Remarks on Section 3 of the draft elements for a political declaration on the use of explosive weapons in populated areas
Women’s International League for Peace and Freedom
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Thank you, ambassador. Our recommendations on section 3 of the draft elements are as follows:

3.2: The commitment to “refrain from any use of weapons that are prohibited as inherently indiscriminate” undermines the very prohibitions referenced. Weapons that are already prohibited, or that have been deemed to be indiscriminate, must never be used. This weakens existing IHL and specific prohibition treaties and cannot remain as worded. It should be cut, or could commit states to “Adhere to existing prohibitions on weapons that are inherently indiscriminate.”

3.3 normalises the continued use of EWIPA. This declaration must promote the presumption of non-use in order to prevent humanitarian harm. Thus 3.3 should be deleted, or commit states to developing, review, and implementing policies relevant for not using explosive weapons with wide area effects in populated areas.

3.4: A commitment to “restrict” the use of explosive weapons with wide area effects in populated areas undermines existing IHL, which presumes against such use already. Furthermore, “restricting” only the use of EWIPA that would be known to be indiscriminate, as it is currently worded in 3.4, is also lower than the obligation under existing law, because indiscriminate attacks are illegal and therefore must not be taken. The current wording suggests that some limited use of EWIPA is permitted even when indiscriminate effects are expected.

3.4 should instead commit states to develop, implement, and promote policies and practices to end the use of explosive weapons with wide area effects in populated areas. As Human Rights Watch and the International Human Rights Clinic of the Human Rights Program at Harvard Law School point out, such a commitment would have the greatest impact on preventing human suffering.

In terms of additional elements, we suggest that the declaration should recognise the connection between arms transfers and the use of explosive weapons in populated areas. It could reaffirm that all states must maintain the highest possible standards on their exports of conventional arms, including by adhering to and implementing fully the Arms Trade Treaty (ATT). It could also commit signatories, including those not party to the ATT, to develop specific guidelines to restrict or stop the transfer of certain types or categories of conventional weapons to state and non-state actors.