Thank you, Chairperson.

The current draft text reiterates key provisions of international humanitarian law in several places and outlines measures to improve implementation. It should do more, however, to clarify how international humanitarian law applies in the context of the use of explosive weapons in populated areas.

Paragraph 2.2 recognizes the importance of “fostering clarity” as well as “enhancing the implementation” of existing obligations under this body of law, and it should be retained. But the paragraph only welcomes the initiatives of others, and the declaration as a whole does little itself to promote clarity of the law.

We recommend states seize the opportunity presented by this declaration to clarify how international humanitarian law applies to the use of explosive weapons in populated areas. Clarification can come through additions to or amendments of the draft text.

Clarifying the law involves more than simply restating existing rules. It must also address how they should be understood in a specific context. At the same time, clarification does not involve creating new law, which a political declaration by nature cannot do.

The last sentence of paragraph 2.2 illustrates the potential for clarification. That sentence implies that the use of explosive weapons with wide area effects in populated areas is acceptable even if it presents difficulties in practice. Field research shows, however, the foreseeability of the immediate and reverberating effects of the use of such weapons in populated areas. Armed forces should take these foreseeably indiscriminate effects into account when assessing the proportionality of an attack, and given the likelihood an attack would be disproportionate, we agree with the International Committee of the Red Cross that there should be a presumption against using explosive weapons with wide area effects in populated areas.
Therefore, we recommend deleting the clause in paragraph 2.2 that reads, “We recognize the difficulty in directing explosive weapons with wide area effects against specific military objectives within populated areas.” States could amend it to enhance legal clarity by stating, “We recognize the difficulty of using explosive weapons with wide area effects in populated areas in a way that is fully compliant with international humanitarian law.”

This kind of clarification would promote consistency in states’ interpretation and implementation of international humanitarian law. In so doing, it would also increase the protection of civilians from the harm this political declaration seeks to address.

We have provided comments on other paragraphs of Section 2 in our written submission.

Thank you.