

Article36

Framing harms

Analysing responses to different harms in international commitments to address armed violence.

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This paper examines how problems of harm resulting from violence have been framed and responded to in different international agreements and statements of commitment by states, to consider implications for future policy processes.

Reducing and responding to the harms caused by violence – and making progress towards conditions internationally where civilian protection is prioritised and resorting to violence is minimised – is a diffuse and complex global task. It implicates many different actors, fields of action and expertise, forums and processes. Within this broad picture, agreements and statements of commitment between states that address armed violence, weapons policy and civilian protection in armed conflict – ranging from resolutions, through political declarations, to new treaties – are part of the range of normative and practical steps that can be taken to make progress.

This paper looks at four issues or problems, to examine how some different harms of armed violence resulting from them have been described, framed and acknowledged by states – and what action countries have been willing to commit to so far on the basis of these framings of harm.

The issue areas examined are: the use of cluster munitions; attacks on and the military use of educational facilities; the intersection of armed violence and development; and conflict pollution (which sits within a broader issue area of conflict and the environment). Though these are a wide-ranging set of issues, they are linked not only in their goals of mitigating and ultimately reducing armed violence, but also through some of the individuals, organisations and countries that have worked within the same broad policy community to advance work on all these areas.



Palestinian students play basketball inside their damaged school nearby a building that was destroyed by Israeli air strikes, in Gaza City May 7, 2019. REUTERS/Mohammed Salem

The purpose of this analysis is to consider what the policy implications might be for future initiatives to seek an international response to problems in the area of weapons policy and civilian protection. Effectively addressing the range of issues in this area will require countries not only to adopt commitments that respond to the most immediate issues of deaths and injuries, and the most proximate causes of these in situations of armed violence and conflict. It will require responsiveness to harms that stretch over the longer term, with more complex chains of causality, and that might be more broadly conceived as harms to our societies collectively, and their futures. The international policy and advocacy community will need to find effective ways to do this.

In considering these issues, the paper examines the potential tension between the need to identify discrete, conceptually manageable and actionable problems – on which agreements and commitments can be made in order to make progress politically and practically – and the risk of oversimplifying, neglecting or erasing important aspects of complex issues. In this context, the paper also looks briefly at what risks as well as advantages there might be in dividing up responses under a broad civilian protection agenda to those that address only certain groups or situations. It also briefly looks at the applicability of more widely conceived precautionary approaches to structuring conversations and building international standards to deal with harms from armed violence.

Comparing agreements' framings of harm and responses

Recent international legal or norm-building exercises addressing the problems of the use of cluster munitions, attacks on and the military use of educational facilities, the intersection of armed violence and development, and conflict pollution, show some of the different types of harm from armed violence that have been on the table for states to consider in the past decade or so, and the variation in strength of state responses to them.

Four documents agreed by states, and some of the context surrounding them, are examined below for how they frame and respond to harm: the Convention on Cluster Munitions (CCM),¹ the Safe Schools Declaration (SSD),² the Geneva Declaration on Armed Violence and Development (GD),³ and the UN Environment Assembly (UNEA)'s 2017 resolution on conflict pollution.⁴

How these agreements and documents describe the harm caused (e.g. deaths and injuries) by the problem they seek to respond to (e.g. cluster munitions) varies in the following ways:

- x Who or what is the subject of harm: whether the harm is conceptualised as being: directly to people (and which people); to certain rights or frameworks; or to broader concepts such as society, economy or the environment
- x How narrowly or widely conceptualised the kind of harm affecting these subjects is: whether the agreement primarily addresses more direct humanitarian effects, or wider social/economic or other effects
- x How complex the chain of causality is: whether the harm to the subject can be directly attributed to the problem being addressed, or the relationship is more indirect, complicated or contestable

- x How the harm is located temporally: when harm to the subject may emerge in relation to the initial cause

All the agreements/documents examined in this paper contain some mixture of more direct/immediate and broader/diffuse framings of harm, but the primary locus of concern varies between them. Their central problem framings can also differ in subtle, but significant, ways from the argumentation around the processes for these initiatives that was put forward by civil society and others at the time of agreement (some materials of which were analysed for this paper).

These agreements and documents also vary by the level and specificity of commitments states have been prepared to make so far to address these harms. The CCM is a treaty prohibiting cluster munitions that is legally binding on states parties and requires the contribution of resources. The SSD and GD are international political declarations, and so are not legally binding.⁵ Under these agreements, states committed to a set of principles and activities of varying specificity and resource implications (the GD is now wound up as an active framework). The UNEA resolution is not binding on states but describes actions and principles that it 'urges' or 'invites' countries to take on.

The limited analysis below shows that states have been able to reach some level of agreement and commitment on problems of armed violence that are wider than just addressing the causes of large numbers of direct casualties – though this is not to say that such causes have yet been adequately addressed by any means. This will be important to build on in the future – including with stronger or more developed levels of commitment – to tackle more effectively and holistically the causes of the long-term, diffuse and complex picture of the harms that result from armed violence, through prevention, mitigation and addressing of existing impacts.

Cluster munitions – direct impacts and prohibition

In 2008, states adopted the Convention on Cluster Munitions (CCM), which prohibits these weapons. This concluded a process initiated to prohibit cluster munitions 'that cause unacceptable harm to civilians.' The CCM was thus framed explicitly as a response to harm to people – primarily civilians – concentrating to a large degree on the pattern of direct casualties.

The start of the CCM's preamble refers to "civilian populations and individual civilians" bearing the brunt of armed conflict, and a determination to prevent "suffering and casualties" from these weapons – locating the problem in the first instance with directly tangible impacts on civilians. Highlighting that such effects occur "at the time of their use, when they fail to function as intended or when they are abandoned," the CCM locates the harm temporally both in the immediate impacts from the use of the weapons (based on their wide area effects), and in the direct and immediate harm that can nevertheless be generated far in to the future from the explosion of abandoned or unexploded cluster munition remnants. The CCM's preamble also refers to the "dangers presented by the large national stockpiles" – highlighting the potential for significant harms in the future from further use.

The issues generated by cluster munition remnants are a major focus of the problem framing and response contained in the CCM.

Concentrating on the impacts of these remnants, the subsequent section of the CCM's preamble widens the picture of harm out from the direct impacts of deaths and injuries to civilians, through impacts on development including through livelihood loss, to effects on post-war reconstruction and refugee return, and peace-building and humanitarian assistance. Though the range of harms here is relatively wide and speaks to broader concepts such as social and economic development, the narrative of harm is mostly not complex: it involves a series of more or less measurable impacts which each have a direct causal – or common-sense – link to the explosion or threat of explosion of cluster munitions remnants.

Though it is significant that these broader harms were included in the treaty, establishing that cluster munitions represented a humanitarian problem that demanded a response did not rely on proving all these facts about wider harms. Argumentation by the Cluster Munition Coalition, for example, whilst including broader effects, focused more strongly on showing the pattern and individual stories of deaths, injuries and disabilities arising particularly from unexploded sub-munitions – and on establishing that in leaving behind this deadly legacy, cluster munitions were not functioning as expected or claimed by militaries.⁶ Locating the problem in this overall, historical pattern of harm meant, significantly, that it was not necessary to prove that each case of cluster munition use would cause a particular effect.

In describing unexploded sub-munitions as 'functioning as anti-personnel landmines,' those arguing for a prohibition on cluster munitions were also able to draw on accepted understandings of a problem that was already well embedded with the international community, following the agreement of the Anti-Personnel Mine Ban Convention. These understandings include those relating to socio-economic impacts such as denial of access to agricultural land and loss of livelihood.⁷

The overarching framing of harm in the CCM draws the most from the evidence and documentation on direct harm presented during the process to achieve the treaty. Through highlighting the rights of victims and the Convention on the Rights of Persons with Disabilities in its preamble, the CCM also brings the concept of harm to rights in to its framing of the problem. In noting the range of assistance required by victims of cluster munitions, the need for this response is, additionally, included in the harm framing: the harm here is the inadequate response to victims so far.

The response and set of solutions to these harms set out in the CCM includes a strong legal prohibition on cluster munitions for states parties (though the definition adopted excludes some specific weapons with sub-munitions). In fulfilling this prohibition, states are obliged to separate cluster munitions from their operational arsenals and destroy their stockpiles within eight years, and take measures for national implementation in law.

States also commit to clear cluster munitions remnants from their territories within ten years, and take measures to protect people from them in the meantime, including through conducting surveys to establish contamination and risk education. Parties are also obliged to assist victims of cluster munitions. This includes collecting data to assess needs and designating a national focal point for this victim assistance work. Parties to the CCM also commit to cooperate together and to assist each other, and to report on their activities under the convention. The CCM has yearly Meetings of States Parties

and five-yearly Review Conferences written in to the treaty. Parties contribute to the costs of these meetings.

In this way, the framing of harm focusing mainly on direct physical impacts on civilians now and in the future that is written in to the CCM – and was presented by its advocates – maps closely on to a response of: prohibition and clearance to prevent further harm; victim assistance to address the ongoing impacts of harm; and cooperation and assistance between states, including a framework of transparency and accountability to scrutinise action being taken, to support this.

The provisions are detailed, specific, lengthy and contain several time limits, as can be expected from a legally binding treaty. Measuring whether states are meeting their commitments, whilst requiring considerable data and access,⁸ is not therefore conceptually complex. There are no practical penalties for non-compliance, with the treaty relying more on states to act in good faith and respond to the demands of their peers and civil society to implement their obligations.

The CCM represents the strongest response and to the narrowest primary issue and harm framing of the agreements and documents considered in this paper. Nevertheless, similarities to the basic structure of its response are seen in some of the other areas considered below.

Attacks on education – responding to harm to the future

The 2015 Safe Schools Declaration (SSD), a response to “the impact of armed conflict on education,” addresses a wider and somewhat more abstract framing of harm than the CCM. Though grounded and justified in the direct humanitarian harm to students (particularly children), and teachers, caused by “attacks on education” and the military use of educational facilities, the major subject of harm addressed by the SSD is education itself, and the right to it. This is linked to a wide and diffuse concept of harm to the future of communities, with education given a central role as a foundation for this future.

The broad range of harms referred to in the opening sentence of the SSD include “humanitarian, development and wider social challenges.” The declaration goes on to build a picture that links direct harm to people and buildings (occurring very specifically in and around institutional places of education) to rights and freedoms, communities' futures, development and peace – which all depend on the foundation of the right to education and the “hopes and ambitions” of children. In this document, violence and its direct impacts is the cause of the main harm to the wider good, rather than being the harm that is the central concern in itself (as in the CCM).

Attacks on education are also framed as causing harm to protective structures: schools and education here not only provide foundations for the future, but are places and institutional frameworks that can mitigate the more immediate direct and indirect harms children can suffer during conflict in the present (through, for example, providing stability and links to other services).

Temporally, the harm addressed by the SSD starts at the time of attacks on buildings or people or the military use of schools, and fans out far and wide into the future from any particular incident.

In terms of the chain of causality, the SSD links attacks to undermined access to education, either through the physical factors of non-functioning facilities, from teachers and learners staying away because of the risks, or because attacks were deliberately targeted at certain groups or at academic freedom. It also links the military use of educational facilities to the recruitment and exploitation of students, and back to an elevated risk of attacks. This reflects evidence and documentation collated by the Global Coalition to Protect Education from Attack (GCPEA) and its members on the short- and medium-term impacts of attacks on education and the military use of educational facilities.⁹

The link to the far future, however, is stated rather than elaborated. The long-term impacts and dynamics of causality between violence against or the military occupation of educational institutions, children's ability to get a full education, and the social and economic futures of communities, may have complexities. However, in the SSD, and at subsequent meetings of states to discuss progress on the framework, it is reiterated and accepted as a straightforward fact.¹⁰

This may rely partly on broader, pervasive narratives on the importance and significance of education. Either way, these broader harms to the future did not appear to require significant proof. During the consultations to agree the SSD, countries appeared compelled to engage with the process more because it raised immediate questions around their commitment (or lack of commitment) to children living through conflict.¹¹ Perhaps reflecting the imperatives and framings that drove state engagement, in the text of the SSD itself there is a slightly greater focus on people and humanitarian impacts than in the argumentation on attacks on education of GCPEA, which frames education itself as the subject to a greater degree.¹²

Nevertheless, aside from the factors that informed or inform states' initial engagement with the SSD, it is significant that countries were able to make an international agreement on civilian protection that addresses such a broad framing of harm to societies, arising from particular definable acts during armed conflict that it responds to specifically.

In terms of the commitments in the agreement, the SSD was developed, in part, to provide a political instrument¹³ through which states could commit to endorsing and implementing the Guidelines for Protecting Schools and Universities From Military Use During Armed Conflict.¹⁴ Its first commitment is that endorsing states "use the Guidelines, and bring them into domestic policy and operational frameworks as far as possible and appropriate."

The SSD also contains a range of other politically binding commitments. Broadly, the commitments cover: military policy and practice; data gathering; responding to the rights and needs of individuals affected by attacks and military use; ensuring legal accountability for attacks; implementing conflict sensitive educational programming domestically and in international interventions; ensuring continuity of education during armed conflict; providing international cooperation and assistance to other states and agencies; supporting UN processes on children and armed conflict; and collectively reviewing implementation of the SSD.

Most of the commitment language includes qualifiers (such as "as far as possible and appropriate", "make every effort," "seek to," etc.).

This may reflect the status of the SSD as a non-legally binding document. It also likely indicates wariness about resource commitment to the agenda, beyond some core commitments that were agreed with fewer qualifiers. These were on: the Guidelines, accountability, supporting international work on children and armed conflict, and keeping the SSD active through regular meetings. Some of the SSD's commitments are more narrow and measurable, such as bringing the Guidelines in to policy and operational frameworks. Others are somewhat broader, and assessing implementation might require breaking down the steps that are needed to fulfil them – for example, for providing assistance to victims.¹⁵

The SSD responds to the broad harm to the future it frames through some more or less specific solutions to harmful activities in the present, and steps to embed and increase understanding of the agenda internationally. Though requiring states to take certain steps in the exceptional situation of armed conflict,¹⁶ it does so because of the wider context of the needs of societies and communities beyond this exceptional situation.

Though far less specific than the CCM by its nature, there are echoes of a similar approach of including commitments for: prevention; response to current harm; better understanding the picture of harm; cooperation between countries; and transparency and accountability of endorsing states through peer review.

Armed violence and development – framing a broader agenda

The Geneva Declaration on Armed Violence and Development (GD), agreed in 2006, concerns itself with the broad problem of reducing armed violence (including from conflict and crime¹⁷), and mitigating its impact on "socio-economic and human development." It grounds this initially in a description of the direct, indirect and longer-term impacts of armed violence on people, but contains a broad range of subjects ranging from individuals, social units, and states as well as collective goods, norms and rights. The overarching subject of harm in the GD is the widest of the documents examined in this paper: armed violence is framed as a very basic and primary threat to all people, and a barrier to all development.

The types of impacts from armed violence listed in the GD are wide ranging, from deaths and injuries, through disruption of services, to threats to the rule of law and the framework of human rights. It uses the language of rights as well as the concept of human security, bringing together challenges to a range of concepts and fields – peace, security, development, human rights, public health, justice, and humanitarianism – that were not necessarily widely linked in policy and practice when the GD was drafted, in order to frame the harm from armed violence as reaching across and affecting all these areas.

Temporally, the harm the GD describes is both immediate (e.g. deaths and injuries from violence), long term (e.g. lifelong impacts of injuries, harm to development), and ongoing (e.g. in the burden on states and the threat to social structures such as the law, rights and justice).

The GD paints a relatively complex picture of the range of consequences of armed violence. Regarding causality, the GD does not

elaborate in detail how these have an impact on development or the other issues highlighted, relying on citing previous acknowledgements of the links between armed violence and development by the international community. It is positioned as a response to the facts of these links, as already established – and functions itself to reinforce that these causal relationships are facts, which can serve as a tool and basis for further practical work. Though the relationship between armed violence, development and other issues may be broad and complicated, the central narrative of the GD is straightforward and presents itself as self-evident: that armed violence must be reduced for individual and societal good.

If the harm framing in the GD is broad, the central problem it addresses is also far wider than the CCM and SSD – the issue is armed violence seen holistically (and ostensibly apolitically, as a health and development issue), rather than the discrete problems of a particular weapon or a pattern of belligerents' behaviour in armed conflict. The solution set and many of the commitments made in the GD are similarly broad and holistic.

GD signatories commit to taking “practical measures” in a range of areas that can serve armed violence reduction, from promoting conflict prevention to improving the effectiveness of public security institutions; implementing alternative livelihood programmes, measuring the costs of armed violence and evaluating interventions; and working with a range of different communities and actors, to name a few. This created a framework for a broad range of possible work by states and others under the GD, and opportunities for different actors to take leadership and move forward on different aspects. Nevertheless, the commitments in the GD are more agenda setting and reflective of general principles and approaches, rather than specific and measurable.

At subsequent meetings of signatories, particularly the second ministerial meeting of the GD in 2011, states committed to some more specific actions, including nominating national points of contact for work on the GD, and adding actions such as recognising the rights of victims and providing assistance.¹⁸ Written guides and regional meetings, on implementation and ways forward for the armed violence and development agenda, were also produced.¹⁹

The commitments in the GD include pledges that can be seen as aimed at promoting acknowledgement of the linkages between armed violence and development and integrating these in to broader work, rather than taking very specific, practical actions. The GD wound itself up as an active framework²⁰ following the embedding of the link between armed violence and development in the successor to the Millennium Development Goals – the Sustainable Development Goals – through Goal 16 on peaceful, inclusive and just societies.²¹ This was described as the realisation of a major goal of the GD,²² and various themes that feature in the GD, such as accountable institutions and the measurement of armed violence, are part of Goal 16 and its implementation.

Part of the impetus for the GD in particular – within a broader growing recognition and acknowledgement of the links between violence and development at the time – were the links increasingly being made within the community of practice around small arms and light weapons between supply, demand and development issues.²³ This is seen in the more specific commitments included in the GD in relation

to small arms and light weapons (such as on: committing to controlling arms transfers and brokering; supporting the UN Programme of Action on Small Arms and Light Weapons (PoA); and presenting the GD as first agreed to the PoA's next meeting). The problem of “illicit arms flows” to sustainable development was eventually recognised in the Sustainable Development Goals.

An international political instrument such as the GD with a broad subject and harm framing, and a broad range of mostly less specific and measurable commitments, may have a slightly different function to agreements that deal with more narrow segments of the problem of armed violence, and which contain very particular solutions.

Wider agreements can have a function of contributing to building and integrating broad approaches, agendas and principles into the normative landscape, with the aim of bringing about larger shifts – rather than seeking to solve very specific problems constructed with narrower boundaries. Agreements such as the GD, that recognise and solidify certain causal links or harms as internationally recognised facts, can also provide a tool for developing further, narrower work, by giving context for its necessity. Nevertheless, more specific work was possible and undertaken under the GD framework, and the GD very broadly follows a similar solution framing to narrower agreements, containing and emphasising aspects of understanding harm, preventing it, and addressing that which has already occurred.

Conflict pollution – addressing systemic harm with humanitarian impacts

The issue of conflict pollution – or toxic remnants of war – sits within the wider issue area of conflict and the environment (which itself can be seen as part of a much wider issue area of environmental harm). The conflict and the environment agenda includes the problems of the humanitarian and environmental impacts of armed conflict and military activities, as well as the broader interrelationships between challenges to the environment and violent conflicts.

The environmental impacts of conflict, which may also have humanitarian consequences, can be both short and long term and may be localised or diffuse – similarly to the environmental impacts of other human activities. The causal links between conflict activities and some environment-related harm can be more complex to elaborate than, for example, the chain of causality in documenting physical injuries from explosive weapons. This can introduce some conceptual complexity to certain issues in this area, for example the long-term health impacts of particular toxic weapons or materials like depleted uranium, which some states and civil society actors have been raising concerns over for several years.²⁴ The narrative of harm in these cases cannot necessarily be a straightforward one of cause and effect (which may oversimplify the facts and lack credibility), but may depend more on the effective understanding and communication of risks and probabilities, for example.²⁵

Nevertheless, this complexity does not preclude the acknowledgement of potential harm or the adoption of solutions, which can be taken on the basis of the prioritisation of precaution and the protection of people. The broad harm to the future addressed by the Safes Schools Declaration, deriving from a set of evidently or likely harmful (if not illegal) behaviours in the present, could be seen as a

case of states taking such an approach. The level of legal protection for the environment in armed conflict is currently low, and strong, specific standards in this area are lacking – as is robust data on the health and environmental impacts of conflict pollution as a part of any response to these issues.

In this context, in 2017 the UNEA passed a resolution on ‘Pollution mitigation and control in areas affected by armed conflict or terrorism.’²⁶ This was significant in being the first UN resolution to directly address the “threats to human health and environment” caused by conflict-specific pollution. The resolution can be seen as a first recognition of an issue, which could pave the way towards greater commitment and response. The resolution contextualises itself first within the Agenda 2030 for sustainable development, as well as resolutions on armed conflict and the environment, and disarmament. It is framed primarily around harm to people (including particular vulnerable or specifically affected groups) and the systems that support them, from conflict related environmental damage or pollution.

The range of impacts from conflict-related pollution highlighted in the resolution includes those on human health (though these are not elaborated), resources and infrastructure; the long-term socio-economic consequences of degradation and resource depletion from pollution; and displacement. In terms of the causes of pollution and the link to these harms, the resolution highlights the targeting of natural resources or infrastructure; illegal exploitation of natural resources; collapse in environmental governance; polluting survival strategies of conflict-affected populations; and the movement of hazardous wastes. Many of the impacts identified stretch far in to the future (including socio-economic impacts from “sometimes irreversible impacts on ecosystem services”), but their link to these causes of pollution is presented as immediate and direct. The majority of the harms identified by the resolution do not require the elaboration of a complex chain of causality, perhaps avoiding some more contested issues.

The harm framing of the resolution has a relatively wide subject: various systems and conditions that sustain human life and activities, and the people affected by their pollution or breakdown, due to the humanitarian and protection consequences. This is still narrower than a holistic or comprehensive consideration of ‘the environment’ as a subject or good. It focuses down on responding to some quite specific threats and harms to these systems and conditions, and during conflict as a particular situation.

The resolution, which is not binding on states, encourages countries to take a number of measures towards addressing these issues, including: taking steps to understand the problem through data collection (including to understand health impacts); putting strategies and steps in place for preventing, minimising and mitigating conflict pollution (including risk education); undertaking remediation measures; and cooperating with each other on these activities.

The most specific recommendation to states in the resolution is for conflict-affected countries to work with all at the national level to prepare “national plans and strategies aiming at setting the priorities for environmental assessment and remediation projects,” and to collect and integrate “data necessary for identifying health outcomes” in to health systems and risk education work. In the context of a significant gap in practice and structures for monitoring and addressing harm to

environment, this recommendation was a significant step forward in this issue area.

Parallels can be drawn between the resolution and states’ responses to other issues, including in binding agreements: it takes a broad approach of understand, prevent, respond, and cooperate, in proposing a solution set to an agreed framing of harm. The range of non-binding recommendations in the resolution could plausibly be built on in the future through states making politically or legally binding commitments on the same points.

Describing the problem of conflict pollution or toxic remnants of war splits off one aspect of the larger conflict and environment agenda, providing a more specific set of problems to address.²⁷ This might be compared to the approach of the SSD, which can be seen as a means to address the protection of educational institutions as a sub-issue within either a broader agenda to protect civilians during conflict, or a broader agenda of promoting the right to education. Or, it could be compared to the CCM as a means to address one tool of violence that has particularly dire consequences for civilians, within a broader problem of civilian harm from explosive weapons, and from armed conflict in general.

The problem of conflict pollution is wider than one particular weapon or practice, however. The Toxic Remnants of War Network, an international NGO coalition working on this issue, enumerates sixteen different sources of conflict pollution in its introduction to the problem, for example.²⁸ This places the issue conceptually somewhere between initiatives like the GD that holistically consider broad issues, and agreements to address specific weapons or practices like the CCM and SSD – though it is significantly closer to the latter.

The solution needed from states to the conflict pollution problem cannot necessarily be framed in terms of one or two simple demands for prohibition and response. Nevertheless, it can potentially follow a similar basic structure of steps to understand a problem, prevent further harm and address existing affects as taken in more narrow agreements. The foundations for such an approach, and for states’ recognition and acceptance of the humanitarian impacts of the effects of conflict on the environment as an issue of harm requiring response, are seen in the UNEA resolution.

Simplification, precaution, and vision

In international initiatives to address the problem of armed violence and the various harms caused by it – whether perpetrated by states or others – a key question for policymakers and advocates remains how to divide up broad problems in order to generate workable policy solutions that countries and others can commit to.

Some amount of simplification about the causes of harm from armed violence, and their solutions, might be necessary in order to make political progress and generate agreements and promote practical actions that feel ‘realistic’ to adopt. Nevertheless, there are also risks in narrowing the parameters too far: this could produce responses that fail to make significant progress on the harms they seek to address, or which tacitly endorse the status quo around an issue whilst enabling the performative prohibition or restriction of practices that states are more willing to concede. Alternatively, such responses may be too restricted to make a significant impact on helping to solve

the wider issues that disarmament or civilian protection initiatives might contribute to, such as challenging over-militarised conceptions of security, or violent conflict itself. The challenges therefore include both oversimplification or neglect of particular aspects within specific issue areas, and a lack of vision or contribution to wider progress: considerations that are important to future initiatives for international commitments to address armed violence.

As seen above, of the issues examined in this paper, argumentation around the conflict pollution issue represents the most evident navigation of the dilemmas of moving beyond oversimplification and over-narrowing, versus identifying a clear problem to which a specific policy solution can be applied.

The sixteen sources in the toxic remnants of war framing of the TRWN, for example, includes 'weapons residues' as a one sub-issue. This expands the problem definition significantly from focusing separately and in turn on particular weapons with toxic residues (such as depleted uranium weapons, or defoliants), to the overarching problem of toxic remnants from all weapons. It then situates this, again, within a broader problem framing of other sources of pollution or toxicity related to military activities, and more broadly, the need for structures and processes to understand and respond adequately to this type of harm from all the sources listed and others.

An overarching response to dealing with these sources, under the rubric of taking precautions against harmful pollution, could help to manage a range of issues of concern, whilst, as the UNEA resolution shows, potentially remaining narrow enough to be conceptually and politically manageable (though it remains to be seen whether further commitment will be developed). Concentrating on these sources one by one, on the other hand, could have more potential for leaving some neglected through an insufficiently holistic framing, or lack of political bandwidth to deal with each in turn effectively. Additionally, a wider framing can help to lay the groundwork for developing concern and action on more specific issues.

Encouraging the adoption of a wider precautionary orientation for the protection of civilians – and placing the onus on states to justify the necessity or disprove the unintended harm caused by particular weapons, tactics or substances by their militaries – is a relevant approach in the area of conflict and the environment. Notably for example, civilian environmental protection standards are often far higher than military ones in relation to the same toxic substances.²⁹ Acknowledging the exceptional circumstances militaries operate in during armed conflict, the question nevertheless stands as to why civilians remaining after the fighting is over should be (knowingly?) exposed to more hazardous substances than if they had not experienced a situation of armed conflict.

A general precautionary orientation to military activities that prioritises civilian protection was relevant to argumentation for the CCM and SSD, and also has relevance in considering how discussions might be structured around new weapons technologies that countries are considering bringing in to use (and their national processes for weapons review). As discussed in this paper, harm does not always have to be definitively 'proven' in order for states to act: and a precautionary approach shifts the burden of proof to those generating risks (including potential new risks) to show that such harm either is acceptable or will not occur.

More widely, there is a value in discussions on weapons and civilian protection policy in considering not only the operational level of precaution in specific attacks and tactical utility, but the broader implications that tactics, technologies and developments might have for encouraging or restraining violence and affecting communities before, during and after what should be the exceptional situation of armed conflict. The framing and scope of the safe schools agenda involved some of this more broad precautionary consideration of a future beyond armed conflict, in tackling the specific issue of attacks on education.

Considering a broad, precautionary orientation also speaks to the wider issue of how the terms of any discussion or framing are set. Introducing health, environmental or development lenses when discussing military activities and technologies can be resisted (for example in international discussions between states) due to the carving out of armed conflict as an exceptional sphere of operation in which harms will by definition occur. Given that these impacts, and decisions about what forms of violence are permissible, will carry over to affect people and wider social organisation beyond the particular legal situation of armed conflict however, these wider lenses must be part of the terms of debate.

Regarding the challenge of narrowing, dividing, and neglect or absences, where the framework of the protection of civilians in armed conflict is used as a lens and means for developing international standards and commitments, there may be risks of fragmenting and thus potentially weakening a broader protection agenda in focusing on particular civilian groups, protection issues, or countries. UNOCHA, for example, has suggested the dangers within the UN Security Council context of "PoC 'a la carte' where different categories of civilians receive different levels of attention," which combined with emphasis on (nevertheless crucial) sub-themes such as hunger in warfare or the urbanisation of conflict, could distort focus away from overarching issues of legal compliance and accountability³⁰ – and lead some states to deflect or avoid focus on their own behaviour.

Silences in policy and practice could be generated by the focus on certain groups to the exclusion of others. Building mechanisms around specific groups or issues such as children and armed conflict has certainly represented political progress, for example – but there are potential risks to undermining broader civilian protection and immunity norms in focusing on those widely considered to be the most 'innocent' in conflicts (which is also gendered).³¹ Practices or threats that affect all civilians may risk being neglected in favour of those that affect more vulnerable and sympathetic groups, such as children, if more specific policy solutions are not integrated into a broader policy strategy or vision.

Limiting harm framings and agreements to the situation of armed conflict can itself produce significant gaps and absences in addressing humanitarian issues. Though it has been widely recognised for some time – as evidenced by the broad problem set the GD includes – that dealing with global issues of widespread armed violence, weapons policy, and the protection of communities are not necessarily served by limiting discussions to the narrow legal framework of armed conflict, this remains how many forums for discussion and processes are framed. Though states may wish to limit the scope of obligations, and maintain legal boundaries, holistically addressing humanitarian and protection issues with a precautionary orientation in the future will continue to require widening the lens beyond armed conflict.

For contributing to broader goals, in the particular sphere of weapons policy and the protection of civilians, there are also wider risks in focusing on addressing civilian harm issues weapon class by weapon class (to prohibit or restrict particular sets of technologies). Taking such an approach risks reproducing similar discussions and solutions in an essentially reactive manner to developments in practice or technology. These developments will be led by states with large military spending or who are involved in conflicts. A reactive approach thus concedes some degree of agenda-setting to these actors. Without articulating or advancing a broader agenda for progress to address the causes or structures that support negative new developments in weapons and the use of force, the gains made by a weapon by weapon approach – while significant and meaningful to affected communities – could ultimately be limited.

Currently, international legal frameworks and the idea of a ‘rules based system’ for managing conflict and violence are considered to be increasingly under threat. This threat arises both from violations in clear disregard of agreed legal frameworks; the marginally more subtle erosion of norms through states’ reinterpretations of rules to fit what they see as the changing parameters and nature of warfare; and the general rise of more authoritarian and militaristic governments around the world. In this context, action around international standards for weapons control and civilian protection may understandably take on a more reactive, defensive, or incremental orientation, with a focus on trying to defend gains previously made, or advance on them slightly in a difficult global context. However, to confront these problems effectively, both an alternative vision of goals and progress, as well as meaningful and substantial steps that can contribute towards it, will be needed.

Conclusion

In the current global context, a strong vision for transforming how states relate to weapons and the use of military force would be beneficial for underpinning future policy initiatives for agreements between countries to address armed violence, weapons policy, and the protection of civilians in armed conflict. States’ and advocates’ ambitions must also reach beyond addressing direct harms from very specific weapons – which are nevertheless crucial to deal with – to the broader effects and contexts of actions during armed conflict and violence, and consider how broader sets of problems can be effectively considered.

The analysis of the agreements and documents conducted in this paper shows that states can make significant commitments on issues that are wider than technologies or practices that cause clear mass casualties – the absence of which is sometimes seen as a barrier to effectively framing and gaining commitment on an issue. Making commitments based on the future of communities may be more politically compelling when framed around the future of children, and where the core responsive action required is quite clear and discrete, as with the SSD. Nevertheless, such agreements show that there is clear scope for states to do so – and that it is not necessarily essential to definitively ‘prove’ a complex chain of causality leading to future harms in order for a precautionary approach to be politically compelling, and for action to therefore be taken.

The documents and agreements examined in this paper – and other international agreements in this area – take a broadly similar format

in their solution sets: to understand a problem, prevent its recurrence, respond effectively to harm already caused, and ensure co-operation between countries and others to implement and reinforce these commitments. In making agreements to respond to problems of violence that affect communities not just during armed conflict, but in the wider context of their futures far beyond such exceptional situations, states and other should consider how such holistic and cooperative solutions can be implemented.

END NOTES

- 1 *Convention on Cluster Munitions* (2008) available at: http://disarmament.un.org/treaties/t/cluster_munitions/text
- 2 *Safe Schools Declaration* (2015) available at: https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf
- 3 *Geneva Declaration on Armed Violence and Development* (2006), available at: <http://www.genevadeclaration.org/fileadmin/docs/GD-Declaration-091020-EN.pdf>
- 4 UN Environment Assembly (2018), '*Pollution mitigation and control in areas affected by armed conflict or terrorism*,' UNEP/EA.3/Res.1 available at: <https://undocs.org/UNEP/EA.3/Res.1>
- 5 Many countries nevertheless treat politically binding commitments that are more specific – such as those that apply to military practice – in a similar way to legal agreements in policy and practice
- 6 See for example among many publications by CMC organisations: Landmine Action (2006), '*Foreseeable harm: The use and impact of cluster munitions in Lebanon*,' 2006; Landmine Action (2006), '*Failure to Protect: A case for prohibiting cluster munitions*,' Colin King, Ove Dullum, Grethe Østern (2007), '*M85: an analysis of reliability*,' Norwegian People's Aid, available at: <https://www.npaid.org/content/download/1142/10896/file/m85.pdf>
- 7 For examples of CMC public argumentation in this area see for instance, Cluster Munition Coalition (2008), 'CMC Press Release, Dublin May 2008,' available at: <https://www.youtube.com/watch?v=I6WIOeydzXg> and CMC (2008), 'Press Release - Global push for cluster bomb ban,' available at: <https://www.youtube.com/watch?v=Xbn9yINlyfo>
- 8 This research is undertaken yearly by the Landmine and Cluster Mmunition Monitor, available at: <http://www.the-monitor.org>, and Norwegian People's Aid's 'Mine Action Review,' available at: <http://www.mineactionreview.org>
- 9 See for example (among many other publications by organisations including Human Rights Watch, Save the Children and others): GCPEA (2014), '*Education Under Attack*,' available at: <http://www.protectingeducation.org/education-under-attack-2014>; GCPEA (2012), '*Lessons in War: Military Use of Schools and Other Education Institutions during Conflict*,' http://www.protectingeducation.org/sites/default/files/documents/lessons_in_war.pdf
- 10 At the Third International Conference on Safe Schools in Palma, Spain in May 2019 for example, panel speakers and states' interventions repeatedly referred to the SSD as an initiative that was about the future
- 11 See Article 36 (2019), '*Reflections from the Safe Schools Declaration process for future international political commitments on civilian protection*,' available at: <http://www.article36.org/wp-content/uploads/2019/08/SSD-process-reflections.pdf>
- 12 See for example GCPEA, 'The problem,' and 'Goals and Recommendations,' on <http://www.protectingeducation.org>; and GCPEA (2014), '*Education Under Attack*,' available at: <http://www.protectingeducation.org/education-under-attack-2014>
- 13 For more on the process to develop the SSD, see Article 36 (2019), '*Reflections from the Safe Schools Declaration process for future international political commitments on civilian protection*,' available at: <http://www.article36.org/wp-content/uploads/2019/08/SSD-process-reflections.pdf>
- 14 The full text of the *Guidelines for Protecting Schools and Universities From Military Use During Armed Conflict* is available here: http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf. The Guidelines were developed through a process involving experts from academia, civil society, international organisations and states during 2012-14. See GCPEA, *Commentary on the "Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict"* http://www.protectingeducation.org/sites/default/files/documents/commentary_on_the_guidelines.pdf
- 15 For discussion of what this could involve, see Article 36 (2019), '*Victim assistance' in international agreements on civilian protection and weapons policy*,' available at: <http://www.article36.org/updates/va-paper/>
- 16 As originally drafted, the SSD also included attacks on education in other situations of violence. This was removed in consultations after objections from some states to this broader scope. See Article 36 (2019), '*Reflections from the Safe Schools Declaration process for future international political commitments on civilian protection*,' available at: <http://www.article36.org/wp-content/uploads/2019/08/SSD-process-reflections.pdf>
- 17 Though there was some contestation throughout the process as to whether the commitments in the GD applied to states' conflict practices, or other situations of violence
- 18 See Switzerland and UNDP (2011) '2nd Ministerial Review Conference on the Geneva Declaration on Armed Violence and Development: Outcome Document,' available at: <http://www.genevadeclaration.org/fileadmin/docs/GD-MRC2/GD-2ndMRC-Outcome-Document.pdf>
- 19 See Geneva Declaration Secretariat (2014), 'Implementing the Geneva Declaration,' available at: <http://www.genevadeclaration.org/nc/en/programming/gd-handbook0.html> and Geneva Declaration Secretariat, 'Geneva Declaration Regional Review Conferences 2014,' available at: <http://www.genevadeclaration.org/en/2014rrc/overview.html>
- 20 See Federal Department for Foreign Affairs of Switzerland and UNDP (December 2015), 'Agenda 2030 and Geneva Declaration on Armed Violence and Development,' Letter to signatories of the GD, available at: <http://www.genevadeclaration.org/fileadmin/docs/News/Switzerland%20and%20UNDP%20on%20the%20GD.pdf>
- 21 See United Nations, 'Sustainable Development Goal 16,' available at: <https://sustainabledevelopment.un.org/sdg16>
- 22 Letter to signatories of the GD, above note 8
- 23 See for example Small Arms Survey (2003), '*Obstructing Development: The effects of small arms on human development*,' Small Arms Survey 2003, available at: <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2003.html>; Quaker United Nations Office (2008), 'Disarmament and Development: One Coin, Two Sides?' available at: <https://quono.org/resource/2008/7/disarmament-and-development-one-coin-two-sides-briefing-friends>
- 24 See for example the International Coalition to Ban Uranium Weapons, <http://www.bandedpleteduranium.org>; there have been several resolutions on Depleted Uranium weapons at the UN General Assembly First Committee since 2007; the UN Secretary-General has also reported on uranium weapons periodically since the first resolution
- 25 See for example ICBUW (2014), '*Proving harm is complex*,' available at: <http://www.bandedpleteduranium.org/en/proving-harm-is-complex>
- 26 UN Environment Assembly (2018), '*Pollution mitigation and control in areas affected by armed conflict or terrorism*,' UNEP/EA.3/Res.1 available at: <https://undocs.org/UNEP/EA.3/Res.1>
- 27 Though it should be noted that in the context of the negotiation of the UNEA resolution, much of the political tension revolved around disagreements playing out within the UN Security Council on the relationship between the environment and security
- 28 See Toxic Remnants of War Network, 'TRW Sources,' available at: <http://www.trwn.org/trw-sources/>
- 29 Article 36 (2015), '*Weapons Reviews: Initial Lessons from Other Regimes*,' (distributed to the CCW in 2015)
- 30 UNOCHA (2019), '*Building a Culture of Protection: 20 Years of Security Council Engagement on the Protection of Civilians*,' available at: <https://www.unocha.org/sites/unocha/files/Building%20a%20culture%20of%20protection.pdf> p63
- 31 See for example, Charli Carpenter (2006), '*Innocent Women and Children: Gender, Norms and the Protection of Civilians*.'

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