



# Making a Commitment

## Paths to Curbing the Use of Explosive Weapons in Populated Areas

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# Introduction

Tens of thousands of civilians are killed and injured every year from the use in populated areas of explosive weapons, such as mortars, rockets, artillery projectiles, and aircraft bombs, including barrel bombs. As civilian casualties multiply, international efforts to deal with this problem are gathering pace. The United Nations secretary-general, several UN agencies—notably the Office for the Coordination of Humanitarian Affairs (OCHA)—and the International Committee of the Red Cross (ICRC) have all acknowledged the need to address the civilian harm caused by the use of explosive weapons with wide area effects in populated areas.<sup>1</sup> States are also seeking to find ways to protect civilians from this threat. In September 2015, Austria will host a meeting to consider how to strengthen the protection of civilians from explosive weapons used in populated areas. The initiative follows a meeting hosted by Norway in 2014 on the same topic. As momentum for international action grows, calls for a political commitment to prevent harm from explosive weapons are increasing.

This paper aims to inform discussions on a political commitment to protect civilians from explosive weapons. It outlines options for the form and nature of such a commitment, for its development and endorsement, and for mechanisms for review, reporting, and institutionalization. By setting out a range of precedents, the paper provides different models on which a political commitment on explosive weapons could draw, either separately or in combination. The precedents also demonstrate the feasibility of such a political commitment. With political will, creative vision, and recognition of the urgency of the problem, a commitment to limit the harm caused by explosive weapons to civilians could be produced in a timely fashion.

The use of explosive weapons in populated areas destroys civilian lives and infrastructure. According to one source, nearly 38,000 people were killed or injured by explosive weapons in 2013 alone.<sup>2</sup> In populated areas, such as cities and towns, the

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<sup>1</sup> See, e.g., UN Secretary-General, “Report of the Secretary General on the protection of civilians in armed conflict,” S/2012/376, May 22, 2012, para. 75; UN Secretary-General, “Report of the Secretary General on the protection of civilians in armed conflict,” S/2013/689, November 22, 2013, para. 34; UN Office for the Coordination of Humanitarian Affairs (OCHA), “Explosive weapons in populated areas,” November 25, 2013, <http://www.unocha.org/top-stories/all-stories/humanitarian-issues-strengthening-protection-explosive-weapons> (accessed April 28 2015); Statement by International Committee of the Red Cross (ICRC), UN General Assembly First Committee, General debate on all disarmament and international security agenda items, New York, October 14, 2014, <https://www.icrc.org/en/document/weapons-icrc-statement-united-nations-2014> (accessed April 28, 2015).

<sup>2</sup> Action on Armed Violence, “Explosive Events: Monitoring Explosive Violence in 2013,” April 2014, <http://aoav.org.uk/wp-content/uploads/2014/05/AOAV-Explosive-Events-2013.pdf> (accessed April 15, 2015), p. 3.

proportion of civilian casualties was 93 percent.<sup>3</sup> Explosive weapons with wide area effects pose especially grave danger. They encompass weapons that produce a large blast and/or fragmentation radius (such as aircraft bombs); weapons that deliver multiple munitions that saturate a large area (such as Grad rockets and others from multi-barrel rocket launchers); and weapons that are so inaccurate that they cannot be effectively targeted (such as barrel bombs). Using explosive weapons with these characteristics in cities and towns inevitably causes immense harm to civilians.

Human Rights Watch and the International Human Rights Clinic at Harvard Law School (IHRC) welcome the increased international attention being paid to the civilian harm caused by the use of explosive weapons in populated areas and urge states to pursue a political commitment to limit that harm. Human Rights Watch is a founding member of the International Network on Explosive Weapons (INEW), a global coalition of nongovernmental organizations (NGOs) that calls on governments to “develop stronger international standards, including certain prohibitions and restrictions on the use of explosive weapons in populated areas.”<sup>4</sup> INEW and its member organizations are prepared to work with states, the United Nations, and the ICRC to help create such standards in the form of a political commitment. Civil society has played an active role in the development of recent humanitarian disarmament instruments and should be a significant contributor in this newest effort to reduce harm to civilians from certain weapons.

This paper provides a roadmap of the paths a political commitment (or series of commitments) on explosive weapons could take. It first identifies four types of commitments—declarations, regulations, guidelines, and manuals—which are distinguishable by form and nature. The paper then explains processes for the development and endorsement of these commitments, which can be led by states, a partnership of states, NGOs, and international organizations, or UN bodies. Finally, it examines mechanisms, notably for reporting and review, to promote implementation of commitments. This paper notes some advantages and disadvantages of each option in the context of explosive weapons, although it does so without providing an in-depth critique. That approach is not meant to imply that all options are equally attractive. Instead it aims to ensure that decisions are based on a comprehensive understanding of the different routes that could be pursued.

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<sup>3</sup> Ibid.

<sup>4</sup> “INEW: Learn More,” International Network on Explosive Weapons, accessed April 5, 2015, <http://www.inew.org/learn-more-about-inew>.

In this paper, a “political commitment” is a written document that outlines standards for state conduct; states may endorse a commitment, but they understand that it is not legally binding. A treaty, by contrast, is a written agreement between two or more states; through certain procedural steps, states consent to be legally bound by a treaty’s terms.<sup>5</sup> The paper’s analysis draws on 30 political commitments, dating back to 1979, that are related to armed conflict, armed violence, or arms control. They deal with such topics as the protection of schools from military use during armed conflict, the regulation of private military and security companies, and the prevention of ballistic missile proliferation.<sup>6</sup>

Political commitments have a long history of setting standards for conduct in armed conflict. The 1863 founding conference of the Red Cross movement, attended by representatives of sixteen states and four philanthropic institutions, issued a series of recommendations to states, including the now widely accepted principle that warring parties should recognize the neutrality of the Red Cross.<sup>7</sup> The *1880 Oxford Manual*, authored by the Institute for International Law, was another early effort to provide guidance for states on conduct in war that set standards reflected in subsequent international treaties.<sup>8</sup> Such precedents show the powerful normative effect that political commitments can have over time. A commitment to curb the use of explosive weapons with wide area effects in populated areas would continue this tradition and help build consensus on the best means to prevent harm to civilians.

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<sup>5</sup> See Vienna Convention on the Law of Treaties, adopted May 22, 1969, 1155 UNTS, entered into force January 27, 1980, art 2(1)(a).

<sup>6</sup> The paper does not cover all political commitments in these areas. The 30 commitments analyzed represent the most prominent examples.

<sup>7</sup> *Resolutions of the Geneva International Conference*, October 26-29, 1863, <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=oEo385578E11B4ABC12563CD005152EB> (accessed April 5, 2015), recommendations.

<sup>8</sup> Institute of International Law, *The Laws of War on Land (Oxford Manual)*, September 1880, <https://www.icrc.org/ihl/INTRO/140?OpenDocument> (accessed April 5, 2015).

## I. Form and Nature

Political commitments in the fields of armed conflict, armed violence, and arms control offer various models that could be used to address the problem of explosive weapons. These commitments range in form from documents resembling UN resolutions to detailed technical guidance. They also differ in nature: some commitments are directed at purely political goals, while others clarify obligations under international law. This paper identifies four descriptive categories of political commitments, which are distinguished by their form and nature, namely: declarations, regulations, guidelines, and manuals.<sup>9</sup>

“Declarations” are documents by which states commit to achieving political goals, which are usually expressed in broad language. Some declarations resemble a UN General Assembly resolution in form. Most are short documents of no more than five pages that consist of an introductory section, which outlines the problem being addressed and describes relevant recent developments, followed by a list of general actions states commit to take. In nature, they are often general expressions of political intention. The *Declaration of Commitment to End Sexual Violence in Conflict* is a three-page document in which states, for example, “pledge to do more to raise awareness of [rape and other forms of sexual violence], to challenge the impunity that exists and to hold perpetrators to account, [and] to provide better support to victims.”<sup>10</sup>

“Regulations” are similar in form to declarations in that they contain introductory and operative sections, but differ in nature and exist primarily in the field of arms control. While declarations present themselves as purely political and often contain broadly worded operative sections—leaving much discretion to states in implementation—regulations establish rules on specific types of weapons that states volunteer to abide by. The introductory section usually takes the form of a preamble and is followed by numbered operative clauses, resembling a treaty. Unlike treaties, however, these rules do not legally bind states to comply. Regulations are often less than five pages in length, but can be significantly longer, especially if they incorporate annexes. Under the *Hague Code of Conduct against Ballistic Missile Proliferation*, a three-page set of regulations, states commit to a number of non-binding actions, such as implementing

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<sup>9</sup> The name of a political commitment does not determine which category it falls into.

<sup>10</sup> *Declaration of Commitment to End Sexual Violence in Conflict*, 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/274724/A\\_DECLARATION\\_OF\\_COMMITMENT\\_TO\\_END\\_SEXUAL\\_VIOLENCE\\_IN\\_CONFLICT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274724/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT.pdf) (accessed April 5, 2015).

transparency measures that include “exchang[ing] pre-launch notifications on their Ballistic Missile and Space Launch Vehicle launches and test flights.”<sup>11</sup>

“Guidelines” are principles to guide state conduct (and sometimes the conduct of additional actors, such as humanitarian organizations) in a particular area. They take a variety of forms from succinct statements of principles, to principles supplemented with commentary and examples of best practices. In nature, guidelines aim to establish progressive standards or to clarify the application of international law in new situations or less specifically regulated areas. The *Guiding Principles on Internal Displacement* are a set of guidelines that contain 30 principles, such as: “[i]nternally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country.”<sup>12</sup>

Finally, “manuals” are lengthy documents that restate international law on a particular subject (often in the field of armed conflict) or provide comprehensive technical guidance in a specific area. They are usually produced by expert groups convened by non-governmental actors, such as research institutes. Most manuals are more than 50 pages and contain explanatory introductions. Manuals restating law are accompanied by extensive commentary. The *Manual on International Law Applicable to Air and Missile Warfare* “provides the most up-to-date restatement of existing international law applicable to air and missile warfare,” identifying 175 “black-letter rules” drafted through expert deliberations over a number of years.<sup>13</sup> That manual is accompanied by a 348-page commentary that “clarifies the prominent legal interpretations and indicates differing perspectives.”<sup>14</sup> Alternatively, manuals such as the *International Ammunition Technical Guidelines* contain detailed technical guidance for practitioners working in the field.<sup>15</sup>

Setting the objectives of a political commitment on explosive weapons will help to determine which category of commitment is most appropriate to address the problem

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<sup>11</sup> *Hague Code of Conduct against Ballistic Missile Proliferation (Hague Code of Conduct)*, 2002, [http://www.hcoc.at/?tab=what\\_is\\_hcoc&page=text\\_of\\_the\\_hcoc](http://www.hcoc.at/?tab=what_is_hcoc&page=text_of_the_hcoc) (accessed April 5, 2015), 4(a)(iii).

<sup>12</sup> UN Commission on Human Rights, “Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, Guiding Principles on Displacement,” E/CN.4/1998/53/Add.2, February 11, 1998, <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx> (accessed June 2, 2015).

<sup>13</sup> Program on Humanitarian Policy and Conflict Research at Harvard University, *Manual on International Law Applicable to Air and Missile Warfare* (Cambridge: President and Fellows of Harvard University, 2009), <http://ihlresearch.org/amw/HPCR%20Manual.pdf> (accessed April 5, 2015), iii.

<sup>14</sup> *Ibid.*

<sup>15</sup> UN Office for Disarmament Affairs (UNODA), *International Ammunition Technical Guidelines*, 2011, <http://www.un.org/disarmament/un-safeguard/guide-lines/> (accessed April 5, 2015).

of explosive weapons. If an objective is to encourage states to make general commitments, such as cooperating on and coordinating international efforts around the problem and recording incidence of harm in a systematic manner, a declaration may be an appropriate choice. The *Geneva Declaration on Armed Violence and Development* could be a suitable model for this type of commitment. It has an operative section that starts with an overall statement of purpose (“[We] have resolved to promote sustainable security and a culture of peace by taking action to reduce armed violence and its negative impact on socio-economic and human development”) and then moves to more discrete action states will take (e.g., “We will work individually and together, at national, regional and multilateral levels, on practical measures that: promote conflict prevention, resolution and reconciliation.”).<sup>16</sup>

If an objective is to establish politically compelling rules addressing the use of some or all explosive weapons in particular circumstances or all circumstances, then a set or sets of regulations could lay out these rules. Under the *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument)*, states agree to specific rules on marking, record-keeping, and tracing concerning small arms and light weapons.<sup>17</sup>

A set of guidelines may be suitable if an objective is to elaborate principles to guide conduct around the use of explosive weapons. Guidelines often address matters that are already partially or substantially covered by existing rules of international law, which is the case with explosive weapons. The use of certain explosive weapons, i.e., antipersonnel landmines and cluster munitions, has been banned by treaties, but there is no treaty that deals specifically with the problem of explosive weapons in populated areas as a whole. Guidelines on explosive weapons could establish progressive standards and/or clarify existing international law. Guidelines focused on progressive goals could elaborate principles around the use of explosive weapons that set a higher standard than existing law requires (without purporting to alter the substance of a state’s international obligations). Such a set of guidelines could also provide supplementary commentary and possibly outline best practices. The *Guidelines for*

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<sup>16</sup> *Geneva Declaration on Armed Violence and Development (Geneva Declaration)*, 2006, <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf> (accessed April 5, 2015).

<sup>17</sup> *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument)*, 2005, [http://www.poa-iss.org/InternationalTracing/ITI\\_English.pdf](http://www.poa-iss.org/InternationalTracing/ITI_English.pdf) (accessed April 5, 2015). Regulations often contain a provision enjoining states to implement their rules through domestic law, something that could appear in a set of regulations on explosive weapons: the *International Tracing Instrument*, for instance, calls on states to “put in place, where they do not exist, the laws, regulations and administrative procedures needed to ensure the effective implementation of [the International Tracing Instrument].” *Ibid.*, para. 24.

*Protecting Schools and Universities from Military Use during Armed Conflict* contain six short “guidelines,” each accompanied by several lines of explanatory text.<sup>18</sup>

Alternatively, or in addition to advancing progressive standards, a set of guidelines could clarify existing law on the use of explosive weapons, as the law may be unclear or misunderstood by states. The *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies* (Montreux Document on private military and security companies) is an example.<sup>19</sup> The *Montreux Document’s* developers recognized that there was “a clear need to spell out the rules for [private military and security companies] and offer practical advice on how to deal with them” because, although international humanitarian law applies to such companies, the lack of “specific international legal regulations” meant many observers perceived them to be beyond the law.<sup>20</sup> Guidelines on explosive weapons could outline discrete rules of international humanitarian law and explain how they apply to the use of explosive weapons, before giving examples of best practices.

Another option could be a manual restating the law governing the explosive weapons problem. The *Tallinn Manual on the International Law Applicable to Cyber Warfare*, produced by a group of individual experts rather than states, is an example of a manual that tackles a subject where the law’s application was seen as unclear.<sup>21</sup> The *Tallinn Manual* “identifies the [relevant international law] and sets out 95 ‘black letter rules’ governing such conflicts,” followed by extensive commentary.<sup>22</sup> The experts who wrote the *Tallinn Manual* developed each “rule” by consensus: in some areas, they agreed on very specific rules; in others, they could only reach agreement on a broadly formulated rule.<sup>23</sup>

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<sup>18</sup> *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, 2014, [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf) (accessed April 5, 2015). For example, “Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in any way in support of the military effort.”

<sup>19</sup> *The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies* (Montreux Document on private military and security companies), 2008, [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0996.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf) (accessed April 5, 2015).

<sup>20</sup> *Ibid.*, p. 38.

<sup>21</sup> Michael N. Schmitt, ed., *Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge: Cambridge University Press, 2013), <https://ccdcoe.org/tallinn-manual.html> (accessed April 5, 2015).

<sup>22</sup> *Ibid.*, preface.

<sup>23</sup> Where there were disagreements, the commentary includes a description of the positions of different experts. *Ibid.*, p. 6.

While such manuals primarily purport to restate law, they may have some progressive aspects: the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* “includes a few provisions which might be considered progressive developments in the law but most of its provisions are considered to state the law which is currently applicable.”<sup>24</sup> A manual on explosive weapons could similarly combine restatements of the law with a progressive agenda.

Although many political commitments plainly fall into one category or another, the lines between declarations, rules, guidelines, and manuals are not always clear. For example, a commitment could combine political goals with restatements of law. In developing a political commitment on explosive weapons, elements from various types of commitment could be brought together in a hybrid form and adapted to advance multiple objectives.

Alternatively, or additionally, more than one objective could be pursued by developing several political commitments from different categories. For example, in a declaration, states could commit to broad measures, such as working to understand the contours of the problem of explosive weapons and identifying best practices; a complementary manual could offer technical guidance for documenting harm caused by explosive weapons. The *Declaration of Commitment to End Sexual Violence in Conflict* includes a commitment from states 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.”<sup>25</sup> The *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (Sexual Violence Protocol)*, a manual, was published the following year.<sup>26</sup>

Beyond the question of objectives, the form and nature of a commitment (or series of commitments) on explosive weapons will also depend on a range of other factors including, crucially, the developers involved and the political capital and resources deployed.

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<sup>24</sup> Louise Doswald-Beck, ed., *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge: Cambridge University Press, 1995), <https://www.icrc.org/ihl/INTRO/560?OpenDocument> (accessed April 5, 2015).

<sup>25</sup> *Declaration of Commitment to End Sexual Violence in Conflict*, para. 12.

<sup>26</sup> *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (Sexual Violence Protocol)*, 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319054/PSVI\\_protocol\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf) (accessed April 5, 2015).

## II. Development and Endorsement

The process leading to a political commitment on explosive weapons will involve steps of initiation and drafting, followed by endorsement. Initiation involves an actor or group of actors signaling an intention to put forward a new commitment in a particular area. The initiating actor(s) may then be involved in the drafting process, or they may delegate drafting to others, such as an expert committee. Once a political commitment is drafted, the process for states to endorse the commitment varies significantly: at one end of the spectrum, some commitments have formal sign-on procedures; at the other, commitments such as manuals rely on gradual integration into domestic policy and practice.

This section outlines the three principal approaches to development and endorsement: state-led, “mixed” (which involves the coordinated development of more than one commitment in a particular area by more than one actor), and United Nations-led.

### State-Led Processes

In a state-led process, a state or a group of states initiates the creation of a political commitment. The initiating state (or states) will then either draft the commitment, often with the assistance of other states and civil society stakeholders, or delegate drafting to an expert committee. Once the commitment is drafted, the initiating state or states may host a conference to launch the commitment. Usually states in attendance endorse the commitment at that conference. Other states can endorse the commitment at a later date.

#### *Drafting by States*

Drafting by states means that state representatives write the commitment’s text. This process can resemble the negotiation and drafting of a treaty, but states participate with the clear understanding that the political commitment is not legally binding. As in a treaty negotiation, civil society groups often have input into a commitment’s text and play an important role in overall discussions. An individual state may lead a process to draft a commitment, or a group of states may draft a commitment within an existing political body. In the examples examined, individual state processes produced declarations and political bodies produced regulations.

Another alternative is that a group of states could lead a process of drafting a commitment outside a political body. While none of the political commitments

referenced in this paper came out of such a group initiation process, it is an approach that has been successfully used in treaty initiation and drafting. Notably, the Mine Ban Treaty and the Convention on Cluster Munitions each came out of a process led by a core group of states acting in concert.<sup>27</sup>

The *Declaration of Commitment to End Sexual Violence in Conflict* emerged from a state-led process launched by the UK government in 2012, the Preventing Sexual Violence in Conflict Initiative. In 2013, when the United Kingdom took the presidency of the G8, a group of states with significant and advanced economies, it placed the topic of preventing sexual violence in conflict high on the G8's agenda. The result was the April 2013 *G8 Declaration on Preventing Sexual Violence in Conflict*.<sup>28</sup> Following the *G8 Declaration* and a resolution the United Kingdom spearheaded in the UN Security Council, the United Kingdom led a drafting process to produce a declaration to which a larger group of states could sign on.<sup>29</sup> With the assistance of 18 like-minded states, the United Kingdom drafted the resulting *Declaration of Commitment to End Sexual Violence in Conflict*, which it launched in September 2013.<sup>30</sup>

The *Geneva Declaration on Armed Violence and Development* was the product of a 2006 summit convened by the Swiss government, in conjunction with the UN Development Programme (UNDP). The summit was attended by 42 states as well as civil society representatives and had the aim of producing a declaration on the topic of armed violence and development.<sup>31</sup> As a follow-up to the *Geneva Declaration*, Norway and UNDP hosted a similar summit in 2010 that produced the *Oslo Commitments on Armed Violence*.<sup>32</sup> This document commits states to actions such as to “[m]easure and

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<sup>27</sup> Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary* (Oxford: Oxford University Press, 2010), pp. 17-18.

<sup>28</sup> G8, *Declaration on Preventing Sexual Violence in Conflict*, 2013, <http://www.unrol.org/files/G8%20Declaration%20Sexual%20Violence%20in%20Conflict%20-%20April%202013.pdf> (accessed April 5, 2015).

<sup>29</sup> “Sexual Violence in Conflict,” UK Foreign and Commonwealth Office, accessed April 7, 2015, <https://www.gov.uk/government/policies/preventing-sexual-violence-in-conflict>; UN Security Council, Resolution 2106 (2013), S/RES/2106, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2106](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2106) (accessed April 5, 2015).

<sup>30</sup> Rt. Hon. William Hague, “Global action to end warzone sexual violence,” speech in New York, September 24, 2013, <https://www.gov.uk/government/speeches/global-action-to-end-warzone-sexual-violence> (accessed April 14, 2015).

<sup>31</sup> Negotiations over the declaration occurred at the summit, and UNDP provided support to the drafting process. See “What is the [Geneva] Declaration?” Geneva Declaration Secretariat, accessed April 5, 2015, <http://www.genevadeclaration.org/the-geneva-declaration/what-is-the-declaration.html>; “The Geneva Declaration Process,” [http://www.quino.org/sites/default/files/resources/The%20Geneva%20Declaration%20Process\\_leaflet.pdf](http://www.quino.org/sites/default/files/resources/The%20Geneva%20Declaration%20Process_leaflet.pdf) (accessed May 22, 2015), p. 2.

<sup>32</sup> *Oslo Commitments on Armed Violence*, 2010, <http://www.osloconferencearmedviolence.no/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=24790> (accessed April 5, 2015).

monitor the incidence and impact of armed violence at national and sub-national levels in a transparent way.”<sup>33</sup>

These individual state processes produced declarations that were short in length and whose development unfolded over a relatively short time frame. Brevity and an expeditious process can be beneficial when states seek rapidly to address issues of concern to the international community. These characteristics could be advantageous for a commitment on explosive weapons, given the increasing prominence of the explosive weapons problem on the international agenda and in contemporary conflicts.

Outside individual state processes, states may initiate and draft commitments within a political body. In this paper, the term “political body” refers to a group of states that have joined together to adopt commitments in a particular area through a standing body that operates under agreed rules. Political bodies are often longstanding arrangements that have produced a number of commitments, usually regulations. The Missile Technology Control Regime, for example, is made up of 33 states that promote ballistic missile non-proliferation.<sup>34</sup> Members of the body proposed and drafted the initial versions of the *Hague Code of Conduct against Ballistic Missile Proliferation*, although it was finalized outside the body.<sup>35</sup> A political body offers possible advantages for the development of a political commitment. Member states are familiar with the formal rules and informal practices of a body once it has been established. Additionally, when membership is contingent upon meeting certain standards, there may be a significant political cost to non-compliance, enhancing the chances that a commitment negotiated within a body’s auspices will be implemented. Political bodies also allow the resource and financial burden of producing a new commitment to be shared among members. However, the problem of the use of explosive weapons in populated areas does not fit squarely within the mandate of any existing political body

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<sup>33</sup> *Ibid.*, para. 2.

<sup>34</sup> Further examples of political bodies include: the Nuclear Suppliers Group, a group of 48 states that “seeks to contribute to the non-proliferation of nuclear weapons through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports”; the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, a group of 41 states organized around arms control concerns; the Organization for Security and Co-operation in Europe (OSCE), a group of 57 states that develops a cohesive approach to security concerns and human rights; and the Kimberley Process, a group of 81 states committed to curbing the flow of conflict diamonds. “About the NSG,” Nuclear Suppliers Group, accessed April 5, 2015, <http://www.nuclearsuppliersgroup.org/en/about-us>; “Introduction,” Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, accessed November 12, 2014, <http://www.wassenaar.org/introduction/index.html>; “Who Are We,” OSCE, accessed November 12, 2014, <http://www.osce.org/who>; “About,” Kimberley Process, accessed November 12, 2014, <http://www.kimberleyprocess.com/en/about>.

<sup>35</sup> “HCoC Chronology,” Hague Code of Conduct website, accessed June 17, 2015, [http://www.hcoc.at/?tab=what\\_is\\_hcoc&page=hcoc\\_chronology](http://www.hcoc.at/?tab=what_is_hcoc&page=hcoc_chronology).

and establishing a new body would be challenging, as it would likely require initiating states to deploy significant political will and resources across a long period of time.

Inside or outside political bodies, drafting by states can involve small or large numbers of states. In the case of the *Geneva Declaration on Armed Violence and Development* and the *Declaration of Commitment to End Sexual Violence in Conflict*, the initiating state invited like-minded states to the drafting table, allowing that state to take a leading role in crafting the commitment's content. The initiating state's control over content decreases as the number of drafting states increases. The final text of the *Hague Code of Conduct against Ballistic Missile Proliferation* resulted from negotiations involving nearly 100 states and contained "looser language" than earlier drafts produced by the initiating states, the members of the Missile Technology Control Regime.<sup>36</sup> However, the involvement of a large number of states in drafting the *Hague Code of Conduct*—including states with developed missile programs that were not members of the Missile Technology Control Regime—furthered the initiating states' ultimate goal of delegitimizing ballistic missile proliferation.<sup>37</sup> Such trade-offs would need to be weighed in deciding how many—and which—states to involve in drafting a political commitment on explosive weapons.

### *Drafting by Expert Committee*

As an alternative to drafting by states, initiating states may enlist an expert committee to draft a political commitment. The committee's composition and size depends on the project's goals, as well as resource and time constraints. In the examples examined, expert committees drafted guidelines and manuals.<sup>38</sup>

The *Montreux Document on private military and security companies*, a set of guidelines, came from an initiative launched in 2005 by the Swiss government, in association with

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<sup>36</sup> "The Hague Code of Conduct: Overview," Nuclear Threat Initiative, accessed April 5, 2015, <http://www.nti.org/treaties-and-regimes/hague-code-conduct-against-ballistic-missile-proliferation-hcoc/>. The Missile Technology Control Regime decided to involve states that were not members of the regime in drafting the final text and allowed non-members to endorse the *Hague Code of Conduct*. Political bodies do not usually invite non-members to draft or endorse commitments they have initiated.

<sup>37</sup> Ibid.

<sup>38</sup> All manuals, regardless of the initiator, are drafted by expert committees. Manuals that restate law are traditionally initiated by civil society actors (usually research institutes) and then drafted by military and legal experts. For example, the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* was initiated by the International Institute of Humanitarian Law at a 1988 Round Table and drafted by lawyers and naval experts from 24 countries at a series of follow-up roundtables, prior to its publication in 1994 (see Doswald-Beck, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*). Meanwhile, technical manuals tend to be initiated by UN bodies or, less frequently, states. For example, as discussed below, the *International Ammunition Technical Guidelines* were initiated by the UN General Assembly, while the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* was initiated by the United Kingdom.

the ICRC, to provide guidance on states' obligations and best practices on the use of private military and security companies during armed conflict. Switzerland and the ICRC brought together experts from diverse spheres who produced a draft text of the commitment, and governments, NGOs, and private security companies participated in the meetings.<sup>39</sup> As part of this process, Switzerland and the ICRC convened several informal consultations with representatives from civil society, academia, industry, and government.<sup>40</sup> By its third meeting, the expert committee had expanded to include human rights organizations, as well as additional government and industry experts. The expanded experts committee produced a draft document, which the initiative then submitted to participating governments for evaluation.<sup>41</sup> The *Montreux Document* was finalized in 2008.

The *Sexual Violence Protocol*, a manual, also involved drafting by an expert committee. Like the *Declaration of Commitment to End Sexual Violence in Conflict*, the manual came out of the UK government's Preventing Sexual Violence in Conflict Initiative.<sup>42</sup> UK government officials leading the initiative began meetings of stakeholders to identify best practices on the documentation and investigation of sexual violence in conflict; these meetings built consensus not only on best practices themselves, but also on the need for a manual to articulate these standards.<sup>43</sup> A group of stakeholders, including civil society organizations, survivors, and other experts, produced the *Sexual Violence Protocol* in 2014.<sup>44</sup>

If a political commitment on explosive weapons takes the form of guidelines or a manual, using an expert committee that brings together experts and important stakeholders is one option that could be explored. The initiating state or states would set the agenda and determine the committee's composition, thereby retaining an indirect hand in the drafting process, while the committee itself would undertake the challenging work of formulating appropriate guidance and assessing best practices.

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<sup>39</sup> "The Montreux Document," Swiss Federal Department of Foreign Affairs, accessed April 5, 2015, <https://www.eda.admin.ch/eda/en/dfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html>

<sup>40</sup> "Third Meeting of Governmental and Other Experts on Private Military and Security Companies, 14-16 April 2008, Montreux, Switzerland: Chair's Summary," [https://www.eda.admin.ch/content/dam/eda/en/documents/topics/Chairs-summary-montreux-3d-meeting-2008\\_en.pdf](https://www.eda.admin.ch/content/dam/eda/en/documents/topics/Chairs-summary-montreux-3d-meeting-2008_en.pdf) (accessed June 17, 2015).

<sup>41</sup> "The Montreux Document," Swiss Federal Department of Foreign Affairs.

<sup>42</sup> "Preventing Sexual Violence in Conflict," last modified April 2, 2014, <http://preventsexualviolenceinconflict.tumblr.com/>.

<sup>43</sup> *Sexual Violence Protocol*, p. 6.

<sup>44</sup> *Ibid.*, pp. 6-7.

## *Partnerships*

In most state-led processes, the states involved have partnered with other actors at the initiation and drafting stage. Sometimes these partnerships are formal. In the process to create the *Montreux Document on private military and security companies*, Switzerland partnered with the ICRC, lending that organization's authority and credibility in the field of international humanitarian law to the project; UNDP played a similar role in the *Geneva Declaration on Armed Violence and Development* process. In other cases, partnerships emerge organically. Beyond being formally represented on expert drafting committees, civil society groups may work alongside states as the project develops to promote its aims and secure further buy-in from states. If states initiate an explosive weapons commitment, enlisting suitable partners to further the project's goals could be a productive step. Partners could include civil society organizations that work on armed conflict, the ICRC, which has expertise in the international law applicable to the explosive weapons problem, and UN bodies, such as OCHA.

## *Endorsement*

Once a political commitment has been drafted, the process of endorsement begins. The most formal path resembles ratification of or accession to a treaty: as a political matter, a state agrees to adhere to the terms of a political commitment either at a launching conference or at a subsequent time by writing to a designated body. At the informal end of the spectrum are manuals. A manual may be launched at a conference or, more usually, publication may simply signal the beginning of the manual's dissemination and promotion among relevant stakeholders. There is no process by which a state can "sign on" to a manual.

In the most common formal process, states endorse a commitment at a conference where their pledges to adhere to its terms are recorded. States not represented at the conference can sign on to the commitment at a later stage through a specified procedure. In the case of the *Montreux Document on private military and security companies*, a series of drafting meetings culminated in a final meeting at which all 17 states participating in the process agreed to adopt the document.<sup>45</sup> These states then "commend[ed] th[e] document to the attention of other States ... and other relevant actors," inviting other states to declare their support via communication to the Swiss

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<sup>45</sup> "The Montreux Document," Swiss Federal Department of Foreign Affairs.

government.<sup>46</sup> As of June 17, 2015, the *Montreux Document* had 52 participating states.<sup>47</sup>

The *Geneva Declaration on Armed Violence and Development* and the *Declaration of Commitment to End Sexual Violence in Conflict* had similar endorsement processes. In the case of the former, the summit at which its text was negotiated also served as its launching conference. At the summit, 42 states, led by Switzerland and UNDP, adopted the *Geneva Declaration*.<sup>48</sup> Following the summit, the *Geneva Declaration* has remained open for subsequent state endorsement via letter to a dedicated Swiss secretariat, and through this mechanism had obtained the endorsement of 113 states as of June 17, 2015.<sup>49</sup> The *Declaration of Commitment to End Sexual Violence in Conflict*, meanwhile, was released in New York where states were gathered for the late September 2013 session of the UN General Assembly. Endorsements were gathered prior to the main event to publicize this declaration: in September 2013 the UK foreign secretary announced to an audience of diplomats, heads of state, civil society representatives, and others that 106 states had already endorsed the commitment.<sup>50</sup> The deadline for states to endorse the declaration was set for October 2013, although it appears that endorsements were also accepted after the deadline. The *Declaration of Commitment to End Sexual Violence in Conflict* went on to gain 155 endorsements by July 2014.<sup>51</sup>

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<sup>46</sup> *The Montreux Document on private military and security companies*, preface, art. 9.

<sup>47</sup> “Participating States of the Montreux Document,” Swiss Federal Department of Foreign Affairs, accessed June 17, 2015, <https://www.eda.admin.ch/eda/en/dfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html>. Similarly, following several rounds of negotiation, the *Hague Code of Conduct against Ballistic Missile Proliferation* was launched at a 2002 conference, at which 93 states became “subscribing states.” The *Hague Code of Conduct* has remained open to subsequent state endorsement via notice to an executive secretariat in Austria. As of February 11, 2014, there were 137 subscribing states. “List of HCoC Subscribing States,” Hague Code of Conduct website, accessed June 17, 2015, [http://www.hcoc.at/?tab=subscribing\\_states&page=subscribing\\_states](http://www.hcoc.at/?tab=subscribing_states&page=subscribing_states). Because the Missile Technology Control Regime decided to open up the *Code*’s drafting and subscription to non-members, the endorsement process is different from the established endorsement procedures regimes generally use. The Wassenaar Arrangement, for example, holds annual meetings at which the regime as a whole may adopt new commitments. Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, “Guidelines and Procedures, including the Initial Elements,” July 2014, <http://www.wassenaar.org/guidelines/docs/5%20-%20initial%20Elements.pdf> (accessed April 5, 2015), p. 6.

<sup>48</sup> Quaker United Nations Office—Geneva, “The Geneva Declaration Process Linking Armed Violence Reduction and Development,” Briefing Paper, November 2007–January 2008, [http://www.quono.org/sites/default/files/resources/The%20Geneva%20Declaration%20Process\\_Linking%20Armed%20Violence%20and%20Development.pdf](http://www.quono.org/sites/default/files/resources/The%20Geneva%20Declaration%20Process_Linking%20Armed%20Violence%20and%20Development.pdf) (accessed April 5, 2015).

<sup>49</sup> “What is the [Geneva] Declaration?” Geneva Declaration Secretariat; “Who Has Signed [the Geneva Declaration]?” Geneva Declaration Secretariat, accessed June 17, 2015, <http://www.genevadeclaration.org/the-geneva-declaration/who-has-signed-it.html>.

<sup>50</sup> Rt. Hon. William Hague, “Global action to end warzone sexual violence.”

<sup>51</sup> A September 2013 UK Foreign and Commonwealth Office press release stated that 113 states had endorsed the *Declaration of Commitment to End Sexual Violence in Conflict* and that other countries would “be able to continue to add their endorsement to the Declaration until October 4th.” After the deadline, in November 2013, the UK foreign secretary noted that 137 states had endorsed the declaration. In July 2014, the figure the Foreign Secretary quoted was 155, suggesting that endorsements were accepted after the October 2013 deadline. “113 countries pledge action to end

Allowing for both initial and subsequent state endorsements would give scope for a political commitment on explosive weapons to grow in influence over time. If there was a launching conference, it would not necessarily need to bring all the stakeholders to the table, but could focus on the most concerned states, the most sympathetic states, the most influential states, or some combination of these according to the project leadership's strategy. Alternatively, launching at the sidelines of a world event, such as the UN General Assembly, and setting a deadline for endorsement might help to galvanize states to endorse a commitment on explosive weapons.

All manuals adopt an informal endorsement process. If a political commitment on explosive weapons took the form of a manual, depending on the audience the state-initiators hoped to reach, a launching conference could be an effective way to promote that manual. After a series of drafting meetings, the *Sexual Violence Protocol* was launched in 2014 at a summit in London, where states were encouraged to incorporate its guidance into domestic law and policy.<sup>52</sup> This summit served both to promote the *Sexual Violence Protocol* and to increase awareness about sexual violence in conflict. It was “the biggest global meeting on this issue ever convened,”<sup>53</sup> bringing together 1,700 delegates and 123 state delegations, and it received significant media attention.<sup>54</sup> The summit's leadership asked participants to support the *Sexual Violence Protocol* and invited ministers to sign a brief Statement of Action “commit[ting] to tackling sexual violence in conflict and to support[ing] victims.”<sup>55</sup>

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sexual violence in conflict #timetoact,” UK Foreign and Commonwealth Office news release, September 24, 2013, <https://www.gov.uk/government/news/113-countries-pledge-action-to-end-sexual-violence-in-conflict-timetoact> (accessed April 14, 2015); Rt. Hon. William Hague, “Oral statement to Parliament: Preventing Sexual Violence in Conflict,” November 28, 2013, <https://www.gov.uk/government/speeches/preventing-sexual-violence-in-conflict> (accessed April 14, 2015); Rt. Hon. William Hague, “Written Statement to Parliament: Preventing Sexual Violence in Conflict: Next Steps,” July 14, 2014, <https://www.gov.uk/government/speeches/preventing-sexual-violence-in-conflict-next-steps> (accessed April 14, 2015).

<sup>52</sup> Rt. Hon. William Hague and UK Foreign and Commonwealth Office, “Chair's Summary—Global Summit to End Sexual Violence in Conflict,” June 13, 2014, <https://www.gov.uk/government/publications/chairs-summary-global-summit-to-end-sexual-violence-in-conflict/chairs-summary-global-summit-to-end-sexual-violence-in-conflict> (accessed November 16, 2014). The Chair's Summary noted that “[t]he launch of the Protocol is just the first step. The next step is to implement the Protocol in a way that keeps it relevant, promotes its advocacy, ensures its accessibility and dissemination, adapts it to national contexts and monitors its progress.”

<sup>53</sup> “About the Global Summit to End Sexual Violence in Conflict,” UK Foreign and Commonwealth Office, accessed November 21, 2014, <https://www.gov.uk/government/topical-events/sexual-violence-in-conflict/about>.

<sup>54</sup> “Topic: Global Summit to End Sexual Violence in Conflict,” UK Foreign and Commonwealth Office, accessed November 21, 2014, <https://www.gov.uk/government/topical-events/sexual-violence-in-conflict> (accessed June 2, 2015); “About the Global Summit to End Sexual Violence in Conflict,” UK Foreign and Commonwealth Office.

<sup>55</sup> “Statement of Action—Global Summit to End Sexual Violence in Conflict,” UK Foreign and Commonwealth Office, June 13, 2014, <https://www.gov.uk/government/publications/statement-of-action-global-summit-to-end-sexual-violence-in-conflict> (accessed November 26, 2014).

In addition to being endorsed by individual states, many state-led commitments have also received endorsement from intergovernmental organizations—most notably, through resolutions of the UN General Assembly. Thus a political commitment on limiting the use of explosive weapons in populated areas generated through a state-led process could seek UN endorsement. In the view of some, UN endorsement would provide a boost in legitimacy for a commitment generated outside the United Nations and help to generate the impetus necessary for additional states to endorse a commitment. General Assembly endorsement ranges from recognizing that the commitment exists to actively encouraging states to formally endorse it. For example, the General Assembly “[took] note” of the *Geneva Declaration on Armed Violence and Development*,<sup>56</sup> and it has issued five resolutions encouraging states that have not yet adopted the *Hague Code of Conduct against Ballistic Missile Proliferation* to do so.<sup>57</sup> Supportive states can play a vital role in putting a political commitment on the UN agenda: the General Assembly resolution welcoming the *Hague Code of Conduct* was first drafted and approved by the UN Disarmament and International Security Committee, before which a large group of states had jointly sponsored the code’s presentation.<sup>58</sup>

## Mixed Processes

In a mixed process, more than one type of actor takes the lead in the development of multiple commitments in a particular subject area. Civil society often plays a prominent role in mixed processes, and states and UN agencies are also involved.<sup>59</sup> Actors typically coordinate their efforts, which may be part of a broader project.

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<sup>56</sup> UN General Assembly, “Promoting development through the reduction and prevention of armed violence,” Resolution 63/23 (2008), A/RES/63/23.

<sup>57</sup> UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 59/91 (2004), A/RES/59/91 (welcoming the instrument); UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 60/62 (2005), A/RES/60/62 (inviting all states that have not subscribed to do so); UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 63/64 (2008), A/RES/63/64 (inviting all states that have not subscribed to do so); UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 65/73 (2010), A/RES/65/73 (encouraging states that have already subscribed to increase participation and welcoming progress on implementation of the *Hague Code of Conduct*); UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 67/42 (2012), A/RES/67/42 (welcoming progress on implementation and universalization of the *Hague Code of Conduct* and encouraging states to sign on). The General Assembly has also been particularly active in promoting the *Kimberley Process* from its initial stages and onward. See, e.g., UN Security Council, Resolution 1459 (2003), S/RES/1459; UN General Assembly, “The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to the prevention and settlement of conflicts,” Resolution 61/28 (2006), A/RES/61/28.

<sup>58</sup> UN Disarmament and International Security Committee, “The Hague Code of Conduct against Ballistic Missile Proliferation,” A/C.1/165/L.45; UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 65/73 (2010), A/RES/65/73.

<sup>59</sup> States took the lead in developing the previously discussed examples of multiple commitments in a subject area: the *Declaration of Commitment to End Sexual Violence in Conflict* and the *Sexual Violence Protocol*, for example, were both initiated by the UK government.

The *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict* are part of a project in which the lead role shifted from civil society to states in a coordinated process that then yielded a second commitment.<sup>60</sup> A group of NGOs and UN agencies, the Global Coalition to Protect Education from Attack (GCPEA), initiated the process that led to this commitment (referred to as the *Lucens Guidelines* prior to their finalization). GCPEA was established in 2010 by organizations “concerned about on-going attacks on educational institutions, their students, and staff in countries affected by conflict and insecurity.”<sup>61</sup> In May 2012, GCPEA held an initial expert meeting at which “participants recognized the need for clear international guidelines setting out recommendations for minimizing military use of education institutions.”<sup>62</sup> As a result, GCPEA commissioned an academic, who was also an ex-military officer, to draft guidelines.<sup>63</sup> In November 2012, GCPEA presented draft guidelines to an expert consultation involving state representatives and experts from 12 geographically representative states, as well as civil society groups and UN agencies.<sup>64</sup> GCPEA subsequently formed a smaller drafting committee (with expert and state representation) to continue to work on the draft guidelines.<sup>65</sup> GCPEA released the *Lucens Guidelines* in June 2013 at a meeting of the Committee on the Rights of the Child.<sup>66</sup>

During the drafting process, GCPEA met with state and civil society representatives to identify a state or group of states to champion the *Lucens Guidelines*. In June 2014,

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<sup>60</sup> Another example of the lead actor shifting during the endorsement phase of single commitment is the *Declaration of Minimum Humanitarian Standards* (also known as the *Turku Declaration*), which outlines standards for state conduct in situations of internal violence. The Norwegian Institute of Human Rights drafted the declaration over the course of three years through two expert meetings of academics and representatives from Nordic human rights centers. It was adopted by the expert group in 1990. The Nordic states initially sought, but failed to achieve, UN endorsement. However, UN endorsement “was never the sole purpose of the exercise and the *Turku Declaration* came to play a meaningful role in many other processes that in a broader meaning could be said to fall under the notion of ‘standard-setting.’” Martin Scheinin, “Turku/Abo Declaration of Minimum Humanitarian Standards (1990)” (paper presented at the International Council on Human Rights Policy and International Commission of Jurists Workshop, Geneva, Switzerland, February 13-14, 2005), p. 2; *Declaration of Minimum Humanitarian Standards*, 1990, <http://www.ifrc.org/Docs/idrl/1149EN.pdf> (accessed April 5, 2015).

<sup>61</sup> “Who we are,” Global Coalition to Protect Education from Attack, accessed April 5, 2015, <http://www.protectingeducation.org/who-we-are>.

<sup>62</sup> “Protecting Schools and Universities from Military Use,” Global Coalition to Protect Education from Attack, accessed April 5, 2015, <http://www.protectingeducation.org/restricting-military-use-and-occupation>.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> “Latest News,” Global Coalition to Protect Education from Attack, accessed April 5, 2015, <http://www.protectingeducation.org/news/newsletter%E2%80%8B-july-11-2013>.

Norway announced it would lead states in finishing the document.<sup>67</sup> In December 2014, Norway and Argentina hosted a meeting at the United Nations in Geneva to release the final *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*.<sup>68</sup> Norway also announced its intention to host a summit in May 2015 focused on a second commitment, a *Safe Schools Declaration*.<sup>69</sup> Norway and other core group members drafted this declaration, including through open consultations held in Geneva that allowed input from supportive states to be reflected in the text. The *Safe Schools Declaration* not only allows states to endorse and commit to use the *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*, but also addresses the need to record harm from attacks on students, teachers, and schools, provide assistance to victims, and promote “conflict-sensitive” education programming. The declaration further provides a framework under which states can meet again to review progress.<sup>70</sup> At the summit, 37 countries joined the *Safe Schools Declaration*,<sup>71</sup> but it remains open for subsequent support. As of June 17, 2015, 38 countries had joined.<sup>72</sup>

A series of commitments involving a mixed process have also addressed the topic of children associated with armed forces or armed groups. In 1997, the UN Children’s Fund (UNICEF) and the NGO Working Group on the Convention on the Rights of the Child organized a regional symposium in Cape Town, South Africa, which produced the *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa*.<sup>73</sup> Although this seven-page set of guidelines was developed for the African context, it

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<sup>67</sup> “Norway: Leading the Way to End Military Use of Schools,” Global Coalition to Protect Education from Attack news release, June 13, 2014, <http://protectingeducation.org/news/norway-leading-way-end-military-use-schools> (accessed April 5, 2015).

<sup>68</sup> “New International Guidelines Address an Insidious Gap in Protecting Education During War,” Global Coalition to Protect Education from Attack, accessed April 5, 2015, <http://protectingeducation.org/news/new-international-guidelines-address-insidious-gap-protecting-education-during-war>.

<sup>69</sup> “UN Security Council Should Build on Its Momentum in Protecting Schools from Attack and Military Use,” Global Coalition to Protect Education from Attack Press Release, September 5, 2014, <http://www.protectingeducation.org/news/un-security-council-should-build-its-momentum-protecting-schools-attack-and-military-use> (accessed April 5, 2015).

<sup>70</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 May 27, 2015).

<sup>71</sup> “37 Countries Start Process of Protecting Schools and Universities During Conflict,” GCPEA news release, May 29, 2015, <http://www.hrw.org/news/2015/05/29/37-countries-start-process-protecting-schools-and-universities-during-conflict>.

<sup>72</sup> “Safe Schools Declaration Endorsements,” GCPEA, accessed June 17, 2015, <http://www.protectingeducation.org/guidelines/support>.

<sup>73</sup> *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa*, 1997, [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles%281%29.pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles%281%29.pdf) (accessed April 5, 2015).

quickly became “a key instrument to inform the development of international norms as well as shifts in policy at the national, regional, and international levels.”<sup>74</sup> In 2005, UNICEF and partners initiated a review of the *Cape Town Principles* with support from the French government.<sup>75</sup> The review showed there was a need for two new commitments on the topic: a set of guidelines and a declaration reflecting developments since 1997.<sup>76</sup>

In 2006, UNICEF drafted these new commitments with expert assistance and through a consultative process.<sup>77</sup> The *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, a set of guidelines of nearly 50 pages, are “[b]ased on international law and standards and on the original Cape Town Principles [and also incorporate] knowledge and lessons learned.”<sup>78</sup> The *Paris Principles* are targeted not only at states, but also at UN and civil society organizations. They are “designed to guide interventions for the protection and well-being of [children associated with armed forces or armed groups] and to assist in making policy and programming decisions.”<sup>79</sup> In 2007, the French government hosted a conference, “Free Children from War,” in collaboration with UNICEF.<sup>80</sup> This conference was attended by representatives from 59 states (including ministers) and a number of intergovernmental organizations and NGOs.<sup>81</sup> At the conference’s conclusion, the 59 participating states endorsed the *Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups*, a three-page declaration in which states commit to a range of actions, including “[t]o make every effort to uphold and apply the Paris principles.”<sup>82</sup> As of June 17, 2015, 105 states had endorsed the *Paris Commitments*.<sup>83</sup>

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<sup>74</sup> *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles)*, 2007 [https://childrenandarmedconflict.un.org/publications/ParisPrinciples\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf) (accessed April 5, 2015), para 1.2

<sup>75</sup> *Ibid.*, para.1.4.

<sup>76</sup> *Ibid.*.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*, para 1.5.

<sup>79</sup> *Ibid.*, paras. 1.10 and 1.11.

<sup>80</sup> “Paris conference on child soldiers concludes with commitment to stop the recruitment of children,” UNICEF news release, February 6, 2007, [http://www.unicef.org/media/media\\_38231.html](http://www.unicef.org/media/media_38231.html); “Paris Conference ‘Free Children from War,’” UNICEF news release, February 2, 2007, [http://www.unicef.org/media/media\\_38208.html](http://www.unicef.org/media/media_38208.html).

<sup>81</sup> “Paris Conference: Free Children from War: List of 59 Participating Countries,” UNICEF, accessed April 5, 2015, <http://www.unicef.org/protection/files/Attendees.pdf>; “Paris Conference ‘Free Children from War,’” UNICEF news release, February 2, 2007, [http://www.unicef.org/media/media\\_38208.html](http://www.unicef.org/media/media_38208.html) (accessed April 4, 2015).

<sup>82</sup> *Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups*, 2007, [https://www.icrc.org/eng/assets/files/other/pariscommitments\\_en.pdf](https://www.icrc.org/eng/assets/files/other/pariscommitments_en.pdf) (accessed April 5, 2015); “Paris conference on child soldiers concludes with commitment to stop the recruitment of children,” UNICEF news release; “Paris Conference ‘Free Children from War,’” UNICEF news release.

<sup>83</sup> “Paris Principles,” Office of the Special Representative of the Secretary General for Children and Armed Conflict, accessed June 17, 2015, <https://childrenandarmedconflict.un.org/our-work/paris-principles/>.

If the problem of explosive weapons were to be addressed through a series of commitments, a mixed process would benefit from the diverse expertise, perspectives, and strengths of different actors. In both of the examples examined, the initial leading actors—GCPEA and UNICEF—maintained an important role throughout, but at certain points states took the lead: in the process around the *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*, Norway and Argentina, once the guidelines were nearly finalized; and in the *Paris Commitments/Principles* process, France, during the commitments’ launch and endorsement phase. This allocation of responsibility meant that GCPEA and UNICEF were able to develop guidelines that set high standards through expert meetings where states’ views were also taken into account. At the same time, a state led other aspects of each process, such as a declaration’s launch and endorsement. Despite some advantages, there may be political disadvantages to this type of process because states agreeing to the commitment might want to play a greater leadership role.

## United Nations-Led Processes

In a United Nations-led process, the General Assembly can initiate a political commitment. It may place the commitment’s development on the agenda of a standing conference that deals with the relevant subject area, or it may convene an ad hoc conference dedicated to the topic. An expert or intergovernmental committee produces the commitment’s initial draft, which is then presented to the standing or ad hoc conference for states to consider and revise. Another type of United Nations-led process involves the General Assembly, or another UN actor, establishing an expert mechanism to study an issue or work toward a commitment and then report back directly to the initiating actor. Once a commitment from either type of process is finalized, the General Assembly may “adopt” the commitment, giving its formal endorsement, or it may express support for the commitment, such as by “welcoming” its completion. If a commitment was initiated by a UN body other than the General Assembly, that body may adopt the commitment prior to General Assembly endorsement.

The *Code of Conduct for Law Enforcement Officials*, a set of guidelines, was developed through a standing conference, the UN Congress on Crime Prevention and Criminal Justice.<sup>84</sup> This conference, held every five years, is attended by states, NGOs, and other

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<sup>84</sup> Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46), UN Doc. A/34/46 (1979). The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* were also developed through the process, but were not adopted by the UN General Assembly. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth UN Congress on the Prevention of

stakeholders.<sup>85</sup> The General Assembly initiated this code of conduct by urging the 1975 Congress to consider “an international code of ethics for police and related law enforcement agencies.”<sup>86</sup> A geographically representative working group of law enforcement experts, appointed by the UN secretary-general, submitted a draft to the Congress. A standing expert committee associated with the Congress undertook revisions.<sup>87</sup> The General Assembly adopted the *Code of Conduct for Law Enforcement Officials* in 1979.<sup>88</sup>

Two political commitments on specific weapons types came out of conferences of the Convention on Conventional Weapons (CCW), a UN framework treaty supplemented by legally binding protocols.<sup>89</sup> During the 2006 Third Review Conference of the CCW, diplomats drafted a *Declaration on Cluster Munitions* and a *Declaration on Anti-Vehicle Mines* after the conference was unable to agree on protocols in these two areas.<sup>90</sup> CCW review conferences, which occur every five years, offer a potential avenue for the development of political commitments on addressing the problem of explosive weapons.

The *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action on small arms and light weapons)*, a set of regulations, came out of an ad hoc conference, the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Small Arms Conference).<sup>91</sup> In 1995, the General Assembly asked the secretary-general to appoint an intergovernmental panel of experts, which two years later, recommended

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Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990). The Congress was previously known as the Congress on the Prevention of Crime and Treatment of Offenders.

<sup>85</sup> “United Nations Congresses on Crime Prevention & Criminal Justice 1955-2010: 55 Years of Achievement,” UN Office on Drugs & Crime, February 2010, [http://www.un.org/en/conf/crimecongress2010/pdf/55years\\_ebook.pdf](http://www.un.org/en/conf/crimecongress2010/pdf/55years_ebook.pdf).

<sup>86</sup> UN General Assembly, “Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment,” Resolution 3218 (XXIX) (1974), A/RES/3218.

<sup>87</sup> Gerhard O. Mueller, “The United Nations Draft Code of Conduct for Law Enforcement Officials,” *Police Studies: The International Review of Police Development*, vol. 1 (1978), p. 17. The working group included representatives from major professional law enforcement organizations, such as the Police Foundation, Interpol, and the International Association of Chiefs of Police.

<sup>88</sup> UN General Assembly, “Code of Conduct for Law Enforcement Officials,” Resolution 34/169 (1979), A/34/46.

<sup>89</sup> 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 (CCW), adopted October 10, 1980, 1342 U.N.T.S. 137, entered into force December 12, 1982.

<sup>90</sup> Third Review Conference of the High Contracting Parties to the CCW, “Final Document, Part III, Documents of the Third Review Conference,” CCW/CONF.III/11 (Part III), November 7-17, 2006, p. 36.

<sup>91</sup> “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects” (*Programme of Action on small arms and light weapons*), adopted by the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, July 9-20, 2001, UN Doc. A/CONF.192/15 (2001).

that the United Nations discuss convening a conference on illicit arms trade.<sup>92</sup> In 1999, at the behest of the General Assembly, a preparatory committee produced a draft of the commitment. States revised it at the 2001 Small Arms Conference, which ultimately adopted the final version.<sup>93</sup> The General Assembly welcomed the *Programme of Action on small arms and light weapons* in 2004.<sup>94</sup>

The *International Tracing Instrument* is a set of regulations on marking, record-keeping, and international cooperation and assistance that enable the tracing of illicit small arms and light weapons. Rather than working through a conference, the General Assembly established an expert committee to start the process that led to the establishment of these regulations. A 2001 General Assembly resolution tasked the committee with considering the feasibility of a commitment on the identification and tracing of illicit small arms and light weapons.<sup>95</sup> In 2003, the General Assembly accepted the expert committee's recommendation to establish a working group to draft this commitment.<sup>96</sup> In 2005, the General Assembly adopted the working group's final version of the *International Tracing Instrument*.<sup>97</sup>

By contrast, a UN body other than the General Assembly initiated the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, a set of guidelines.<sup>98</sup> In 1989, a subcommittee to the UN Commission on Human Rights appointed a special rapporteur, an independent human rights expert, specifically to study the right to restitution, compensation, and

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<sup>92</sup> UN General Assembly, "General and complete disarmament," Resolution 50/70 (1995), UN Doc. A/RES/50/70 (calling for the panel of experts); UN General Assembly, "Report of the Panel of Governmental Experts on Small Arms," UN Doc. A/52/298 (1997), para. 80(k).

<sup>93</sup> "Preparatory Committee for 2001 Conference on Illicit Trade in Small Arms Begins General Debate," UN news release, DC/261, February 28, 2000, <http://www.un.org/press/en/2000/20000228.dc2681.doc.html> (accessed April 5, 2015); UN Conference on Illicit Trade in Small Arms and Light Weapons, "Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons," A/CONF/192/15, July 9-20, 2001, <http://www.un.org/events/smallarms2006/pdf/No150720.pdf> (accessed April 5, 2015), p. 6.

<sup>94</sup> UN General Assembly, "Assistance to States for curbing the illicit traffic in small arms and collecting them," Resolution 59/74 (2004), A/RES/59/74.

<sup>95</sup> UN General Assembly, "The illicit trade in small arms and light weapons in all its aspects," Resolution 56/24 V (2001), A/C.1/56/L.47. The decision to pursue a non-binding tracing commitment arose from failed efforts at the 2001 Small Arms Conference to promote a legally binding tracing document as part of the resulting *Programme of Action on small arms and light weapons*.

<sup>96</sup> UN General Assembly, "The illicit trade in small arms and light weapons in all its aspects," Resolution 58/241 (2003), A/RES/58/241.

<sup>97</sup> UN General Assembly, Decision 60/519 (2005), adopting "International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons," A/60/88 and Corr. 2, annex.

<sup>98</sup> UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines on the Right to a Remedy and Reparation)," Resolution 60/147 (2005), A/RES/60/147.

rehabilitation for victims of gross human rights violations.<sup>99</sup> At the request of the subcommittee, the special rapporteur included proposed principles in his 1993 final report.<sup>100</sup> After a number of revisions by the special rapporteur and his successor, the *Basic Principles and Guidelines* were adopted in 2005 by the Commission on Human Rights and subsequently the General Assembly.<sup>101</sup>

Identification by the United Nations of the need to address the problem of the use of explosive weapons in populated areas would be seen by some as a source of credibility for a commitment.<sup>102</sup> The CCW offers one United Nations-affiliated forum for the development of a political commitment on explosive weapons. In formal terms, however, CCW review conferences are not designed for the development of political commitments; they are mandated “to review the scope and operation of [the CCW and its protocols] and to consider any proposal for amendments of [the CCW and its protocols].”<sup>103</sup> The 2006 declarations came out of the specific circumstances of that conference, at which states failed to reach agreement on legally binding protocols covering cluster munitions and mines other than antipersonnel mines. Furthermore, the 2006 declarations were only open to endorsement by states that were parties to the CCW and attended the 2006 conference. CCW conferences may therefore not be the most appropriate venue for developing new political commitments, including on explosive weapons.

Outside the CCW declarations, the examples examined suggest that United Nations-led processes usually evolve over a long time period and involve a series of expert committees or individual experts. A political commitment on explosive weapons would

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<sup>99</sup> Theo van Boven, “The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” *UN Audiovisual Library of International Law* (2010), [http://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf) (accessed April 5, 2015). The UN Commission on Human Rights was replaced in 2006 by the UN Human Rights Council.

<sup>100</sup> UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, “Study concerning the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms,” E/CN.4/Sub.2/1993/8, [http://www1.umn.edu/humanrts/demo/van%20Boven\\_1993.pdf](http://www1.umn.edu/humanrts/demo/van%20Boven_1993.pdf) (accessed April 5, 2015).

<sup>101</sup> The rapporteur, Theo van Boven, submitted revised sets of principles in 1995 and 1997. In 1998, to revise the principles again, the Commission on Human Rights appointed M. Cherif Bassiouni as independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms. Bassiouni submitted his final report and revised principles in 2000. Consultative Meetings organized by the Office of the High Commissioner for Human Rights were held in 2002, 2003, and 2004, during which various versions of the principles were reviewed and discussed by governments, intergovernmental, and nongovernmental organizations. See van Boven, “The United Nations Basic Principles and Guidelines”; see also Ellen Desmet, “The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation: A landmark or window-dressing? An analysis with special attention to the situation of indigenous peoples,” *South African Journal of Human Rights*, vol. 24 (2008), pp. 74-75. See also UN General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation.”

<sup>102</sup> Inis L. Claude, Jr., “Collective legitimization as a political function of the United Nations,” *International Organization*, vol. 20 (1966), p. 379.

<sup>103</sup> CCW, art. 8(3)(a).

likely follow a similar trajectory. While expert involvement and the legitimacy offered by the United Nations may be valuable attributes, the international actors striving to address the problem of explosive weapons may seek a more expeditious process than the United Nations can offer.

### III. Review, Reporting, and Institutionalization

Once a commitment begins to receive endorsements, the next focus is implementation, which is aided by review, reporting, and institutionalization mechanisms. These mechanisms will help a commitment on explosive weapons be more effective in practice. Commitments other than manuals may be accompanied by reporting and review mechanisms to assess implementation. Reporting refers to a state's provision of information to a designated body at periodic intervals describing progress the state has made toward implementing a commitment. Review mechanisms, meanwhile, involve the periodic convening of states that have endorsed a commitment to discuss the progress collectively made toward implementation. A commitment may become "institutionalized" through the creation of a secretariat or other body that facilitates reporting and review or takes a more expansive role, such as producing research and guidance to aid implementation.

In its text, a commitment may request that states report to a particular body on progress toward implementation or other matters. In the *Hague Code of Conduct against Ballistic Missile Proliferation*, states agree to make "annual declaration[s] providing an outline of ... Ballistic Missile policies" and "an outline of their Space Launch Vehicle policies," as well as additional information.<sup>104</sup> Other commitments leave considerable discretion to states regarding the matters they report on and the frequency of reporting: the *Programme of Action on small arms and light weapons* mentions (although does not require) "national reports," but offers no guidance on what states should include in a national report.<sup>105</sup> In practice, however, states have been encouraged by UN General Assembly resolutions to report on their implementation of the instrument, and the 2012 Review Conference adopted a reporting template to facilitate such reporting.<sup>106</sup> For commitments developed within

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<sup>104</sup> *Hague Code of Conduct*, paras. 4a(i) and (ii). These declarations are sent to Austria, the *Hague Code of Conduct's* Secretariat. "Hague Code of Conduct against Ballistic Missile Proliferation," Hague Code of Conduct website, accessed January 3, 2015, [http://www.hcoc.at/?tab=background\\_documents&page=text\\_of\\_the\\_hcoc](http://www.hcoc.at/?tab=background_documents&page=text_of_the_hcoc).

<sup>105</sup> *Programme of Action on small arms and light weapons*, para. 33. Most states use a reporting template developed by the Coordinating Action on Small Arms mechanism, a group of UN and civil society actors.

<sup>106</sup> As of June 17, 2015, there had been 763 voluntary state reports. See "National Reports on the Programme of Action," accessed June 17, 2015, <http://www.poa-iss.org/Poa/NationalReportList.aspx>. At the Fourth Biennial Meeting of States to Consider the Implementation of the Programme of Action in 2010, states emphasized the importance of voluntary national reporting and noted that standardized reporting templates would make reports more comparable. At the Fifth Biennial Meeting in 2012, states undertook to increase efforts to submit biennial reports using that template. "Report of the Fourth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," A/CONF.192/BMS/2010/3, June 14-18, 2010, para. 35; "Report of the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," A/CONF.192/2012/RC/4, August 27-September 7, 2012, p. 10. Since 2003, a series of UN General Assembly

the UN system, a commitment may ask states to report to a specific UN entity. For example, states report to the UN secretary-general on their implementation of the *International Tracing Instrument*.<sup>107</sup> Alternatively, a commitment may request that the UN secretary-general obtain and disseminate information about its implementation.<sup>108</sup>

State reporting can facilitate civil society monitoring of implementation. With respect to the *Programme of Action on small arms and light weapons* and the *International Tracing Instrument*, the Small Arms Survey, an independent research institute, has actively followed submissions by states on implementation, and has released periodic reports on its findings.<sup>109</sup> However, state reports are not publicly available for some commitments, precluding open scrutiny.<sup>110</sup> Additionally, compliance with reporting provisions varies significantly by commitment.<sup>111</sup>

Some commitments establish a review procedure. For example, “subscribing states” of the *Hague Code of Conduct against Ballistic Missile Proliferation* meet regularly to review progress in universalization of the code.<sup>112</sup> In addition to allowing for internal and external scrutiny of a commitment’s implementation, review procedures may

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resolutions has encouraged states to submit national reports (all resolutions have the same name): UN General Assembly, “The illicit trade in small arms and light weapons in all its aspects,” Resolution 58/241 (2003), A/RES/58/241, para. 13 (2003); Resolution 59/86 (2004), para. 4; Resolution 60/81, A/RES/60/81 (2005), para. 6; Resolution 61/66 (2006), para. 9; Resolution 62/47 (2007), para. 6; Resolution 63/72 (2008), para. 8; Resolution 64/50 (2009), para. 10; Resolution 65/64 (2010), para. 11; Resolution 66/47 (2011), para. 9; Resolution 67/58 (2012), para. 12.

<sup>107</sup> The *International Tracing Instrument* provides that “[s]tates will report on a biennial basis to the Secretary-General on their implementation of the instrument.” *International Tracing Instrument*, para. 36. Voluntary reporting may also be requested by the UN body that adopts a given commitment: the 8th UN Congress on the Prevention of Crime and Treatment of Offenders invited states to inform the UN secretary-general every five years, beginning in 1992, on the progress achieved in the implementation of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. UN Office on Drugs and Crime, *Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice* (New York: United Nations Publications, 1999), <http://www.uncjin.org/Standards/compendium.pdf> (accessed April 5, 2015).

<sup>108</sup> For instance, the *Programme of Action on small arms and light weapons* “request[s] the Secretary-General of the United Nations ... to collate and circulate data and information provided by States on a voluntary basis and including national reports, on implementation by those States of the Programme of Action.” *Programme of Action on small arms and light weapons*, para. 33. The UN General Assembly may also support reporting on commitments developed outside the UN system. In a 2012 resolution, the General Assembly welcomed “the submission of [*Hague Code of Conduct*] annual declarations on space and ballistic missile policies. UN General Assembly, “The Hague Code of Conduct against Ballistic Missile Proliferation,” Resolution 67/42 (2012), A/RES/67/42, para. 6.

<sup>109</sup> Sarah Parker, *National Implementation of the United Nations Small Arms Programme of Action and the International Tracing Instrument: An Analysis of Reporting 2009-10*. (Geneva: Small Arms Survey, 2010), <http://www.poa-iss.org/mge/Documents/Index/SAS-AnalysisofReporting.pdf> (accessed April 5, 2015).

<sup>110</sup> *Hague Code of Conduct* annual declarations, for example, are not made public. The annual declarations of some countries have been the subject of seemingly unwelcome disclosure, e.g., by Wikileaks. Wikileaks, “Annual Declaration of the United States under the Hague Code of Conduct against Ballistic Missile Proliferation,” March 4, 2008, [https://wikileaks.org/plusd/cables/o8STATE27211\\_a.html](https://wikileaks.org/plusd/cables/o8STATE27211_a.html) (accessed January 3, 2015).

<sup>111</sup> A number of states have never reported on their implementation of the *Programme of Action on small arms and light weapons*. Parker, *National Implementation of the United Nations Small Arms Programme of Action and the International Tracing Instrument*.

<sup>112</sup> *Hague Code of Conduct*, para. 5.

encourage states to comply with reporting standards. At the 2014 Regular Meeting of *Hague Code of Conduct* subscribing states, participants “stressed the importance of full implementation of the Code, in particular with regard to ... the timely submission of Annual Declarations.”<sup>113</sup>

A review and reporting regime can develop incrementally after the finalization of a commitment. States endorsing the *Geneva Declaration on Armed Violence and Development* agreed to “pursu[e] this initiative in all appropriate fora and to [meet] again not later than 2008 to assess [their] progress in meeting these goals.” In 2008, 88 states, 39 NGOs, and 17 international organizations attended a review conference on this topic.<sup>114</sup> At that conference, states agreed to hold a second review conference no later than 2011.<sup>115</sup> Nearly 500 participants, including representatives from 96 states, attended the 2011 conference, whose final outcome document called for reporting on matters that the *Geneva Declaration* addresses.<sup>116</sup> In 2014, five regional review conferences, each involving around 100 participants, were held to review implementation and discuss other related matters.<sup>117</sup>

The *Geneva Declaration* also provides a mechanism to institutionalize a commitment. Following the declaration’s launch in 2006, a core group of “affiliated organizations” and 15 states, representing all the regions of the world, was formed.<sup>118</sup> This core group is “responsible for steering the process and guiding the implementation of the Geneva Declaration.”<sup>119</sup> The Geneva Declaration Secretariat, a dedicated body hosted at the Small Arms Survey, works with this core group. Since its formation in 2006, the Secretariat has produced substantial research on armed violence and development,

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<sup>113</sup> “13<sup>th</sup> Regular Meeting of the Subscribing States to the Hague Code of Conduct against Ballistic Missile Proliferation,” HCoC Subscribing States news release, May 29-30, 2014, <http://www.hcoc.at/documents/Press-Release-of-the-13th-ARM.pdf> (accessed April 5, 2015).

<sup>114</sup> “List of Participants—Review Summit 2008,” accessed April 5, 2015, <http://www.genevadeclaration.org/fileadmin/docs/Geneva-Declaration-Review-Summit-List-of-participants.pdf>.

<sup>115</sup> “Review Conference 2008,” accessed April 14, 2015, <http://www.genevadeclaration.org/events/review-conferences/review-conference-2008.html>.

<sup>116</sup> Second Ministerial Review Conference of the Geneva Convention on Armed Violence and Development, “Outcome Document,” October 31, 2011, <http://www.genevadeclaration.org/fileadmin/docs/GD-MRC2/GD-2ndMRC-Outcome-Document.pdf> (accessed January 3, 2015).

<sup>117</sup> “Geneva Declaration Regional Review Conferences,” accessed April 7, 2015, <http://www.genevadeclaration.org/2014rrc/overview.html>. Specifically, to discuss how to integrate armed violence reduction into the Post-2015 development agenda.

<sup>118</sup> “How does [the Geneva Declaration] work?” Geneva Declaration Secretariat.

<sup>119</sup> *Ibid.* Similarly, there is a steering group on the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, co-chaired by Save the Children and UNICEF. Since 2007, in collaboration with the *Paris Principles* steering group, the French government and UNICEF have hosted an annual ministerial follow-up forum during the UN General Assembly session. “Paris principles and Paris commitments,” UNICEF, accessed April 14, 2015, [http://www.unicef.org/protection/57929\\_58012.html](http://www.unicef.org/protection/57929_58012.html).

including a 2008 publication, *Global Burden of Armed Violence*, a 175-page report comprising “the first comprehensive assessment of the scope of human tragedy resulting from violence around the world.”<sup>120</sup> In addition, the Secretariat has authored guidance on implementing the *Geneva Declaration*, including a detailed handbook released in 2014.<sup>121</sup> The core group also includes UNDP and the Global Alliance on Armed Violence, a coalition of NGOs.<sup>122</sup>

The *Montreux Document on private military and security companies* is part of a larger project, “the Swiss Initiative” on private security regulation, which has been institutionalized through several mechanisms.<sup>123</sup> The Swiss government and the ICRC are the central actors in the initiative. They receive assistance from the Geneva Centre for the Democratic Control of Armed Forces (DCAF), an international foundation supported by the Swiss government.<sup>124</sup> In 2013, these three actors convened an international conference, “Montreux +5,” attended by more than 60 states, international organizations, and civil society groups, to examine challenges in implementing the *Montreux Document*.<sup>125</sup> To assist participants, DCAF produced a detailed study on *Challenges and Recommendations for Montreux Document Endorsing States*.<sup>126</sup> At the conference, participants decided to create the Montreux Document

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<sup>120</sup> Geneva Declaration Secretariat, *Global Burden of Armed Violence* (Geneva: Geneva Declaration Secretariat, 2008), <http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf> (accessed April 7, 2015), cover page.

<sup>121</sup> Geneva Declaration Secretariat, *Implementing the Geneva Declaration on Armed Violence and Development* (Geneva: Geneva Declaration Secretariat, 2014), <http://www.genevadeclaration.org/fileadmin/docs/Handbook/GD-Handbook-Implementing-the-GD.pdf> (accessed April 7, 2015).

<sup>122</sup> “How does [the Geneva Declaration] Work?” Geneva Declaration Secretariat. The website of the Geneva Declaration secretariat recognizes the value of civil society and states: “There are numerous significant collective benefits that arise from the dedicated and continued engagement of civil society in the project of armed violence prevention and reduction. Both within and across settings, civil society organisations are uniquely placed to provide the kind of specialised and technical expertise that has consistently been of enormous added value in informing policies and strategies that aim to prevent or reduce armed violence.” “Civil Society Process,” Geneva Declaration Secretariat, accessed May 22, 2015, <http://www.genevadeclaration.org/advocacy/civil-society-process.html>.

<sup>123</sup> The Swiss initiative has also included the development of the *International Code of Conduct for Private Security Providers*, which “set[s] out international principles and standards for the responsible provision of private security services.” More than 700 companies have committed to abide by its terms. Some states require companies to have signed up to the document before they will contract with them. See *International Code of Conduct for Private Security Providers*, 2010, [http://www.icoca.ch/en/the\\_icoc](http://www.icoca.ch/en/the_icoc) (accessed April 7, 2015).

<sup>124</sup> “The Montreux Document,” Geneva Center for the Democratic Control of Armed Forces, accessed April 7, 2015, <http://www.dcaf.ch/Project/The-Montreux-Document>.

<sup>125</sup> “Montreux+5 Conference,” International Committee of the Red Cross, accessed April 7, 2015, <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/private-military-companies-montreux-plus-5-conclusions.htm>.

<sup>126</sup> Benjamin S. Buckland & Anna Marie Burdzy, *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States* (Geneva: DCAF, DCAF, 2013), [http://reliefweb.int/sites/reliefweb.int/files/resources/Montreux\\_5\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Montreux_5_Report.pdf) (accessed April 7, 2015). This document “examines the national regulations of endorsing states, addresses progress, and identifies key gaps where the Montreux Document’s good practices could be better implemented.” “The Montreux Document,” Geneva Center for the Democratic Control of Armed Forces. A separate a 240-page report, “Montreux Five Years On: An analysis of State efforts

Forum, to institutionalize regular dialogue among participating states and organizations.<sup>127</sup> From 2011 onward, Switzerland has also organized a series of regional conferences to raise awareness about the *Montreux Document*.<sup>128</sup>

A political commitment on explosive weapons may likewise benefit from review, reporting, and institutionalization mechanisms. Public reporting and review mechanisms make it possible for both states and civil society stakeholders to assess the implementation of a commitment, and can highlight areas of difficulty. Mechanisms that institutionalize a commitment, such as a core group to coordinate action or a secretariat with monitoring and research functions, could also be options to explore for reviewing and institutionalizing a commitment on explosive weapons. However, in the examples examined, states have invested significant political and financial resources in these mechanisms, an aspect that may bear upon their suitability for an explosive weapons commitment, at least in the short term.

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to implement Montreux Document legal obligations and good practices” was “drafted by a global team of academics, experts, and activists” and also published that year. Rebecca DeWinter-Schmitt, “Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices,” 2013, <http://ihrib.org/wp-content/uploads/2013/12/MontreuxFv31.pdf> (accessed April 7, 2015).

<sup>127</sup> “The Montreux Document,” Geneva Center for the Democratic Control of Armed Forces.

<sup>128</sup> *Ibid.*

## Conclusion

The suffering caused by the use of explosive weapons in populated areas is a serious problem requiring an immediate response. Recent armed conflicts have highlighted the dangers to civilians, especially when the explosive weapons have wide area effects. A political commitment could reduce this harm, most notably by helping to establish the standard that explosive weapons with wide area effects should never be used in populated areas. Political commitments on other topics have proven feasible over the past 40 years and demonstrate the viability and potential impact of a new one on explosive weapons.

Human Rights Watch and IHRC call on states to consider the varied precedents examined in this paper and choose among or merge the options for form, process, and implementation mechanisms. Determining these elements of a commitment will help guide discussions of the content of the instrument itself. States should take into account the specific challenges associated with explosive weapons and the current diplomatic landscape in deciding the shape a commitment should take and the procedure that can best achieve it. Working in partnership with civil society, the United Nations, and the ICRC, states should aim as soon as possible to develop and adopt a political commitment aimed at reducing the harm caused by the use of explosive weapons in populated areas with maximum humanitarian effect.

## **Appendix**

### **Political commitments referred to:**

#### **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006**

Guidelines on the rights of victims of violations of human rights law and international humanitarian law.

#### **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990**

Guidelines providing criteria that must be met for the use of force and firearms by law enforcement officials.

#### **Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, 1997**

Guidelines on the prevention of child recruitment to armed forces and the demobilization and reintegration of child soldiers.

#### **Code of Conduct for Law Enforcement Officials, 1979**

Guidelines establishing norms and standards related to the humane performance of law enforcement functions.

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

Declaration to end rape and sexual violence in armed conflict.

#### **Declaration of Minimum Humanitarian Standards, 1990**

Guidelines on human rights and international humanitarian law applicable to situations of internal violence.

#### **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 on governments to limit their use of cluster munitions.

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

A declaration in which G8 foreign ministers recognized 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.

**Guiding Principles on Internal Displacement, 1998**

Guidelines that identify the international humanitarian and human rights law applicable to internally displaced persons.

**Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, 2014**

Guidelines around the use of schools and universities in military efforts.

**Hague Code of Conduct against Ballistic Missile Proliferation, 2002**

Regulations around disarmament and mechanisms to curb ballistic missile systems proliferation.

**International Ammunition Technical Guidelines, 2011**

Technical manual on conventional ammunition stockpile management processes.

**International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, 2005**

Regulations on the marking and tracing of small arms and light weapons.

**International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, 2014**

Technical manual that lays out principles and practices for effectively documenting sexual violence as a war crime, crime against humanity, or act of genocide.

**Manual on International Law Applicable to Air and Missile Warfare, 2009**

Manual that restates existing international law on air and missile warfare.

**Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict, 2008**

Guidelines aimed at promoting respect for international humanitarian law and human rights law whenever private military and security companies are present in armed conflicts.

**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.

**Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, 2007**

Guidelines for those implementing programs relating to children associated with armed forces or armed groups.

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