

The 2022 Political Declaration on the Use of Explosive Weapons in Populated Areas: A tool for protecting the environment in armed conflict?

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Abstract

In November 2022, eighty-three States endorsed the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas (Political Declaration). The Political Declaration is a new and significant development in the long-standing and ongoing efforts to protect civilians from the use of explosive weapons in populated areas – an issue which has been of growing concern for a number of states, the United Nations, the International Committee of the Red Cross and civil society for more than a decade.

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The use of explosive weapons in populated areas has been documented to result in widespread civilian deaths and injuries as well as longer-term harm to civilians resulting from damage to or the destruction of hospitals, water and sanitation systems and electrical power grids. Although less researched, the use of explosive weapons in populated areas also plays a prominent role in damaging and destroying the environment in situations of armed conflict.

This article examines the potential of the new Political Declaration for strengthening the protection of the environment. An express reference to the environment, and the impact of explosive weapons thereon, exists only in the Declaration's preamble, but the lack of express references to the environment in the Declaration's operative commitments does not mean it lacks potential as a tool for strengthening the protection of the environment. On the contrary, the preambular reference provides an important basis on which to argue that the armed forces of endorsing States must consider the protection of the environment in their efforts to implement a number of the Declaration's key operational commitments.

Keywords: explosive weapons in populated areas, Political Declaration on Explosive Weapons in Populated Areas, environment, protection of civilians.

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Introduction

On 18 November 2022, the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas¹ (Political Declaration) was formally endorsed by eighty-three States in Dublin, Ireland.² The Political Declaration is the culmination of almost three years of intergovernmental negotiations from November 2019 to June 2022, as well as more than a decade of advocacy by the United Nations (UN), the International Committee of the Red Cross (ICRC) and civil society organizations, represented in the International Network on Explosive Weapons (INEW). It sets new international standards for protecting civilians from the use of bombs, rockets, artillery and other explosive weapons in populated areas during situations of armed conflict.

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- 1 *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas*, 18 November 2022 (Political Declaration), available at: www.dfa.ie/our-role-policies/international-priorities/peace-and-security/ewipa-consultations/ (all internet references were accessed in June 2023).
- 2 A list of endorsing States as of 18 November 2022 is available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/List-of-endorsing-states-18-November-2022.pdf.

destroying the environment in situations of armed conflict. A recent study on Ukraine, for example, noting the location in urban areas of commercial and industrial units, utility infrastructure, filling stations, workshops, fuel storage and garages, observes that the use of explosive weapons in such areas “can result in the contamination and release of a host of toxic and hazardous chemicals from damaged buildings and infrastructure [which] can create airborne contaminants and can contaminate water resources and/or underlying soils, negatively impacting human health”.³

Given the apparent link between the use of explosive weapons and damage to the environment, this article seeks to examine the potential of the Political Declaration for strengthening the protection of the environment in armed conflict. The Declaration’s preamble recognizes that “[t]he environment can ... be impacted by the use of explosive weapons, through the contamination of air, soil, water and other resources”. However, the Declaration is otherwise silent on specific operational steps that its endorser States should take to protect the environment from the use of explosive weapons.

This does not necessarily mean that the Political Declaration has no role in protecting the environment. The Declaration stipulates a range of operational commitments to be implemented by endorser States: key among these are the commitments to restrict or refrain from the use of explosive weapons when such use may be expected to harm civilians or civilian objects; factoring the foreseeable direct and indirect effects on civilians and civilian objects into the planning and execution of military operations; and collecting and sharing data in order to better understand and learn from the impact of the use of explosive weapons on civilians and civilian objects. The question this article asks is, to what extent and in what ways can the Declaration and these and other commitments be interpreted and implemented so as to strengthen the protection of the environment in armed conflict?

The first part of this article provides an overview of explosive weapons and the humanitarian and, in particular, environmental consequences resulting from their use in populated areas. The second part reviews efforts at the international level since 2009 to address the consequences of the use of explosive weapons in populated areas, which culminated in the process of intergovernmental consultations to develop the Political Declaration. It considers the extent to which the protection of the environment was addressed by States, the UN, the ICRC and civil society organizations during the consultation process and how the issue is subsequently reflected in the Declaration text. The third part of the article examines the extent to which the Political Declaration and some of the commitments therein might be interpreted and implemented to support strengthened protection of the environment in armed conflict. The article concludes with observations on the Declaration’s potential, and importance, for strengthening the protection of the environment in armed conflict and from the use of explosive weapons in particular.

3 Linsey Cottrell, Eoghan Darbyshire and Kristin Holme Obrestad, “Explosive Weapons Use and the Environmental Consequences: Mapping Environmental Incidents in Ukraine”, *Journal of Conventional Weapons Destruction*, Vol. 26, No. 1, 2022, pp. 46–47.

Explosive weapons and the environmental consequences arising from their use in populated areas

As armed conflict has become increasingly urbanized,⁴ the use of explosive weapons in populated areas has emerged as a leading cause of harm to civilians.⁵ Many types of explosive weapons exist and are currently in use – these include air-delivered bombs, artillery projectiles, missiles and rockets, mortar bombs and improvised explosive devices. Some are launched from the air and others are surface-launched. While different technical features dictate their accuracy of delivery and explosive effect, these weapons generally create a zone of blast and fragmentation with the potential to kill, injure or damage anyone or anything within that zone.⁶ It is the blast and fragmentation effect of explosive weapons that makes their use in populated areas – i.e., areas that are likely to contain concentrations of civilians⁷ – particularly problematic. The problems resulting from the use of explosive weapons in populated areas are especially pronounced and severe if the weapon has “wide area effects”. These are generally understood to result from three characteristics, either individually or in combination: a substantial blast and fragmentation radius of the weapon, resulting from a large explosive content; inaccuracy of delivery, meaning that the weapon may land anywhere in a wide area, as may be the case with mortars, for example; and the use of multiple firings, sometimes designed to spread, affecting a wide area, such as in multiple-launch rocket systems.⁸

Unsurprisingly, the use of explosive weapons in populated areas has significant humanitarian and environmental consequences. In terms of the

- 4 As Gisel *et al.* observe, “over the last decades we have seen a resurgence of urban warfare in the Middle East and beyond, with an estimated 50 million people around the world bearing the brunt of it. Today’s urban centres are often vulnerable to conflict for the very reasons they are key hubs of civilian life.” Laurent Gisel, Pilar Gimeno Sarcada, Ken Hume and Abby Zeith, “Urban Warfare: An Age-Old Problem in Need of New Solutions”, *Humanitarian Law and Policy Blog*, 27 April 2021, available at: <https://blogs.icrc.org/law-and-policy/2021/04/27/urban-warfare/>.
- 5 For example, beginning in 2009, concerns over the humanitarian consequences of the use of explosive weapons in populated areas have been consistently raised in the reports of the UN Secretary-General to the Security Council on the protection of civilians in armed conflict. These reports have included repeated calls from the Secretary-General for member States to take steps to address the problem. See *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Doc. S/2009/277, 29 May 2009, para. 36.
- 6 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Reducing the Humanitarian Impact of the Use of Explosive Weapons in Populated Areas: Compilation of Military Policy and Practice*, New York, 2017, p. 9.
- 7 The term “concentrations of civilians” is defined in Protocol III to the Convention on Certain Conventional Weapons as “any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads”. Protocol on Prohibitions and Restrictions on the Use of Incendiary Weapons (Protocol III) to the Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1342 UNTS 137, 10 October 1980 (entered into force 2 December 1983), Art. 1(2).
- 8 OCHA, above note 6, p. 9. See, further, Article 36 and PAX, *Areas of Harm: Understanding Explosive Weapons with Wide Area Effects*, 2016; Kenneth Cross, Ove Dullum, Nick Jenzen-Jones and Marc Garlasco, *Explosive Weapons in Populated Areas: Technical Considerations Relevant to Their Use and Effects*, Armament Research Services, May 2016.

former, tens of thousands of civilians are killed and injured by explosive weapons every year. According to Action on Armed Violence (AOAV), between 2011 and 2020, 238,892 civilians were killed or injured by the use of explosive weapons in populated areas. Moreover, when explosive weapons are used in populated areas, on average, 91% of those killed or injured are civilians.⁹ In 2016, the UN Secretary-General described the use of explosive weapons in populated areas as the “primary killer of civilians in conflict”.¹⁰

As alarming as this is, it is important also to recognize that the impact of explosive weapons extends far beyond deaths and injury at the time of use.¹¹ The use of explosive weapons is associated with a widespread pattern of long-term harm resulting from damage to or destruction of essential civilian infrastructure, such as hospitals and water and electricity supply systems.¹² The damage to and destruction of such essential infrastructure has important “reverberating” or knock-on effects, the negative consequences of which can extend far in both time and space, affecting the provision of health care, water and electricity to a far broader proportion of the population than those within the vicinity of a specific attack.¹³ The use of explosive weapons in populated areas is also a major driver of population displacement, both within and across international borders, as people flee due to fear of, or as a result of, attacks that damage or destroy their homes or livelihoods.¹⁴ The use of explosive weapons inevitably results in the presence of explosive remnants of war (ERW) which pose a continued threat to civilians until they are identified and removed.¹⁵

Beyond these humanitarian consequences, and although much less researched, the use of explosive weapons in populated areas also has significant environmental consequences which can, in turn, further compound the risks to, and harm experienced by, civilians as described previously. These consequences are described by the Conflict and Environment Observatory (CEOS) as

9 AOAV, *A Decade of Explosive Harm*, London, 2021, p. 3.

10 *One Humanity: Shared Responsibility – Report of the Secretary-General for the World Humanitarian Summit*, UN Doc. A/70/709, 2 February 2016, para. 52.

11 OCHA, above note 6, p. 9.

12 Mark Zeitoun and Michael Talhami, “The Impact of Explosive Weapons on Urban Services: Direct and Reverberating Effects across Space and Time”, *International Review of the Red Cross*, Vol. 98, No. 1, 2016, p. 68.

13 For a discussion of the “reverberating effects” of the use of explosive weapons in populated areas, see Christine Wille and John Borrie, *Understanding the Reverberating Effects of Explosive Weapons: A Way Forward*, United Nations Institute for Disarmament Research (UNIDIR), Geneva, 2016; Isabel Robinson and Ellen Nohle, “Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas”, *International Review of the Red Cross*, Vol. 98, No. 1, 2016, p. 107. See also Christina Wille and Alfredo Malaret Baldo, *Reference Framework: Menu of Indicators to Measure the Reverberating Effects on Civilians of the Use of Explosive Weapons in Populated Areas*, UNIDIR, Geneva, 2021; Humanity and Inclusion, *Death Sentence to Civilians: The Long-Term Impact of Explosive Weapons in Populated Areas in Yemen*, 2020.

14 See, for example, Article 36, *Fleeing the Bombs: Approaching Explosive Weapons in the Policy Framework of Displacement*, Discussion Paper, 2017; Simon Bagshaw, “Driving Displacement: Explosive Weapons in Populated Areas”, *Forced Migration Review*, No. 41, 2012.

15 See ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, Geneva, 2022, p. 54.

“diverse”, with “typically ... wide-ranging and long-lasting effects”.¹⁶ To begin with, buildings destroyed by explosive weapons can release hazardous materials into the air and on the ground, such as toxic smoke and heavy metals, which can have both chemical and physical impacts on health, including in the long term.¹⁷ The destruction of buildings can also generate enormous volumes of debris which may contain ERW or other hazardous materials that pose further dangers to civilians and can hinder clearance operations and make debris difficult to recycle.¹⁸ According to CEOBS, in Syria, for example, the volume of debris generated from the destruction in Aleppo and Homs is estimated at more than 20 million tonnes combined. It is estimated that its removal will require more than 1 million truckloads, generating emissions and pollution and taking years to complete¹⁹ – assuming that the capacity to undertake such clearance even exists. Environmental governance in conflict-affected areas is often already weak, with a lack of capacity to manage debris on such a large scale.²⁰ The collapse of local governance and damaged infrastructure also affects solid **waste management systems**, resulting in uncontrolled dumping, open burning of waste and co-disposal with conflict debris. This causes further contamination, hinders recycling and negatively impacts the environment.²¹

As indicated above, the use of explosive weapons in populated areas can lead to widespread damage to and destruction of essential infrastructure, impeding the provision of services such as water and sanitation and electricity supply. Damage and destruction of wastewater treatment plants and collection systems, or their non-functioning due to interruptions to their power supply, can result in the contamination of groundwater, surface water or coastal waters by untreated sewage, thereby contaminating natural resources and affecting wider ecoservices, “impacting both people and ecosystems within and outside of urban areas”.²² In Gaza, for example, hostilities in May 2021 resulted in the destruction of 109 wastewater facilities, leading to the outflow of untreated sewage into streets, inland lakes and the Mediterranean Sea.²³

Further environmental consequences and harm from the use of explosive weapons in populated areas result from the fact that “there are multiple potential sources of pollution within urban settings, and proportionately more people vulnerable to the risk of exposure to contaminants”.²⁴ As indicated above, with commercial and industrial units, utility infrastructure, filling stations, workshops,

16 CEOBS, “We Must Not Ignore Explosive Weapons’ Environmental Impact”, *CEOBS Blog*, 12 May 2021, available at: <https://ceobs.org/we-must-not-ignore-explosive-weapons-environmental-impact/>. See also ICRC, above note 15, p. 59.

17 AOAV, *The Broken Land: The Environmental Consequences of Explosive Weapons Use*, London, 2020, p. 6.

18 *Ibid.*

19 CEOBS, above note 16.

20 *Ibid.*

21 *Ibid.* See also Doug Weir, “How Yemen’s Conflict Destroyed its Waste Management System”, *CEOBS Blog*, 1 August 2019, available at: <https://ceobs.org/how-yemens-conflict-destroyed-its-waste-management-system/>.

22 CEOBS, above note 16.

23 WASH Cluster State of Palestine, *Gaza WASH Cluster Damage Assessment*, 28 June 2021.

24 *Ibid.*

fuel storage and garages all being located in urban areas, the use of explosive weapons in populated areas “can result in contamination and the release of a host of toxic and hazardous chemicals from damaged buildings and infrastructure”.²⁵ This can create airborne contaminants and can contaminate water resources and underlying soils, negatively impacting human health through direct contact, inhalation or ingestion of chemicals. Typical contaminants of potential concern include metals like lead and chromium, fuel oils, polychlorinated biphenyls (PCBs), fire retardants, explosives and asbestos. For example, during the Kosovo conflict in 1999, NATO air strikes reportedly damaged oil refineries and depots in Pancevo, resulting in widespread environmental damage as well as reports of “Pancevo cancer” among people from the area who were exposed to contaminants.²⁶ During the ongoing conflict in Ukraine, Russian forces are reported to regularly strike energy facilities that contain heavy oil, asbestos and PCBs which are carcinogenic, according to the UN Environment Programme.²⁷ Although in such cases some contaminants will disperse and eventually degrade in the environment, CEOBS observes that others do not and will persist for years.²⁸

Concerns have also been raised with regard to the polluting effects of explosive weapons themselves. According to AOAV, it is well known that explosive weapons can be harmful to the environment, with consequences for human health.²⁹ Explosive munitions typically contain elements such as lead, antimony, uranium, dinitrotoluene, trinitrotoluene and hexahydro-1,3,5-trinitro-1,3,5-triazine “which can pollute soils and water and create long-term risks for civilians”.³⁰ Concerns have also been raised over the polluting effects of ERW, the presence of which is an almost inevitable consequence of the use of explosive weapons in populated areas. According to PAX, for example, research indicates that toxic substances such as lead, mercury or depleted uranium may leak into the ground from ERW, or lead to direct exposure by civilians working with military scrap metal. Long-term accumulation of such substances “could result in significant health problems”.³¹

Although not unique to the use of explosive weapons, the forced displacement of civilians, which is often caused and prolonged by attacks involving, and the destruction associated with, the use of explosive weapons as well as the

25 *Ibid.* See also L. Cottrell, E. Darbyshire and K. Holme Obrestad, above note 3.

26 AOAV, above note 17, p. 8.

27 Jeff Stein and Michael Birnbaum, “The War in Ukraine Is a Human Tragedy. It’s also an Environmental Disaster”, *Washington Post*, 13 March 2023, available at: www.washingtonpost.com/world/2023/03/13/ukraine-war-environment-impact-disaster/.

28 CEOBS, above note 16.

29 AOAV, above note 17, p. 12.

30 Roos Boer and Wim Zwijnenburg, “Exploring Environmental Harm from Explosive Weapons in Populated Areas”, 28 May 2020, available at: <https://paxforpeace.nl/news/blogs/exploring-environmental-harm-from-explosive-weapons-in-populated-areas>.

31 *Ibid.*

presence of ERW,³² can also result in significant environmental effects far from affected areas. As noted by CEOBS, “[d]isplacement camps themselves can, if not properly designed, severely and negatively impact the local environment through, for instance, deforestation due to the overharvesting of firewood, or improper waste disposal”.³³ This is recognized in the International Law Commission’s (ILC) Draft Principles on the Protection of the Environment in Relation to Armed Conflict (ILC Draft Principles). Principle 8 notes that States, international organizations and other relevant actors “should take appropriate measures to prevent, mitigate and remediate harm to the environment in areas where persons displaced by armed conflict are located, or through which they transit”.³⁴

The Political Declaration on Explosive Weapons in Populated Areas: A missed opportunity to strengthen the protection of the environment?

In November 2019, responding to the growing international concern at the devastating harm resulting from the use of explosive weapons in populated areas and following the 2019 Vienna Conference on the Protection of Civilians in Urban Warfare,³⁵ the Republic of Ireland launched a process of intergovernmental consultations aimed at developing a political declaration to address this critical issue. The consultations took place in February 2020, March 2021 and April and June 2022, involving the participation of States, the UN, the ICRC and civil society organizations, including through INEW. The final text of the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas³⁶ was presented at the consultation in June 2022 and was formally endorsed by eighty-three States in November 2022 at an adoption conference in Dublin, Ireland.³⁷

The Political Declaration consists of two parts: a preamble and an operative section. The preamble sets the scene, noting that as armed conflicts have become

32 For example, a 2016 study by Humanity and Inclusion found a strong correlation between forced displacement and the use of explosive weapons in populated areas in Syria. The majority of those interviewed for the study stressed that the main reason for leaving their homes was the use of explosive weapons in their villages, towns and cities. “In our interviews, explosive weapons were mentioned as the overriding factor forcing Syrians out as they fled from their homes.” Humanity and Inclusion, *Escaping the Bombing – the Use of Explosive Weapons in Populated Areas and Forced Displacement: Perspectives from Syrian Refugees*, 2016, p. 4.

33 CEOBS, above note 16. See also Groupe URD, *Implications of Refugee Settlements on the Natural Environment and on Refugee and Host Community Resilience – Summary Case Studies: Lebanon and Cameroon*, August 2017.

34 ILC, *Draft Principles on the Protection of the Environment in Armed Conflict*, in *Yearbook of the International Law Commission*, Vol. 2, Part 2, 2022, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf.

35 See Republic of Austria Federal Ministry, “Vienna Conference on Protecting Civilians in Urban Warfare”, available at: 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/.

36 See above note 1.

37 See above note 2.

more protracted, complex and urbanized, the risks to civilians have increased and must be addressed. These risks involve a range of factors, including the use of explosive weapons in populated areas, which has a devastating impact on civilians and civilian objects. Paragraphs 1.3–1.6 describe the broad range of humanitarian and other impacts, including direct effects, such as death and injury of civilians, and severe and long-lasting indirect or “reverberating” effects. Among these direct and indirect effects, the Declaration notes in paragraph 1.5 that “[t]he environment can also be impacted by the use of explosive weapons, through the contamination of air, soil, water and other resources”.

The operative section provides a series of actions that endorser States are expected to implement as part of their overall commitment to

strengthening the protection of civilians and civilian objects during and after armed conflict, addressing the humanitarian consequences arising from armed conflict involving the use of explosive weapons in populated areas, and strengthening compliance with and improving the implementation of applicable International Humanitarian Law.³⁸

Key among these is the commitment in paragraph 3.3 that States will

[e]nsure that [their] armed forces adopt and implement a range of policies and practices to help avoid civilian harm, including by restricting or refraining as appropriate from the use of explosive weapons in populated areas, when their use may be expected to cause harm to civilians or civilian objects.

The operative section is, however, silent on specific operational steps that militaries should take to ensure more effective protection of the environment. In fact, concern for the environmental impact of explosive weapons was virtually absent from the negotiations to begin with.

The initial “elements paper” that was circulated by Ireland in January 2020,³⁹ prepared on the basis of interventions made during the first consultation in November 2019 and written submissions received thereafter, contained no reference to the environment. This is not entirely surprising, as the November consultation saw very few references to the environment – of the States that were present, only Malaysia noted that harm to the environment from the use of explosive weapons in populated areas should be among the types of harm recognized in the future declaration.⁴⁰ INEW noted that “environmental degradation” should be among the impacts of explosive weapons recognized in the declaration text.⁴¹

38 *Chapeau* to the Political Declaration’s operative section.

39 “Elements of a Political Declaration to Ensure the Protection of Civilians from Humanitarian Harm Arising from the Use of Explosive Weapons in Populated Areas”, 20 January 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Elements-Paper.pdf.

40 Women’s International League for Peace and Freedom (WILPF), “Recommendations for a Political Declaration on the Use of Explosive Weapons in Populated Areas”, January 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/WILPF-Written-Submission---18-November-2019.pdf.

41 INEW, *A Declaration to Prevent Harm from the Use of Explosive Weapons in Populated Areas*, Background Paper, September 2019, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Article-36-INEW-Written-Submission---18-November-2019.pdf.

The elements paper was discussed by States at the second consultation in February 2020. During the consultation, Finland specifically requested the inclusion of the “natural environment” in draft paragraph 1.2, which provided an overview of the impacts of the use of explosive weapons on civilians and civilian objects.⁴² Finland believed that the natural environment was “among the casualties” and should be duly mentioned in the paragraph.⁴³ In addition to Finland, Panama, while not referring directly to the environmental impact of explosive weapons, requested that existing language in the elements paper referring to contamination by ERW should note that such contamination can include “hazardous chemicals, heavy metals and fuel hydrocarbons, impeding the return of displaced persons and causing casualties and long-term harm to human health”.⁴⁴

On the part of civil society, the Women’s International League for Peace and Freedom (WILPF) noted that, in view of the increasing global concerns with environmental degradation,

it would be prudent for the declaration to recognise the environmental impacts of the use of [explosive weapons in populated areas]. This could include the long-term harm posed by toxic remnants of war introduced or released into the environment by explosions, including hazardous chemicals, heavy metals, and fuel hydrocarbons.⁴⁵

A joint submission by Human Rights Watch and Harvard Law School’s International Human Rights Clinic (HRW/IHRC) called for damage to the environment to be included among the list of short- and long-term harms associated with the use of explosive weapons in populated areas.⁴⁶

Despite such calls, the first draft of the Political Declaration that was circulated to States on 17 March 2020 did not include a reference to the environment.⁴⁷ However, the reaction to this first draft by some States, the UN and ICRC and a number of civil society organizations would lead to a positive

42 Paragraph 1.2 read: “Explosive weapons with wide area effects are having a devastating impact on civilians and civilian objects in populated areas. Beyond the immediate deaths, injuries, and psychological trauma, the civilian population can be exposed to severe and long-lasting harm as a result of the destruction of housing, schools, hospitals, energy networks, water and sanitation systems, cultural heritage sites and infrastructure.”

43 “Finland Written Submission”, 10 February 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Finland-Written-Submission---10-February-2020.pdf.

44 Written comments submitted by Panama, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Panama-Written-Paper-Submission---10-February-2020.pdf.

45 WILPF, “Response to the Draft Elements for a Political Declaration on the Use of Explosive Weapons in Populated Areas”, February 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/WILPF-Written-Submission---10-February-2020.pdf.

46 HRW/IHRC, *Analysis of the Draft Elements of a Political Declaration on the Use of Explosive Weapons in Populated Areas*, February 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Human-Rights-Watch-Harvard-Written-Submission---10-February-2020.pdf.

47 *Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm Arising from the use of Explosive Weapons in Populated Areas*, 17 March 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Draft-Political-Declaration-17032020.pdf.

evolution of the text. In their written comments on the first draft, Austria,⁴⁸ Finland,⁴⁹ Ecuador,⁵⁰ the Netherlands,⁵¹ Panama⁵² and Portugal,⁵³ as well as the UN,⁵⁴ ICRC,⁵⁵ INEW,⁵⁶ PAX,⁵⁷ Norwegian People's Aid⁵⁸ and HRW/IHRC,⁵⁹ noted the need for the draft declaration to refer to the environmental impact of the use of explosive weapons in populated areas. Panama proposed an operative paragraph in which States would commit to preventing and remediating the environmental impacts caused by the use of the explosive weapons in populated areas. Portugal proposed a standalone paragraph highlighting that the use of explosive weapons in populated areas

can pose further threats to the environment, with effects lasting well after the armed conflict has reached its end, including the contamination of air, soil and groundwater, along with other environmental resources whose conservation is indispensable for the survival and livelihood of civilian populations. This could

- 48 "Draft Political Declaration Circulated by Ireland on 17 March 2020: Written Comments by Austria", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Austria-Written-Submission---17-March-2020.pdf.
- 49 "Comments by Finland on the Draft Political Declaration/EWIPA: Written Consultation", April 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/FINLAND-ewipa-kommentit-30.4.2020.pdf.
- 50 Written comments submitted by Ecuador, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Ecuador-Written-Submission---17-March-2020.pdf.
- 51 "Comments of the Kingdom of the Netherlands on the Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas", 30 April 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Netherlands-Written-Submission---17-March-2020.pdf.
- 52 "Panama's Proposals to the Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Panama-Written-Submission---17-March-2020.pdf.
- 53 "Portugal Contribution to the Project of Political Declaration on EWIPAs", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Portugal-Written-Submission---17-March-2020.pdf.
- 54 "Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Harm Arising from the Use of Explosive Weapons in Populated Areas: Comments by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Office for Disarmament Affairs (ODA)", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/UNOCHA-UNODA-Written-Submission---17-March-2020.pdf.
- 55 "Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas: Comments by the International Committee of the Red Cross (ICRC)", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/ICRC-Written-Submission---17-March-2020.pdf.
- 56 "INEW Key Advocacy Points on the Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas", April 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/INEW-Written-Submission--17-March-2020.pdf.
- 57 "PAX Additional Comments on the Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas", April 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/PAX-Written-Submission---17-March-2020.pdf.
- 58 "Norwegian People's Aid (NPA): Comments to the Draft Political Declaration", available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/NPA-Written-Submission---17-March-2020.pdf.
- 59 HRW/IHRC, *Analysis of the Draft Political Declaration on the Use of Explosive Weapons in Populated Areas*, April 2020, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/HRW-IHRC-Written-Submission---17-March-2020.pdf.

potentially escalate into severe public health crises due to the lack of food, the rise of communicable diseases and inadequate healthcare.

Given the increased attention to the issue, it was perhaps unsurprising that the second draft of the Declaration text, circulated to states on 29 January 2021, included a specific reference to the “natural environment” in draft paragraph 1.3 which read: “The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, *and the natural environment can also be impacted by the use of explosive weapons with wide area effects, leading to the contamination of air, soil, groundwater, and other resources.* Urban warfare can also result in psychological and psychosocial harm to civilians [emphasis added].”⁶⁰

The second draft was discussed during the third consultation in March 2021 (which was conducted online over three days due to the COVID-19 pandemic). Finland expressed its pleasure at seeing the inclusion of the natural environment “among the casualties” and further suggested that it could be moved to paragraph 1.2.⁶¹ Finland did not explain the rationale for this additional request though it may have been intended to or perceived as raising the status and importance of the environment in the declaration text.⁶²

Prior to the March 2021 consultations, CEOBS submitted written comments to Ireland on the second draft, including a number of proposed amendments to the text.⁶³ These included revisions to paragraph 1.3 which would have provided a fuller sense of the environmental impacts of the use of explosive weapons in populated areas,⁶⁴ as well as the insertion of references to “the environment” throughout the text, several of which had the express support of

60 *Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences that Can Arise from the Use of Explosive Weapons with Wide Area Effects in Populated Areas: REV 1*, 29 January 2021, available at: www.dfa.ie/media/dfa/ourrolepolicies/internationalpriorities/290126-EWIPA-Political-Declaration-REV-1.pdf.

61 “Comments by Finland on the Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences that can arise from the use of Explosive Weapons with Wide Area Effects in Populated Areas: Informal Consultations on 3–5 March 2021”, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/FINLAND-ewipa-kommentit-5.3.2021.pdf.

62 Paragraph 1.2 read: “Explosive weapons with wide area effects can have a devastating impact on civilians and civilian objects in populated areas. Blast and fragmentation effects cause immediate deaths and injuries. Beyond these direct effects, civilian populations can also be exposed to severe and long-lasting indirect effects—also referred to as ‘reverberating effects’. When critical civilian infrastructure is damaged or destroyed, such as energy networks, water and sanitation systems, the provision of essential services such as healthcare is disrupted. These services are often interconnected and, as a result, damage to one component or service can negatively affect services elsewhere, causing harm to civilians that can extend far beyond the weapon’s impact area.”

63 CEOBS, “Proposed Amendments to the 29/01/21 Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences that Can Arise from the Use of Explosive Weapons with Wide Area Effects in Populated Areas”, 25 February 2021, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/CEOBS_proposed_amends_EWIPA_dec_draft_290121.pdf.

64 CEOBS proposed amending paragraph 1.3 as follows (amendments in italics): “The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, *as does damage to the natural environment. The environmental impacts of the use of explosive weapons with wide area effects include the contamination of air, soil, groundwater, and other resources, both by weapons residues and by pollutants released by objects that are damaged or destroyed.* Urban warfare can also result in psychological and psychosocial harm to civilians” (footnote omitted). *Ibid.*

Panama.⁶⁵ For example, CEOBS, as well as the Dutch NGO PAX, recommended that draft paragraph 3.4, the commitment to take into account the direct and indirect effects on civilians and civilian objects in the planning and conduct of military operations, should also include an additional reference to the environment, so that it would read:

Ensure that our armed forces take into account the direct and reverberating effects on civilians, civilian objects, *including the environment*, which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas.⁶⁶

The two organizations also called for draft paragraph 4.2, relating to the need for States to collect, share and make available data on the direct and reverberating effects on civilians of their military operations involving the use of explosive weapons with wide area effects, to be broadened to include data on the effects of such use on the environment.⁶⁷ CEOBS also noted its “strong support” for a proposed amendment by INEW,⁶⁸ proposed also by WILPF,⁶⁹ that the term “natural environment” be replaced with the term “environment” throughout the declaration. According to CEOBS,

“[a]lthough the term natural environment is used in Additional Protocol I [to the Geneva Conventions], it is an artefact of the period of its development and does not reflect contemporary understanding of the relationship between people and the environment, nor of the value of the environment per se.”⁷⁰

Despite these various suggestions, the third draft of the Political Declaration, circulated on 3 March 2022, maintained the existing language of the previous draft, again stating in paragraph 1.3 that “the natural environment can also be impacted by the use of explosive weapons, leading to the contamination of air, soil, water, and other resources”.⁷¹ In its written comments on the second draft, CEOBS noted that its earlier proposals to highlight the critical link between environmental protection and the protection of civilians had not been included in

65 “Panama’s Proposals on the Revised Version of the Draft Political Declaration on EWIPA (REV 1 – 29 January 2021)”, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/EWIPA-Political-Declaration-REV-1---Panamas-proposals-track-changes.pdf.

66 CEOBS, above note 63; PAX, “PAX Response to the 29 January 2021 Draft Political Declaration”, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/PAX-response-to-Jan-2021-version-of-the-political-declaration.pdf (emphasis added).

67 *Ibid.*

68 INEW, “INEW Comments on the Draft Political Declaration Text (29 January 2021)”, February 2021, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/INEW_Comments_PolDecl290121.pdf.

69 WILPF, “Comments on the Revised Draft Political Declaration on the Use of Explosive Weapons in Populated Areas”, February 2021, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions3-5march/wilpf-ewipa-declaration-rev1.pdf.

70 CEOBS, above note 63.

71 *Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas: REV 2*, 3 March 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Draft-EWIPA-Political-Declaration-REV-2-CLEAN.pdf.

the second draft. Referring to the ongoing conflict in Ukraine, where there were “dozens of locations where damage from explosive weapons may have caused serious pollution incidents that may effect [*sic*] communities for long after the conflict” – risks that are “not unique to Ukraine” – CEOBS reiterated the importance of strengthening the declaration text to ensure that the environmental consequences of the use of explosive weapons are also highlighted. CEOBS again proposed a range of amendments to this end, along the same lines as those submitted on the previous draft, including in relation to paragraphs 3.4 and 4.2.⁷²

Additional comments pertaining to the environment were forthcoming from other civil society actors, the UN and a small number of States. HRW/IHRC proposed that the phrase regarding environmental impacts in paragraph 1.3 should be rewritten in the active voice, in part to eliminate the use of the word “can”, which “waters down the description of the harm caused”. Thus, the relevant part of paragraph 1.3 would read: “*the use of explosive weapons in populated areas damages the environment, leading to the contamination of air, soil, water, and other resources*”.⁷³ Norwegian People’s Aid expressed support for CEOB’s proposals, including, specifically, the deletion of the word “natural” before “environment” in paragraph 1.3.⁷⁴ The UN also supported deletion of the word “natural” and further requested the addition of a reference at the end of the current sentence on the environment to acknowledge that the use of explosive weapons in populated areas also generates “large amounts of dangerous wastes including military munition and debris”, which, as it noted in its written comments, “can expose the population to environmental health risks and impede the return of displaced persons”.⁷⁵ This addition was supported by Palestine.⁷⁶

Chile and Mexico, in joint comments, also removed the word “natural” in paragraph 1.3. They further requested the inclusion of a new paragraph in the Political Declaration which recalls the specific protections under international humanitarian law (IHL) afforded to specific civilian objects, such as medical units and transports, cultural property and “the natural environment”. Their actual proposal was, however, much less specific and limited to stating: “We recall the existing specific protections under IHL to specific civilian objects, particularly

72 CEOBS, “Comments on Rev 2 – Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences from the Use of Explosive Weapons in Populated Areas”, 4 April 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/Conflict-and-Environment-Observatory.pdf.

73 HRW/IHRC, *Analysis of the Draft Political Declaration on the Use of Explosive Weapons in Populated Areas*, April 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/HRW---Harvard-Law.pdf

74 Norwegian People’s Aid, “Comments on the Second Revised Draft Political Declaration on EWIPA”, April 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/Norwegian-Peoples-Aid.pdf.

75 “Comments on the Draft Declaration from the United Nations on Behalf of: OCHA, ODA, OHCHR, UNEP, UNHCR, UNICEF, UNIDIR, UNMAS”, April 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/UN-joint-comments.pdf.

76 “Second Revised Draft Political Declaration Circulated by Ireland on 3 March 2022: Proposals by the State of Palestine”, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/State-of-Palestine.pdf.

relevant when conducting military operations in populated areas.”⁷⁷ Panama also requested the deletion of the word “natural” from paragraph 1.3 and further requested that the paragraph also acknowledge loss of biodiversity as a consequence of the use of explosive weapons in populated areas.⁷⁸

Of these various proposals, only that relating to the deletion of the word “natural” was reflected in the text of what became paragraph 1.5 of the final draft of the Political Declaration, as circulated to States on 25 May 2022. The relevant sentence was also revised slightly, presumably for stylistic reasons, to read as follows: “The environment can also be impacted by the use of explosive weapons, through [rather than “leading to”] the contamination of air, soil, water, and other resources.”⁷⁹

The Political Declaration’s acknowledgement of the link between the use of explosive weapons in populated areas and environmental damage is certainly significant. It builds upon the increasing attention being paid to the impact of armed conflict on the environment as manifested, for example, in the recent reports of the UN Secretary-General on the protection of civilians in armed conflict,⁸⁰ the ICRC’s issuance in 2020 of updated *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC Guidelines),⁸¹ and, more recently, the adoption of the ILC Draft Principles.⁸² The latter were formally taken note of by the UN General Assembly in December 2022, which brought them to the attention of “States, international organizations and all who may be called upon to deal with the subject” while also encouraging “their widest possible dissemination”.⁸³

At the same time, the absence of operative commitments in the Political Declaration by States and their militaries to take specific steps to protect the environment from explosive weapons could be interpreted as a missed opportunity. The inclusion of the environment, as called for by CEOBS and others, within the scope of operative paragraphs 3.4 and 4.2 of the Declaration, for example, could have made a significant contribution to efforts to strengthen the protection of the environment: first, in terms of ensuring that armed forces give due consideration to – and take steps to prevent and mitigate – the potential impact of the direct and indirect effects of military operations on the

77 “Protecting Civilians in Urban Warfare – Towards a Political Declaration to Address the Humanitarian Harm Arising From the Use of Explosive Weapons in Populated Areas. Consultation Process 6-8 April 2022: Comments by Chile and Mexico”, April 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/Chile-Mexico.pdf.

78 “Panama’s Proposals on the Revised Version of the Draft Political Declaration on EWIPA (REV 2 – 3 March 2022)”, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/submissions6-9april/Panama.pdf.

79 *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas: FINAL REV*, 25 May 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf.

80 See *Protection of Civilians in Armed Conflict: Report of the Secretary-General*, UN Doc. S/2019/373, 7 May 2019, para. 50; UN Doc. S/2020/366, 6 May 2020, paras 42–43; UN Doc. S/2021/423, 3 May 2021, paras 20–22; and UN Doc. S/2022/381, 10 May 2022, paras 30–31.

81 ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict*, Geneva, 2020 (ICRC Guidelines).

82 See above note 34.

83 UNGA Res. 77/104, 7 December 2022.

environment in the planning and conduct of those operations (paragraph 3.4), and second, in terms of collecting data on the direct and indirect effects of the use of explosive weapons in populated areas on the environment (paragraph 4.2). This would support improved understanding of the environmental impact of explosive weapons that could inform efforts to respond to and remediate that impact as well as help to identify lessons learned that could be applied in the planning and conduct of future operations in order to prevent or mitigate it.

The Political Declaration as a tool for strengthening the protection of the environment

Despite the lack of express references to the environment in the operative commitments, it is important for a number of reasons not to underestimate the Political Declaration's potential as a tool for strengthening the protection of the environment.

First, on a very practical level, if implemented effectively by endorser States, the Political Declaration should lead to reduced use of explosive weapons in populated areas in the future. Paragraph 3.3 expressly commits States to avoid civilian harm by "restricting or refraining, as appropriate, from the use of explosive weapons when their use may be expected to cause harm to civilians or civilian objects". To the extent to which this commitment leads to less use of explosive weapons in populated areas, it will, of course, lead to a corresponding decrease in the likelihood of damage to or destruction of the environment.

Second, in line with existing IHL, the Political Declaration draws a distinction between civilians and civilian objects on the one hand, and military objectives on the other. According to the ICRC, it is today generally recognized that, by default, the natural environment⁸⁴ is civilian in character – a recognition that is reflected in State practice, the ILC's work on the Draft Principles, and other important practice and scholarly work.⁸⁵ Thus, "all parts or elements of the natural environment are civilian objects, unless some become military objectives".⁸⁶ On this basis, it follows that the Declaration's references to "civilian objects" should be interpreted to include the environment. For example, the commitment in paragraph 3.3 to avoid civilian harm "by restricting or refraining

84 The ICRC Guidelines refer to the "natural environment". They observe that there are no agreed definitions of the terms "environment" or "natural environment" in international law and that for the purposes of the Guidelines, "natural environment" is understood "to constitute the natural world together with the system of inextricable interrelations between living organisms and their inanimate environment, in the widest sense possible". ICRC Guidelines, above note 82, p. 17. As noted above, during the consultations to develop the Political Declaration, a number of actors requested that references to the "natural environment" should refer only to the "environment". CEOPS, for example, noted that "[a]lthough the term natural environment is used in Additional Protocol I [to the Geneva Conventions], it is an artefact of the period of its development and does not reflect contemporary understanding of the relationship between people and the environment, nor of the value of the environment *per se*". CEOPS, above note 63.

85 ICRC Guidelines, above note 81, p. 19.

86 *Ibid.*, p. 20.

as appropriate from the use of explosive weapons when their use may be expected to cause harm to civilians or civilian objects” should be interpreted to include expected harm to the environment as a civilian object.

Third, it could additionally be argued that the inclusion of environmental impact among the different direct and indirect effects of explosive weapons elaborated in paragraphs 1.3–1.6 of the preamble – which are essentially a statement of the humanitarian consequences of explosive weapons use that the Political Declaration is seeking to address – requires that States and their armed forces consider environmental impact in their interpretation and implementation of a number of the Declaration’s key operative commitments, in particular those contained in paragraphs 3.3, 3.4 and 4.2.

Implementing the commitment in paragraph 3.3 raises some important questions for endorser States and their armed forces, not least of all determining what is meant by, or what constitutes, “harm to civilians and civilian objects” in the context of paragraph 3.3. This is important as it is the expectation of such harm that marks the threshold at which militaries must choose to either restrict or refrain from the use of explosive weapons in populated areas. Of course, the actual types of harm that may be expected to result from the use of explosive weapons in populated areas will depend on the specific context in which the weapons are being used. As a general rule, however, it could be argued that the expectation of one or more of the direct and indirect effects elaborated in paragraphs 1.3–1.6 would be sufficient to require militaries to either restrict or refrain from the use of explosive weapons in populated areas.⁸⁷ By virtue of paragraph 1.5, this would necessarily include the likelihood of environmental harm – that is to say, endorser States should either restrict or refrain from any use of explosive weapons in populated areas that would be likely to impact the environment through the contamination of air, soil, water and other resources.

Paragraph 3.4 of the Political Declaration commits States to ensuring that their armed forces “take into account the direct and indirect effects on civilians and civilian objects which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas”. A key question for States and their armed forces in implementing this commitment is determining what direct and indirect effects “can reasonably be foreseen”. Again, the preamble provides important guidance on this. The elaboration of direct and indirect or reverberating effects in paragraphs 1.3–1.6 reflects a substantial body of research that has documented such effects in recent armed conflicts in Afghanistan, Iraq, Libya, Syria, Yemen and elsewhere. As such, it is representative of the direct and indirect effects that “can reasonably be foreseen” to result from military operations in populated areas and which must, pursuant to paragraph 3.4, be taken into account – and mitigated against – in the planning and execution of

87 For a detailed discussion of the process of implementing paragraph 3.3 and determining when explosive weapons use may be expected to cause harm to civilians and civilian objects and, on that basis, whether to restrict or refrain from the use of explosive weapons in populated areas, see Simon Bagshaw, *Implementing the Political Declaration on the Use of Explosive Weapons in Populated Areas: Key Areas and Implementing Actions*, Article 36 Policy Briefing, November 2022.

such operations. As a result of paragraph 1.5, environmental harm would be among the direct and indirect effects that can reasonably be foreseen and that armed forces would need to take into account, pursuant to paragraph 3.4, in the planning of military operations and the execution of attacks in populated areas.

Paragraph 4.2 of the Political Declaration commits States to “[c]ollect, share, and make publicly available disaggregated data on the direct and indirect effects on civilians and civilian objects of military operations involving the use of explosive weapons in populated areas, where feasible and appropriate”. The collection and sharing of such data is a critical function for a number of reasons, some of which are recognized in paragraph 1.8 of the preamble, which observes that

improved data on civilian harm would help to inform policies designed to avoid, and in any event minimize, civilian harm; aid efforts to investigate harm to civilians; support efforts to determine or establish accountability, and enhance lessons learned processes in armed forces.

As noted, CEOBS and PAX had advocated for the inclusion of a specific reference to the environment in this paragraph on the grounds that “[i]mpact monitoring is critical to understand the environmental risks and damage caused by conflict”⁸⁸ – information that could be used to inform humanitarian and other response actions as well as military policies designed to avoid or minimize future such harm. Although no such reference to the environment was included in paragraph 4.2, once again, the inclusion of environmental harm among the direct and indirect effects of explosive weapons listed in paragraphs 1.3–1.6 of the Political Declaration would support its inclusion among the direct and indirect effects on which States have committed to collect, share and make publicly available disaggregated data, albeit where feasible and appropriate.⁸⁹

Last but not least, reference should also be made to operative paragraph 3.5 of the Political Declaration, which commits States to “[e]nsure the marking, clearance, and removal or destruction of explosive remnants of war as soon as feasible after the end of active hostilities in accordance with [their] obligations under applicable international law, and support the provision of risk education”. As noted earlier, concerns have been raised with regard to the polluting effects of ERW. Efforts under the Declaration to ensure the timely marking and, in particular, removal and destruction of ERW would assist with mitigating these concerns.⁹⁰

A number of States have specific legal obligations relating to ERW clearance under the Convention on Cluster Munitions (CCM) and Protocol V to the Convention on Certain Conventional Weapons, and these are also alluded to

88 CEOBS, above note 16. See also R. Boer and W. Zwiijnenburg, above note 30.

89 Support for such an interpretation can also be found in the ILC Draft Principles, above note 34. Specifically, Principle 23 stipulates that States and relevant international organizations shall share and grant access to relevant information in order to “facilitate measures to remediate harm to the environment resulting from an armed conflict”.

90 Such efforts would also be consistent with the ILC Draft Principles, above note 34. Principle 26 states that parties to an armed conflict “shall seek, as soon as possible, to remove or render harmless toxic or other hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment”.

in paragraph 3.5 of the Political Declaration. In this regard, it should be noted that not all eighty-three States that have endorsed the Declaration are among the 94 States party to Protocol V⁹¹ or the 111 States party to the CCM.⁹² Thus, States that have remained outside of Protocol V and the CCM have committed through the Declaration, albeit in a political sense, to address the threat posed to civilians and the environment by ERW. This includes, in the case of Protocol V, Colombia, Indonesia, Kenya, Mexico, Serbia, Somalia, Turkey and the United Kingdom, and with regard to the CCM, Cambodia, Kuwait, Serbia, Turkey and the United States.

Conclusion

The Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from Use of Explosive Weapons in Populated Areas is, in many respects, a significant achievement – the first formal recognition at the international level of the severe short- and long-term harm resulting from the use of explosive weapons in populated areas. If fully and effectively implemented, the Declaration has the potential to make an important difference to the lives of conflict-affected populations, in particular by restricting the use of explosive weapons in populated areas and thereby reducing the harm to civilians and civilian objects that has been widely documented to result from such use.

The Political Declaration's treatment of the environment and its protection may have been the cause of disappointment in some quarters, but there is reason to believe that the Declaration can play an important role in future in strengthening the protection of the environment in armed conflict and from the use of explosive weapons in particular. This can be seen in terms of the extent to which its implementation leads to reduced reliance on and use of explosive weapons in populated areas, thereby reducing the likelihood of damage to the environment; in terms of interpreting the Declaration's references to civilian objects to include the environment; and in the inclusion of environmental impact among the direct and indirect effects arising from the use of explosive weapons, as articulated in paragraphs 1.3–1.6, placing environmental impact among the effects that States and their armed forces must consider when implementing their commitments in the Declaration. Lastly, the Declaration's provisions relating to the clearance or removal of ERW would also work to reduce their potential for polluting the environment.

It might reasonably be asked why it is important that the Political Declaration should be interpreted as also speaking to the protection of the

91 Protocol on Explosive Remnants of War (Protocol V) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 2399 UNTS 100, 28 November 2003 (entered into force 12 November 2006). A list of States Parties is available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mdtsg_no=XXVI-2-d&chapter=26&clang=_en.

92 Convention on Cluster Munitions, 2688 UNTS 39, 30 May 2008 (entered into force 1 August 2010) (CCM). A list of States Parties is available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mdtsg_no=XXVI-6&chapter=26&clang=_en.

environment – it could be argued, for example, that IHL already provides the environment with specific and general protection⁹³ and that what is required is more effective implementation of the existing law. How does the Political Declaration supplement or improve upon IHL as it relates to protection of the environment?

To begin with, the Declaration sets a lower threshold for environmental damage than that found in IHL. While the law prohibits “the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”,⁹⁴ the threshold for widespread, long-term and severe damage is very high: “The three conditions are cumulative and the phrase ‘long-term’ [is] understood ... to mean decades.”⁹⁵ The Declaration does not set such a high threshold. It refers more generally and without qualification to the “impact” of explosive weapons on the environment as among the direct and indirect effects against which endorser States have committed to strengthen the protection of civilians. The addition of such a commitment in the environmental sphere has the potential to strengthen the protection of the environment.

The extent to which that potential is realized will depend on the extent to which endorser States implement their commitments under the Political Declaration. Here, the Declaration’s provision of a formal process of review may be advantageous. Paragraph 4.7 envisages regular meetings of endorser States (the first is expected to be convened in 2024) to review implementation of the Declaration, to exchange good policies and practices, and to share views on emerging concepts and terminology. In addition, paragraph 4.8 commits States to promoting the Declaration and pursuing its effective implementation by the greatest possible number of States, and to seeking adherence to its commitments by all parties to conflict, including non-State armed groups. Both paragraphs offer significant opportunities for interested States, the UN, the ICRC and civil society to advocate for and pursue strengthened protection of the environment in armed conflict. Again, the potential is there – what is needed, moving forward, is the will to realize it.

93 ICRC Guidelines, above note 81, p. 21.

94 Article 35(3) of Additional Protocol I prohibits the use of “methods or means of warfare which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment”. Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict, 1125 UNTS 8, 8 June 1977 (entered into force 7 December 1978), Art. 35(3).

95 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005, p. 151, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>. The authors note that the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia stated in its final report in 2000 that the threshold was so high as to make it difficult to find a violation (p. 157).