have benefits. It can lead to further development of international law or standards at a later stage. In the interim, it can build and bolster legal standards and norms, thus extending the commitment's impact beyond the states that endorse a particular declaration. By crystallizing international norms, such a commitment can influence the conduct of states that have not endorsed the declaration and non-state actors, including non-state armed groups that seek legitimacy on the international stage. In addition, civilian victims from non-endorsing states might benefit from international assistance or at least from the public recognition of the harm they suffered.

# Data Gathering and Sharing

## Description and Precedent

Armed conflict-related political declarations often include a commitment to support and improve the collection and sharing of data. Relevant data can include the number of casualties, disaggregated by sex, age, and ability, and the incidence of other types of harms. For example, endorsers of the 2013 Declaration of Commitment to End Sexual Violence in Conflict pledge to “[e]ncourage and improve the safe and ethical collection of data and evidence relating to acts of sexual violence committed in conflict, to inform national and international responses.”<sup>49</sup> In the 2010 Oslo Commitments on Armed Violence, states agree to “[m]easure and monitor the incidence and impact of armed violence at national and sub-national levels in a transparent way.”<sup>50</sup>

## Application to an EWIPA Declaration

In the context of EWIPA, a political declaration should include a commitment to undertake and support others in undertaking data gathering and reporting. The data collected should encompass the use of explosive weapons in populated areas, the type of weapon used, casualties, and the destruction of civilian infrastructure and housing.<sup>51</sup> Data on casualties should be sorted, in particular, by age, gender, and nature of injury.

Some states already collect data related to EWIPA use. For instance, states parties to Protocol V on Explosive Remnants of War to the Convention on Conventional Weapons are obligated to collect information on their own use of explosive ordnance in conflict.<sup>52</sup> More generally, states have a duty to gather data on the impact of particular weapons on civilians in order to comply with international humanitarian law. Without in any way

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<sup>49</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 3.

<sup>50</sup> Oslo Commitments on Armed Violence, 2010, <http://www.sehla.org/wp-content/uploads/2012/06/98130251-Oslo-Commitments-on-Armed-Violence.pdf> (accessed November 4, 2019), p. 1. In the same paragraph, states commit to “develop a set of targets and indicators to assess progress in efforts to achieve measurable reductions in armed violence.”

<sup>51</sup> Suggestions drawn from Action on Armed Violence, “Explosive Violence Monitor 2018,” May 2019, <https://aoav.org.uk/wp-content/uploads/2019/05/Explosive-Violence-Monitor-2018-v5.pdf> (accessed November 2, 2019).

<sup>52</sup> Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons), adopted November 28, 2003, entered into force November 12, 2006, art. 4.

supplanting or assuming this primary duty of states, NGOs also are sometimes involved in the collection of such data.<sup>53</sup>

## Value of Gathering and Sharing Data

Data collection can improve implementation of the declaration's other commitments. It helps assess the effectiveness of the declaration and what further steps could be taken to strengthen the content of and compliance with the commitment. Data may also inform the design and updating of relevant programs as needed. For example, detailed data can provide states with lessons for future operations, with the goal of mitigating civilian harm. If, as discussed below, states convene further meetings focused on the issue or on the declaration's implementation, it is particularly useful for states and supporting NGOs to have information on the declaration's effectiveness and progress toward achieving its goals.

Collection and publication of accurate information also benefits victims. It provides ongoing recognition of the harm victims experience. In so doing, it can honor survivors and bolster efforts to mitigate or remedy their suffering. Reliable data on the numbers of victims and their circumstances, as well as information about affected communities, further facilitates the provision of victim assistance, which is discussed above. In addition, by spotlighting ongoing problems, as well as progress spurred by the declaration, the data encourages more states to join a declaration.

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<sup>53</sup> For example, Action on Armed Violence currently tracks the global use of explosive weapons and the civilian casualties that result. Action on Armed Violence, "AAOV's Explosive Violence Monitor," <https://aoav.org.uk/explosiveviolence/> (accessed November 7, 2019).

Finally, a commitment to gathering and sharing data allows for monitoring of progress and promotes accountability among states. Monitoring sheds light on compliance, both with relevant existing international law and with the new political commitments in the declaration. The information gathered can then help hold states responsible for implementing their legal obligations and political commitments. For example, in the 2007 Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, the monitoring efforts that states commit to supporting are aimed at uncovering “violations of child rights in armed conflict, including the unlawful recruitment or use of children.”<sup>54</sup>

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<sup>54</sup> See Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, 2007, [https://childrenandarmedconflict.un.org/publications/ParisCommitments\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisCommitments_EN.pdf) (accessed November 5, 2019), para. 6.

# Establishment of a Framework for Continued Engagement

## Description and Precedent

Most political declarations include a commitment that endorsing states will continue engaging with the problem at hand. Such commitments often take the form of agreements to convene the group that negotiated the political declaration along with states that more recently endorsed the declaration.

These commitments can specify the regularity by which future meetings will occur, actual dates and/or locations for future meetings, the general need to reconvene, or any combination of these agreements. For example, the 2006 Geneva Declaration on Armed Violence and Development includes a commitment to “meet[] again no later than 2008 to assess our progress in achieving these goals.”<sup>55</sup> The 2015 Safe Schools Declaration includes a commitment to “[m]eet on a regular basis,”<sup>56</sup> while the 2016 Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles says that endorsers “are resolved to continue discussions.”<sup>57</sup>

Commitments that establish a framework for continued engagement frequently identify specific reasons why further work is necessary. The 2016 Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles, for example, highlights the need for states that have endorsed the declaration to keep international standards up to date with “the rapid development of UAV technology.”<sup>58</sup> The 2013 G8 Declaration on Preventing Sexual Violence in Conflict cites “a considered review of the implementation of the above commitments” as the rationale for continued engagement.<sup>59</sup> Similarly, the 2015 Safe Schools Declaration states that the purpose of meeting regularly in

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<sup>55</sup> Geneva Declaration on Armed Violence and Development, 2006, <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf> (accessed November 5, 2019), p. 2.

<sup>56</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019), p. 1.

<sup>57</sup> Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles, 2015, para. E <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm> (accessed November 5, 2019).

<sup>58</sup> Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles, 2015, <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm> (accessed November 5, 2019), para. E.

<sup>59</sup> G8 Declaration on Preventing Sexual Violence in Conflict, 2013, <https://www.un.org/ruleoflaw/files/G8%20Declaration%20Sexual%20Violence%20in%20Conflict%20-%20April%202013.pdf> (accessed November 5, 2019), para. 15.

the future is to “review the implementation of this declaration and the use of the [corresponding] guidelines.”<sup>60</sup> In the 2013 Declaration of Commitment to End Sexual Violence in Conflict, states agree to “[s]upport and encourage the development of the International Protocol on the documentation and investigation of sexual violence in conflict at national, regional and international levels, with a view to its conclusion in 2014.”<sup>61</sup>

## Application to an EWIPA Declaration

A political declaration on the use of explosive weapons should include a commitment for the states that are endorsing the declaration to meet again regularly. The commitment could also specify that discussions at these future meetings should focus on sharing information gathered, exchanging best practices, and determining what, if any, changes are necessary to strengthen implementation measures currently being undertaken. In particular, at these future meetings, states could analyze the ongoing use of explosive weapons and whether current measures associated with the declaration are sufficient.<sup>62</sup>

## Value of Establishing a Framework for Continued Engagement

Committing to establish a framework for continued engagement can be useful in several ways. First, such a commitment creates a framework for sharing ideas and information related to the declaration and its implementation. States can review the data gathered regarding the status of the problem being addressed and the progress made toward addressing it. This information can help states assess the adequacy of the political declaration and consider whether additional steps are needed. States can also exchange best practices and lessons learned regarding the operationalization of other commitments.

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<sup>60</sup> Safe Schools Declaration, 2015, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (accessed November 5, 2019).

<sup>61</sup> Declaration of Commitment to End Sexual Violence in Conflict, 2013, <https://www.mofa.go.jp/mofaj/files/000016524.pdf> (accessed November 4, 2019), p. 3.

<sup>62</sup> See, for example, INEW, “A Declaration to Prevent Harm from the Use of Explosive Weapons in Populated Areas,” September 2019 <http://www.inew.org/wp-content/uploads/2019/09/A-declaration-to-prevent-harm-Sept-2019-2.pdf> (accessed November 5, 2019) (calling for a commitment to “[b]uild[] a community of practice towards stronger civilian protection”). “A declaration should provide a basis for ongoing action and provide a framework for further discussions among states, international organisations and civil society in order to monitor the impact of explosive weapons in populated areas and further strengthen the protection of civilians in the future.” *Ibid*, p. 4.

Second, like the data-gathering commitment, a commitment to continue engagement can facilitate compliance monitoring and promote accountability. The prospect of regular meetings can motivate states that have endorsed the declaration to achieve certain goals before they report to their peers. These meetings provide an opportunity to determine which states may need international assistance in order to achieve their political commitments. Continued engagement also normalizes and reifies the principles laid out in the declaration.

Third, a commitment to engage gives states the opportunity to address issues that they did not have the time or political will to address during the declaration drafting period.

Fourth, this kind of commitment creates an opportunity for parties to foster relationships and build on the political declaration. For example, a plan to meet again can provide a forum for states that are interested in developing other agreements complementary to the declaration in the future.

## **Appendix**

### **Political Declarations Analyzed**

#### **Declaration of Commitment to End Sexual Violence in Conflict, 2013**

Declaration to end rape and sexual violence in armed conflict.

#### **Declaration on Anti-Vehicle Mines, 2006**

Declaration developed through the forum of the Convention on Conventional Weapons calling on governments to limit their use of anti-vehicle mines.

#### **Declaration on Cluster Munitions, 2006**

Declaration developed through the forum of the Convention on Conventional Weapons calling for an agreement to prohibit cluster munitions.

#### **G8 Declaration on Preventing Sexual Violence in Conflict, 2013**

Declaration in which G8 foreign ministers recognize the need to work together to end sexual violence in conflict.

#### **Geneva Declaration on Armed Violence and Development, 2006**

Declaration to curb the negative effects of armed violence on development.

#### **Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs), 2016**

Declaration identifying principles to ensure the responsible export and subsequent use of unmanned aerial vehicles (UAVs).

#### **Oslo Commitments on Armed Violence, 2010**

Declaration outlining measures to prevent and reduce armed violence.

#### **Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, 2007**

Declaration to end the recruitment and use of children by armed forces or armed groups.

**Political Declaration on the Protection of Medical Care in Armed Conflict, 2017**

Declaration to enhance protection of, and prevent acts of violence against, medical and humanitarian personnel.

**Safe Schools Declaration, 2015**

Declaration on preventing attacks on education during armed conflict, which includes endorsement of Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.