

With Friends Like These

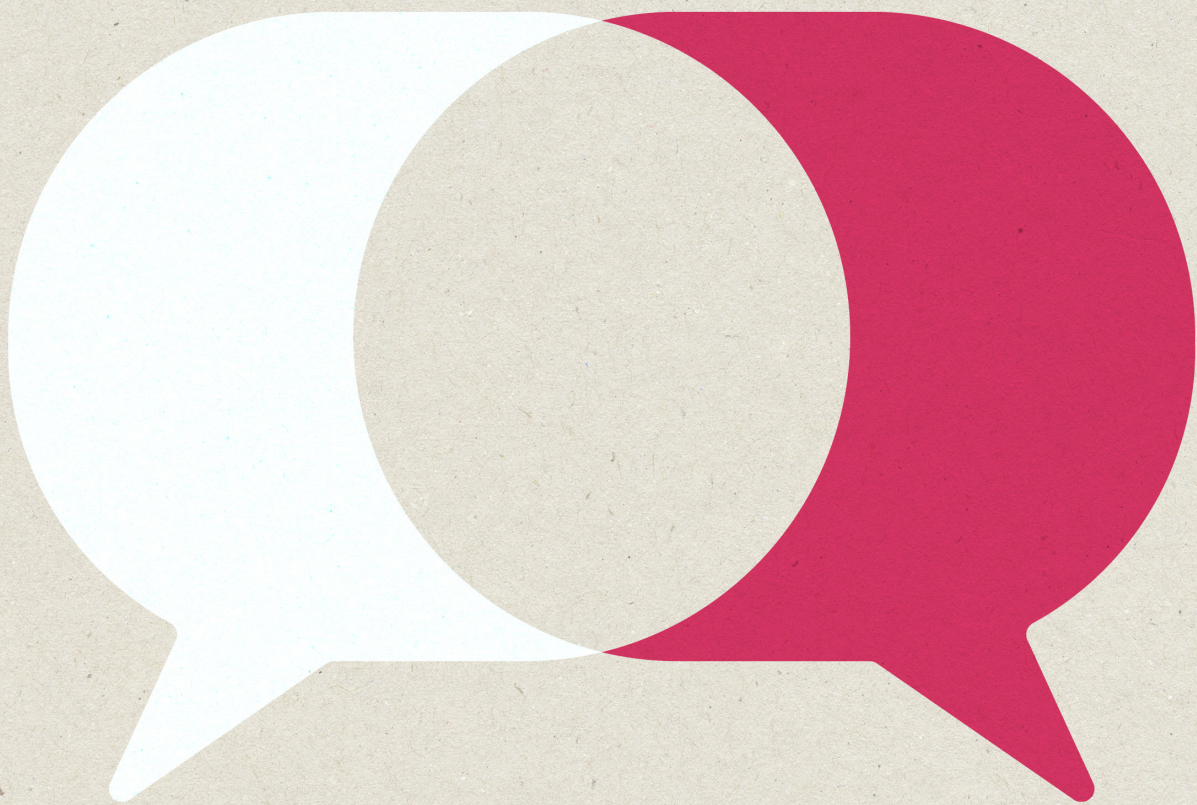
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REPORT

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Compliance Rhetoric
in the Joint Statements of the
Group of Friends of the Protection
of Civilians in Armed Conflict

This report examines the shortcomings of the Group of Friends of the Protection of Civilians in the context of its conservatism on two core protection issues. It links these to the rhetorical strategy of militarised states that proposes compliance with International Humanitarian Law as a wholly sufficient means of protecting civilians in armed conflict. The report explores why this, and the Group's positions, should be scrutinised.

Key messages:

- × If the title 'Group of Friends of the Protection of Civilians' is to have any meaning at the United Nations Security Council, then some level of scrutiny is required regarding the stances that such a group maintains on key protection of civilians (PoC) issues.
- × The title 'Group of Friends' could be taken to imply that the Group's contributions to Security Council PoC open debates reflect a progressive consensus on PoC. In reality, the Group of Friends' (GoF) contributions appear to be significantly limited by the influence of conservative members who have interests or orientations against action on a number of contemporary PoC issues. The Group's resultant lacklustre engagement with key PoC issues, as identified by the UN Secretary-General in his reports, falls far short of what we might expect from a collective of states with a goal of "contributing to advocacy at the global level to enhance the protection of civilians in armed conflict".¹
- × In line with the rhetorical strategies of militarised states, the GoF's contributions to Security Council PoC open debates often harmfully conflate International Humanitarian Law (IHL) compliance with the protection of civilians. An overwhelming preoccupation with straightforward violations of IHL ultimately works to the detriment of responding to PoC issues which are characterised by longer term harms, more complex chains of causality, and less straightforward adjudications of legality.
- × This stance is seen in the GoF's prolonged reluctance to address the humanitarian impact of the use of explosive weapons in populated areas (EWIPA) and arms transfers, in the contributions to Security Council open debates analysed for this paper. In both cases, the GoF has tacitly denied that such matters belong on the PoC agenda. Notwithstanding the GoF's recent change of stance on EWIPA, the Group's collective activities have not generally served to facilitate progress in these key areas.

¹ See Permanent Mission of Switzerland to the United Nations, 2021. 'Statement by the Permanent Mission of Switzerland to the United Nations 27th May 2021', p. 113. Online: <https://digitallibrary.un.org/record/3932831?ln=en>.

Introduction

The Group of Friends of the Protection of Civilians in Armed Conflict (henceforth the 'Group of Friends' or GoF) is an informal network of 27 states² who maintain a collective stance on a number of issues relating to the protection of civilians.³ One of many such groups, the Group of Friends was formed in 2007 with the stated aim of collectively contributing to global-level advocacy relating to the protection of civilians.⁴

In practice, such contributions have largely taken the form of joint statements to United Nations Security Council open debates on the protection of civilians, annual sessions which are used to maintain momentum in the protection of civilians agenda whilst also providing a discursive platform for both Council member states, the broader community of UN member states and some civil society. In terms of their content, the Group's contributions have invariably been directed towards promoting compliance with international law, and International Humanitarian Law (IHL) in particular, both in general terms as well as by specific reference to the considerable diversity of topics which currently fall under the protection of civilians (PoC) agenda.

Promoting compliance with – and, inversely, condemning violations of – IHL is undoubtedly valuable. However, for developing progressive norms and practice to protect civilians it is insufficient. The Group of Friends has rarely been the most progressive voice in contemporary international discourse on the protection of civilians and, as a collective, has not played a significant role in leading novel initiatives to improve civilian protection. This report elaborates two examples of where the Group of Friends has maintained a collective position of silence on key issues, whilst others have pushed forward with international policy initiatives to better protect civilian populations affected by conflict. This report reviews both the form and sources of the Group's apparent lack of progressiveness, advocacy, or initiative on key issues, as well making initial observations on the extent of its implications for making progress to better protect civilians through international policy initiatives.

Structure and Rationale

In terms of structure, this report begins by providing case studies which detail the Group of Friends' engagement with two prominent topics in the broader PoC agenda: the use of explosive weapons in populated areas (EWIPA), and scrutiny surrounding responsible arms transfers. These themes have both been consistently highlighted in UN Secretary-General reports on the Protection of Civilians. The UN Security Council requests these reports to inform its work on PoC, and so might be considered the agenda that a Group of Friends would seek to support and reinforce in global advocacy on PoC. The themes of EWIPA and arms transfers are chosen for examination in this report on that basis.

2 At the time of the Group's latest statement to a UN Security Council open debate on protection of civilians. Statement of the Permanent Mission of Kuwait to the United Nations 23rd of May 2023. Online. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/145/50/PDF/N2314550.pdf?OpenElement>

3 The group's current members are Australia, Austria, Bangladesh, Belgium, Brazil, Canada, the Dominican Republic, France, Germany, Indonesia, Ireland, Italy, Côte d'Ivoire, Japan, Kuwait, Liechtenstein, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Ukraine, and Uruguay.

4 See no. 1, p. 113: "The Group of Friends is committed to doing its part and contributing to advocacy at the global level to enhance the protection of civilians in armed conflict."

For each topic, the report explores not only the ways in which the Group of Friends has failed to adopt progressive or active stances on core PoC issues, but also the ways in which Security Council PoC debates facilitate such a lack of engagement. Having identified two policy areas in which the GoF has arguably fallen short in its engagement as a collective, the report will turn towards a more systematic effort to outline the sources of the GoF's moderacy, focusing specifically on the structure and composition of the group itself as well as the agenda and dominant objectives of Security Council PoC debates.

This analysis aims to bring the GoF's silence on key protection issues into plain view whilst offering some preliminary explanations as to its sources. Whilst such a project may have policy implications in its own terms, the report's primary contribution will be an exploration of the long-term implications of the insidious view that legal compliance provides a wholly sufficient mechanism for the protection of civilians, and that the sources of civilian harm reside exclusively in violations of the law, and of International Humanitarian Law (IHL) in particular.

Continued progress in the PoC policy space will depend on the recognition that many of the most pressing humanitarian issues of our time cannot be straightforwardly reduced to matters of IHL compliance or non-compliance. Indeed, doing so serves only to obscure the realities of such harms in practice. We would argue that an overwhelming pre-occupation with IHL compliance can and has served to preclude a meaningful engagement with some of the most serious humanitarian issues in armed conflict in the 21st century. In order to address these issues effectively, states must adopt an orientation to harms that stretch over the longer term, which have more complex chains of causality, which might be more broadly conceived as harms to our societies collectively,⁵ and which also speak to other frameworks such as International Human Rights Law.

As a final word of introduction, it is worth elaborating why the contributions of the GoF are worthy of analysis – given that the Group might be considered to have a relatively innocuous role or position within the PoC policy landscape. We would suggest two reasons why the contributions of such a group should be scrutinised:

1. Firstly, the contributions of coalitions like the GoF could potentially play a role in helping promote the topics worthy of consideration within the international discourse relating to the protection of civilians. One of the primary functions of Security Council PoC debates is to set the agenda for policy action which will take place elsewhere, and the crowded nature of the PoC landscape means that sustained, concerted efforts are required to ensure that certain topics remain live issues within the discourse. As the report will demonstrate, the GoF's engagement with EWIPA and the scrutiny of arms transfers has been characterised by a lack of acknowledgement of their place within the discursive landscape. Such omissions are not neutral: they actively contribute to the broader discursive culture, with implications for framing what "counts" as a PoC issue (or what initiatives gather momentum and at what speed). Whether the GoF is considered to have a major influence in this or not, these broader discursive dynamics facilitate states'

⁵ See Minor, 2019. Framing Harms. Online. <https://article36.org/wp-content/uploads/2019/08/Framing-harms.pdf>.

evasion of scrutiny with regards to certain practices which demonstrably cause civilian harm, as well as their ability to avoid addressing certain issues through policy responses.

2. Secondly, if the title 'Group of Friends' is to have any meaning within fora like the Security Council then there should be some level of scrutiny regarding the stances the Group maintains on prominent topics within the PoC agenda. Given the lack of information regarding the GoF's objectives within the Security Council, it is difficult to assess the implications of its shortcomings. That said, this report will maintain that, at the very least, the group's contributions to Security Council PoC debates should have a function in supporting and helping to advance the discussion of key protection issues that the UN Secretary-General has highlighted for the UN Security Council to consider. If, as this report will argue, a conservative cohort of states holds a disproportionately influential position within the GoF, and they can be seen to use that position to limit the scope of the Group's contributions, then serious questions should be raised as to whether the GoF's activities are adequate to merit the title 'Group of Friends'. In our view, a true 'Group of Friends' would be one which drives humanitarian debates forward by maintaining progressive stances on a full range PoC issues. At present, the Group of Friends falls significantly short of that standard.

A Note on Methodology

One of the notable features of the Group of Friends is that, in the sixteen years since it was formed, it has almost entirely refrained from producing any programmatic account of its own activities. There is no publicly available mission statement, five-year plan, or framework for the Group. Indeed, it appears that the Group has never published any materials outlining its objectives, strategy, or underlying philosophy. Perhaps for this very reason, despite the GoF's putatively central position within international debates on the protection of civilians, the Group has been the subject of remarkably little commentary.

The primary obstacle presented by this lack of information is that it is difficult to establish a metric against which the efficacy of the GoF might be assessed. As the GoF makes its interventions almost entirely within the confines of UN Security Council open debates on the protection of civilians, we have chosen in this report to proceed on the basis that, at minimum, the GoF has a responsibility to consider seriously the issues raised in the UN Secretary-General's annual reports on the protection of civilians, and to contribute to the way those issues are advanced.

As such, this report will be almost entirely concerned with analysing the record over the last decade of the joint statements the Group has routinely given during Security Council PoC open debates. These ultimately constitute the only publicly available record of the Group's engagement with the international discourse surrounding the protection of civilians. Through a comparative analysis between GoF statements and those provided by some key other parties, i.e., the UN Secretary General, but also the International Committee of the Red Cross (ICRC), and selected individuals states, the report will identify the ways in which the Group of Friends has failed to adopt progressive or even active positions on key PoC issues. Insofar as the processes by which the Group's statements are produced remain entirely obscured from view, contribu-

tions to PoC debates are far from perfect as a means of accessing the inner workings of the GoF. Nevertheless, in the absence of an alternative, they at least provide a set of foundations upon which a preliminary effort to assess the contribution of the Group can be built.

The Membership of the Group of Friends of the Protection of Civilians in Armed Conflict

Since 2021, the Group of Friends members are Australia, Austria, Bangladesh, Belgium, Brazil, Canada, the Dominican Republic, France, Germany, Indonesia, Ireland, Italy, Côte d'Ivoire, Japan, Kuwait, Liechtenstein, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Ukraine, and Uruguay.⁶

Given the diversity of the Group's 27 members and their complex individual histories it will always be difficult to characterise the 'kinds' of state that are members of the Group, but a preliminary effort to do so is appropriate. For each of the features identified below there are exceptions, and it should be stressed that the diversity of the Group has increased as it has expanded in size since the Group was originally formed, particularly in the last couple of years.⁷

Speaking in broad terms, therefore, the GoF's members are generally states with advanced economies; they are predominantly – though not exclusively – states from the global north; and they are to a large degree states with a significant military expenditure. By contrast, though a number of members are frequently involved in armed conflicts, the Group's members are not the world's military superpowers, and, with the notable exception of Ukraine, they are not states where civilian populations have been at significant risk of harm from armed conflict in recent years.

6 See 'Annex 54: Statement by the Permanent Mission of Switzerland to the United Nations,' in the record of 2021's debate UN Security Council (2021), 'Letter dated 27 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council,' S/2021/505 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/135/97/pdf/N2113597.pdf?OpenElement>

7 In 2011 the group had sixteen members, of whom only Japan, Uruguay, Brazil, and Australia were not either European or North American states. (See statement of the Group of Friends in the meeting record, UN Security Council document S/PV.6650 <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20S%20PV%206650.pdf>). Since then, eleven new members have joined, including Cote d'Ivoire, Indonesia, Kuwait, Bangladesh and the Dominican Republic. Today, 18 of the Group's 27 members are either European or North American.

A Pair of Case Studies

The Use of Explosive Weapons in Populated Areas

For more than ten years, monitoring has continually shown that 90% of the direct casualties reported from the use of explosive weapons in cities, towns and villages are civilians.⁸ With the increasing urbanisation of conflict, the use of weapons originally intended for open battlefields in such areas, exacerbated by the ongoing concentration of civilian populations into towns and cities, has seen the harms caused by the use of EWIPA grow rapidly into one of the most pressing humanitarian concerns of the present day.

Since 2011, the International Network on Explosive Weapons (INEW)⁹ has led advocacy efforts to frame and highlight the harms caused by the use of EWIPA – particularly explosive weapons with wide area effects – coordinating the collaborative work of civil society organisations and working with states and UN bodies towards the development of stronger international standards and improved government policy and operational practice at a national level. In recent years, these efforts have been primarily directed towards the development of *politically* binding international standards rather than new law relating to EWIPA.

On the 18th of November 2022, following a negotiation process led by the government of Ireland, the ‘Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas’ opened for endorsement by states.¹⁰ This declaration marked the culmination of several years of multi-lateral efforts to create a political mechanism relating to the use of EWIPA, and as such the discourse which surrounded its development provides a number of insights into the GoF’s engagement with emerging issues in the protection of civilians landscape. Although Security Council PoC debates did not generally provide a platform where efforts towards the EWIPA declaration would be discussed in explicit terms, it should be understood that contributors’ references to EWIPA were situated firmly within the context of the ongoing deliberations regarding its potential development and then its negotiation.

For context, it is worth outlining the general tenor of progressive statements with regards to the use of EWIPA. One example is provided by the International Committee of the Red Cross (ICRC), which played a particularly active role in advocating for the development of stronger standards relating to the use of EWIPA and had been calling for states to avoid the use of explosive weapons in populated areas for more than a decade. In 2017, the ICRC’s statement to the open debate on the protection of civilians contained the following words:

8 The Action on Armed Violence (AOAV) ‘Explosive Violence Monitor’ tracks the impact of explosive weapon use worldwide as reported in English-Language media, see AOAV, 2023. ‘Explosive Violence Monitor’. Online: <https://aoav.org.uk/explosive-violence/>. See also, Explosive Weapons Monitor, 2023. ‘2021-2022: Two Years of Global Harm to Civilians from the Use of Explosive Weapons’. Online: <https://www.explosiveweaponsmonitor.org/two-years-global-harm-civilians-use-explosive-weapons-populated-areas-2021-2022>.

9 A network of civil society partners that Article 36 coordinates

10 INEW, 2022. ‘Dublin Conference to Adopt the Political Declaration on Explosive Weapons’. Available at: <https://www.inew.org/dublin-conference-to-adopt-the-political-declaration-on-explosive-weapons/>.

“Approximately 50 million people in urban areas now bear the brunt of conflict. The overwhelming percentage of people killed or injured by explosive weapons in populated areas are civilians ... The ICRC advocates that all parties should avoid using explosive weapons that have a wide-impact area in populated places. In addition to the high risk of indiscriminate civilian death and injury, heavy explosive weapons can cause extensive damage to critical infrastructure, such as health care, water and electricity facilities.”¹¹

In a similar vein, the UN Secretary-General’s reports on the protection of civilians in armed conflict have consistently contained explicit references to risks and harm associated with the use of EWIPA since 2009. In his 2012 report, the Secretary-General expressly called on parties to conflict to refrain from using explosive weapons with a wide-area impact in densely populated areas, a call which was subsequently repeated in all future protection of civilians reports.¹² In his 2013 report, the Secretary-General went further, calling for the first time (again to be repeated on multiple occasions thereafter) on states to engage proactively “in a process aimed at developing a political commitment and guidance with regard to reducing the short-term and longer-term impact on civilians of explosive weapons in populated areas.”¹³

Beyond the ICRC and the Secretary-General, it is noteworthy that many states which are members of the Group of Friends have also made progressive statements regarding EWIPA at the open debates on the protection of civilians.¹⁴ Norway, for example, made the following statement in 2018:

“... [W]e should support the call to avoid the use of explosive weapons with wide-area effects in populated areas and to develop policies on the use of such weapons to avoid civilian harm ... We stand ready to contribute to developing practical measures and guidance on the basis of lessons learned.”¹⁵

No doubt, there are considerable differences in the contents of these statements, but they are unified in their acknowledgement of the seriousness of the issue at hand, in their proposals that concrete policy action will be required to prevent further suffering and, crucially, in their belief that states should “avoid” or “refrain from” the use of explosive weapons with wide-area effects in populated areas. This latter point is particularly important, as ‘avoidance’ language would prove fundamental to the framing of the issue in the political declaration. Put briefly, states who maintained a generally conservative stance on the development of a political declaration relating to the use of EWIPA in the months and years preceding its adoption (e.g., France, the UK, Israel, and the US) were reluctant to accept any language which they were wary

11 ICRC, 2017. ‘Statement of the ICRC to the United Nations 25th May 2017’. Online: <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N17/149/98/PDF/N1714998.pdf?OpenElement>.

12 Report of Secretary-General on the protection of civilians in armed conflict, UN doc. S/2012/376 (22 May 2012), para.75(a)

13 Report of Secretary-General on the protection of civilians in armed conflict, UN doc. S/2013/689 (22 November 2013), paras.69 and 69(a)

14 Additionally, it should be noted that Ireland and Austria have played a very significant role in the development of the EWIPA declaration. As such, whilst the GoF itself maintains moderate positions on a number of issues, membership does not prevent states from holding progressive positions in their national capacity.

15 This statement was given on behalf of Finland, Iceland, Denmark, Sweden and Norway. See Permanent Mission of Norway to the United Nations, 2018. ‘Statement of the Permanent Mission of Norway to the United Nations 22nd of May 2018’. Online: <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N18/155/58/PDF/N1815558.pdf?OpenElement>.

could establish restrictions beyond those which already exist in international humanitarian law (IHL). Conversely, those advocating for a more progressive declaration were resolute in the belief that specific language on practice around the use of EWIPA would be useful for strengthening international norms for the protection of civilians as they relate to EWIPA.

It should be evident by this point that from 2010 onwards the international community was increasingly recognising an unfolding humanitarian crisis, and many wished to take concrete action to alleviate the suffering it was causing. Where did the Group of Friends of the Protection of Civilians stand in all of this? The first indicator as to the Group of Friends' role in these efforts is that, even construed in the broadest possible terms, the Group entirely failed to acknowledge the issue until at least 2017. Indeed, the term 'explosive weapons' did not appear in a GoF statement until 2020 – eleven years after it was first raised in the Secretary-General PoC reports – where it was presented in the following terms:

"First, we remain gravely concerned at the humanitarian harm being caused during active hostilities in populated areas. The nature of armed conflict in urban areas poses acute challenges for the protection of civilians, and more can be done to strengthen compliance with international humanitarian law during armed conflict and advance the protection agenda. Strict application of IHL rules and principles, including those of precaution, humanity, distinction, necessity, and proportionality, is required by all parties to conflict. In that regard, the GoF takes note of the consultation process to develop a political declaration to enhance the protection of civilians in urban warfare, including from the humanitarian impacts that could arise when explosive weapons are used in populated areas."¹⁶

Even at a glance, it is evident that this statement had been carefully constructed in order to suit the orientation of the Group's more conservative members, and that it falls significantly short of the positions outlined in the reports of the Secretary General and statements of the ICRC. Ultimately, this statement is strongly indicative of the ways in which preoccupations with compliance lead contributors into adopting conservative, and indeed unintuitive, positions on key humanitarian issues.

The statement opens with an acknowledgement of the fact that conflict in urban areas places civilians at an increased risk of harm, but it is intentionally unspecific about the sources of that harm and makes no clear reference to the role of explosive weapons. By 2020, the weight of evidence supporting the claim that explosive weapons – particularly those with wide-area effects – were a central source of civilian harm in urban areas was insurmountable. This fact was intentionally omitted in the statement.

16 Permanent Mission of Switzerland to the United Nations, 2021. 'Statement by the Permanent Mission of Switzerland to the United Nations 27th May 2020'. Online: https://www.eda.admin.ch/dam/mission-new-york/en/speeches-to-the-un/2020/20200527-new-york-POC-GoF%20PoC%20statement_E.pdf.

Following this overly vague account of the issue, we are presented with a familiar statement: “the strict application of IHL rules and principles... is required by all parties to conflict.”¹⁷ This is, of course, true, but it is too vague to amount to a meaningful contribution to the matter at hand. Indeed, this type of observation is often deployed in order to oppose meaningful international policy efforts to mitigate against the harms civilians endure during periods of conflict. One of the central recommendations of this report is that we must actively contest the notion that generic references to the applicability of IHL constitute a sufficient contribution to debates surrounding humanitarian crises, particularly in cases where such crises demonstrably emerge from specific military practices. It should be acknowledged that the repetition of existing rules is important for the building and reinforcement of norms, and that this is an important function of Security Council PoC debates. Nevertheless, it must also be recognised that concentrating simply on the application of ‘existing law’ can be disingenuously employed in order to evade scrutiny of the harm caused by specific practices that may or may not be straightforwardly ‘non-compliant’.

As the GoF statement continues, its conservative orientation to the EWIPA declaration becomes increasingly clear. First, and most obviously, ‘taking note’ of a consultation process is not supporting it, and the language here is clear evidence that some members of the Group of Friends maintained a sceptical orientation to the proposed declaration. That being said, by 2020 militarised states were coming to recognise that the emergence of a political declaration relating to EWIPA was an unavoidable – though in many ways undesirable – reality. The GoF’s more conservative members were among the most proactive participants in the deliberative processes which surrounded the declaration, though the extent to which these states actually *supported* the declaration (that is, a declaration which would meaningfully alter the conduct of militarised states) was often under scrutiny. States like France, the UK, Canada, and others were charged by civil society with seeking to maintain control over a political process which they deemed threatening, and also with seeking to dilute the declaration’s language in order to suit their own strategic interests.¹⁸ These accusations are supported by the characterisation of the EWIPA declaration which appear in the GoF statement quoted above.

Firstly, the use of “in that regard” links the EWIPA declaration to the previous assertion regarding the applicability of IHL. Such a transition suggests a preference for an EWIPA declaration that merely provides a restatement of the provisions of IHL. As noted above, progressive parties to the deliberations maintained that a mere re-statement of IHL would mark a significant failure to respond to the humanitarian issues, and an inadequate use of the political will which had been mobilised towards the development of a new declaration. Of course, a straightforward re-statement of IHL would be preferable for states who were invested in maintaining the unchallenged

17 Article 36 has written at length about statements of this kind elsewhere. See Holder, 2021. ‘The Compliance Trap and the Protection of Civilians’. Online: <https://article36.org/wp-content/uploads/2022/01/compliance-trap-alexander-holder-singlepage.pdf>.

18 See Reaching Critical Will, 2021. ‘Editorial: Stigmatising and stopping explosive violence for the protection of civilians’. Online: <https://reachingcriticalwill.org/news/latest-news/15213-report-on-the-march-2021-consultations-on-a-political-declaration-on-the-use-of-explosive-weapons-in-populated-areas>. See also Article 36, 2020. ‘Rejecting calls to address only the “indiscriminate use” of explosive weapons in populated areas’. Online: <https://article36.org/wp-content/uploads/2020/02/A-rejection-of-indiscriminate-use.pdf>.

legitimacy of the use of EWIPA. Secondly, the statement suggests that the proposed declaration should concern urban warfare in general as opposed to EWIPA more specifically. By 2020, the subject matter of the emerging declaration was almost entirely settled, and the position articulated here was held only by a small number of states who were particularly opposed to an EWIPA declaration. For those members of the GoF who had vocally advocated for a more limited political declaration – e.g., France, the UK, Germany, the Netherlands, Canada – at this point an ideal outcome would have been a general declaration on urban conflict which elaborated little beyond the provisions of IHL. Such a declaration would have been desirable insofar as it would have provided many opportunities by which the impunity of bad-faith actors could be condemned – without requiring moderate states to make any meaningful alterations to, or undertake scrutiny of, their own conduct and its humanitarian impacts.

Previous analysis by Article 36 of documents released following a freedom of information request to the British government showed that, in 2012, the Foreign and Commonwealth Office warned British diplomats against language which implies that “the air-delivery of weapons or the use of heavy artillery... is less accurate or less capable of being carried out discriminately than all or any other means.” This was in a briefing for the PoC open debate, under the topic of “the use of weapons in populated areas”. Further, reports suggested that the UK diplomats who had been charged with following this guidance subsequently blocked engagement with the issue of EWIPA in collective statements by the GoF.¹⁹

Though this gives only one evidenced example, we might hypothesise that this, and the more public behaviour of the UK and others, is indicative of the extent to which the Group of Friends’ more conservative members were able to a) suppress any reference to EWIPA in the Group’s statements for several years, despite the topic’s momentum, and b) to advocate for framing a significantly limited political declaration when its emergence became unavoidable. A central observation in this regard is that what we might assume to be the ‘consensus’ politics of the Group of Friends does not produce neutral contributions to Security Council debates: it produces contributions which reflect the values of the Group’s most conservative members.

To date, the Group of Friends has never made a statement with regards the use of EWIPA that extends beyond a re-iteration of the statement that, as elsewhere, IHL applies to the use of these weapons. Were one to consult the statements of the Group of Friends on the matter, it would appear that there is nothing distinctive about EWIPA whatsoever. This denial, not only in the face of terrible harms caused by explosive weapons, but also in the face of multi-lateral efforts to strengthen the norms surrounding their use, evidences a significant failure and undoubtedly raises questions about the Group’s present function in the PoC policy space. It should be noted that many of the states who had opposed the development of a progressive EWIPA declaration, including both France and the UK, ultimately endorsed the final text on its adoption in 2022 – with the UK subsequently becoming an active player in promoting national implementation. Of the GoF’s members, Poland, Ukraine, and Bangladesh are the only states who have not endorsed the EWIPA declaration. As a testament to the power of conservative minorities in the GoF, however, the Group’s 2023 statement at the open debate on the protection of civilians went no further than

19 Article 36, 2014. ‘Impact of heavy explosive weapons in Gaza exposes UK failure to lead on protection of civilians’. Online: <https://article36.org/updates/impact-of-heavy-explosive-weapons-in-gaza-exposes-uk-failure-to-lead-on-protection-of-civilians/>.

'noting' the recent adoption of the declaration.²⁰

Scrutiny Regarding Arms Transfers

In 2014, the entry into force of the Arms Trade Treaty established common standards for the international trade of conventional arms for the first time. The treaty emerged out of decades of diplomatic efforts to strengthen international norms in this area and was principally intended to reduce human suffering by limiting the extent of irresponsible and illegal arms transfers. Though the treaty does not independently prohibit the sale or purchase of any specific weapons, it *does* establish obligations for states to adopt basic regulations and approval processes for the transfer of weapons across international borders, as well as common standards that must be met before arms transfers can be authorised. For present purposes, it should be understood that Article 6 of the treaty outright prohibits weapon transfers which would violate states parties' obligations under international law. Article 7, which is more relevant in practice, obligates states to undertake export assessments in order to "assess the potential that conventional arms or items [...] could be used to: commit or facilitate a serious violation of international humanitarian law" or "international human rights law".²¹

The UN Secretary-General has made a clear effort over many years to establish a place for discussions regarding arms transfers within the PoC agenda. Since 2007, the Secretary-General's reports on the protection of civilians in armed conflict have consistently called for states to work together to alleviate the harms associated with "irresponsible" arms transfers.²² The Secretary General's 2017 PoC report, for example, stated that "irresponsible arms transfers exacerbate conflict and undermine the protection of civilians" and encouraged all states to join the ATT and adopt rigorous due diligence measures before authorising arms exports.²³ Though arms transfers is something of a fringe topic in the Security Council open debates, references to the matter are commonplace in what is already an extremely crowded agenda. The primary source of this topic's relevance to the present discussion is that the Group of Friends has *never* made a statement which acknowledges irresponsible arms transfers as being a PoC issue. There are a number of reasons why this might be case.

The most straightforward obstacle for the Group's acknowledging the implications of irresponsible arms transfers for the protection of civilians is that there are several members of the Group of Friends who have not ratified the ATT, including Bangladesh, Indonesia, Kuwait and Ukraine. Though the Group could plausibly acknowledge the importance of responsible arms transfers *without* reference to the ATT, the credibility of such a statement would be significantly limited insofar as it would be made on behalf of states who are not parties to the primary legal mechanism by which such responsibility might be assured.

20 Statement of the Permanent Mission of Kuwait to the United Nations 23rd of May 2023. Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/145/50/PDF/N2314550.pdf?OpenElement>

21 United Nations, 2013. 'The Arms Trade Treaty'. Online: https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templated=137253.

22 Report of Secretary-General on the protection of civilians in armed conflict, UN Doc S/2009/277. (28th October 2007) Para. 25.

23 Report of Secretary-General on the protection of civilians in armed conflict, UN Doc S/2017/414 (10th of May 2017) Para 23.

Additionally, it cannot be ignored that many of the Group of Friends' members are large arms exporters – and some have been subject to considerable criticism with regards to the legitimacy of their own arms sales. According to SIPRI's 2022 reporting, twelve of the world's top twenty arms exporters are members of the Group of Friends, with these states collectively accounting for 29.8% of global arms exports between 2018 and 2022.²⁴ Of course, the vast majority of these states have signed and ratified the ATT and are therefore legally obligated to comply with the regulatory mechanism that treaty prescribes in order to ensure against irresponsible arms transfers.

With that being said, a number of these states have been subject to considerable criticism on the grounds that their arms export practices at very least violate the spirit, if not the letter, of the ATT. In this regard, the continued sale of arms by France and the UK to the Kingdom of Saudi Arabia has been the most prominent source of condemnation (until the recent development, at the time of publication, of Israel's war in Gaza).

Since 2019, the UK government has been the defendant in a series of legal cases relating to its continued arms sale to the Saudi Arabia in spite of the overwhelming evidence of IHL violations that have been documented in the conflict in Yemen.²⁵ Since 2015, the UK's official figures state that £7.1 billion worth of arms sales have been made to the Kingdom of Saudi Arabia since 2015, though civil society organisations estimate that sales may have exceeded £20 billion.

France has rightly been the subject of similar scrutiny.²⁶ In July 2015, Saudi Arabia and France reportedly signed agreements worth \$12 billion for the sale of helicopters and military patrol boats which have subsequently been deployed in the conflict in Yemen.²⁷ Most troublingly, French-made patrol boats have reportedly been used as part the naval blockade which has surrounded Yemen since 2015, restricting the flow of food, fuel, and medicine to civilian populations who are suffering acutely as a result of the war.²⁸ In this context, France's continued arms sales to Saudi Arabia appears particularly disturbing, in light of the Group of Friends' regular condemnation of both the use of starvation as a method of warfare as well as the restriction of

24 Specifically France, Germany, Italy, the United Kingdom, Spain, the Netherlands, Sweden, Switzerland, Australia, Canada, Ukraine, and Poland. See SIPRI, 2022. 'Trends in International Arms Transfers'. Online: https://www.sipri.org/sites/default/files/2022-03/fs_2203_at_2021.pdf

25 See Human Rights Council, 2020. 'Report of the Group of Eminent International and Regional Experts on Yemen'. Online: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

26 Human Rights Watch, 2021. 'France Should Stop Selling Arms to the United Arab Emirates, Saudi Arabia'. Online: <https://www.hrw.org/news/2021/12/02/france-should-stop-selling-arms-united-arab-emirates-saudi-arabia>.

27 France 24, 2015. 'France to sign deals with \$12 billion with Saudi Arabia'. Online: <https://www.france24.com/en/20150624-france-saudi-arabia-deal-12bn>

28 See Human Rights Watch, 2017. 'Yemen: Coalition Blockade Imperils Civilians. UN Should Sanction Senior Saudi Leaders'. Online: <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians>. See also, *Mediapart*, 2019. 'The French-made warships blockading Yemen's starving population'. Online: <https://www.mediapart.fr/en/journal/international/170919/french-made-warships-blockading-yemens-starving-population?onglet=full>.

humanitarian access to conflict zones.²⁹

As with EWIPA, it is not difficult to identify the ways in which the interests of members of the Group of Friends may have prevented the coalition from making progressive statements about responsible arms transfers. What is consequential here, however, is not just that the GoF has failed to adopt a *progressive* stance on arms transfers, but that it has elected to ignore the matter entirely. This in spite of the UN Secretary General's clear efforts to introduce the matter to the Security Council's PoC agenda. As, generally speaking,³⁰ there is no formalised agenda for the Security Council PoC debates – and by extension no mechanism by which contributors can be compelled to address topics they wish to avoid – it should be understood that there is a quiet conflict here regarding the status of responsible arms transfers as a legitimate PoC issue. By continuing to omit references to arms transfers from statements at the Security Council's PoC debates, more conservative members of the Group of Friends are able to discreetly contest the notion that such matters are relevant to the protection of civilians. Crucially, in this arrangement, states such as Indonesia and Kuwait are not required to defend their failure to sign the ATT, and nor are France and the UK required to defend their continued arms sales to Saudi Arabia. Instead, these states can use the apparently unified values of the Group of Friends as a means to outline a PoC agenda which does not challenge their efforts to evade scrutiny on these matters.

In all of this, the crowded PoC agenda contributes significantly to the ease with which the Group of Friends can ignore the issue of irresponsible arms transfers without being subject to significant scrutiny. Not only do the sheer number of topics which can be addressed in any given statement make it difficult to identify omissions such as these, but the range of matters which fall under the PoC umbrella makes it easy to justify the claim that other matters should take precedence. The Group of Friends' contributions to Security Council PoC debates are invariably directed towards the general problem of 'impunity', or with condemnations of specific violations, whether that be the potential indiscriminate targeting of civilians, the prevention of humanitarian access to conflict zones, or the use of illegitimate methods of warfare. Undoubtedly these matters are of great significance – but an overwhelming pre-occupation with condemning certain types of legal violations in Security Council PoC debates has seen the development of a hierarchy in which topics like irresponsible arms transfers and the use of EWIPA can be treated as matters of secondary significance.

The primary reason for this is that *such practices are often not straightforwardly illegal*. Or, to be more circumspect, the nature of such practices – coupled with states' varying interpretations of international law – means that states cannot straightforwardly be held accountable for actual or potential violations. Despite the sale of arms to Saudi Arabia having undoubtedly been the source of considerable

29 In the January of 2023 legal efforts to suspend the authorisation for French arms exports to Saudi Arabia were significantly damaged by a ruling of the Conseil d'Etat at the conclusion of a deliberative period which lasted more than three years. Though this will not be the end of efforts to end French arms sales to Saudi Arabia, it marks a significant setback and will have real impacts on the safety and security of civilian populations in Yemen. See ASER, 2023. 'Un arrêt scélérat du Conseil d'État entérine le massacre des yéménites avec des armes françaises'. Online: <https://aser-asso.org/un-arret-sclerats-du-conseil-detat-enterine-le-massacre-des-yemenites-avec-des-armes-francaises/>.

30 States that hold the Security Council presidency at the time of the debate may circulate a concept note outlining a particular theme that states are expected to focus on, though states are also free to raise other issues.

harm, the prolonged and (up to now) unsuccessful legal proceedings which have been brought against the French and UK governments has demonstrated just how difficult it is to formally establish the legality of arms transfers in practice.³¹ The same is certainly true when it comes to EWIPA.³² In the context of the present discussion, the *actual* legality of the UK and France's arms exports is only of secondary significance. What is more important is that, provided states are able to exploit the ambiguity which surrounds the legality of those exports, the GoF are easily able to side-line references to arms transfers during Security Council PoC debates in favour of other, more straightforward violations of the law. This is a symptom of the current structure of PoC debates, which provide a discursive regime which perpetually foregrounds instances of flagrant non-compliance. If states continue to adopt an impoverished conception of both the protection of civilians *and* international law, then it must accordingly be recognised that violations of the law are not the sole source of civilian harm. In turn, states must take meaningful action towards improving the protection of civilians beyond simply calling for an end to instances of non-compliance.

Having outlined the GoF's engagement with two core issues in the PoC landscape, it should be evident that the Group has failed to be a progressive voice within Security Council PoC debates. The Group's failure to engage with topics which appear to conflict with the military or financial interests of its members ultimately has implications for humanitarian progress, insofar as omissions of this kind serve to deny that such matters have relevance to the protection of civilians: this, in turn, has implications for such issues being considered in a timely way in the Security Council PoC debates – which should be a forum for such consideration.

As a collective, the GoF is seen to take relatively conservative positions. As our case studies have shown, this by no means implies that the Group's membership as a whole is conservative – but it does suggest that its most conservative members have a disproportionate influence on the Group's contributions to Security Council PoC debates. In the following section, the sources of the Group's moderacy will be split into two categories: those which emerge from the structure of the Group itself, and those which emerge from the objectives of Security Council PoC debates.

31 The Arms Trade Litigation Monitor tracks and documents litigation and other legal interventions against arms exports. Online: <https://armstradelitigationmonitor.org/>

32 In the March of 2017, the US-led Coalition dropped 5,000 explosive munitions onto the city of Mosul in Northern Iraq. During that period, the primary munition which was deployed was the Mark 82 500-pound bomb, which has a lethal radius of 230 metres. The use of such munitions in populated areas has been widely condemned, not least because their blast radius means that considerable civilian harm is inevitable. Perhaps unsurprisingly, the coalition has maintained that each of the 5,000 munitions dropped on Mosul was used in compliance with IHL. It is extremely difficult to assess this claim, not only due to poor reporting and the diversity of other actors involved in the conflict during this period, but also because, fundamentally, IHL's structure of balancing military necessity and humanitarian considerations means that a 'proportionate' attack cannot straightforwardly be defined. See Airwars and Pax, 2017. 'Seeing Through the Rubble The civilian impact of the use of explosive weapons in the fight against ISIS'. Online: <https://www.inew.org/wp-content/uploads/2020/10/pax-airwars-seeing-through-the-rubble-full-report.pdf>. See also Amnesty, 2017. 'The battle for west Mosul has caused a civilian catastrophe'. Online: <https://www.amnesty.org/en/latest/campaigns/2017/07/at-any-cost-civilian-catastrophe-in-west-mosul-iraq/>.

Conservatism Emerging from the Composition and Structure of the Group of Friends

1. A Coalition will Tend Towards the Positions of its Most Conservative Members

The first and most prominent source of the GoF's moderacy is likely to be that any statement delivered on behalf of a coalition of states will be significantly limited by the apparent consensus politics which govern that coalition. As the two case studies above demonstrate, the Group of Friends has been unwilling to make statements which may encroach upon the positions or interests of its more conservative members. It appears that the Group's position on any given issue is likely to be established in line with the least progressive position of any one of its members, where this is nationally important.

Such an arrangement will inevitably lead to a 'lowest common denominator' approach to collective statements, one which naturally gives rise to weaker positions on key issues and a more limited scope for progress. In recent years the GoF's membership has significantly expanded and diversified, which has gone some way towards correcting the Group's significant over-representation of northern states and also supports non-Security Council members' representation in Security Council PoC debates. Nevertheless, these efforts towards improved representation are significantly undermined by what appears to be the consensus politics of the Group, in which some of the Group's membership – i.e. states like the UK – have demonstrated both their ability and willingness to place significant restrictions on the Group's contributions.

2. Members have Interests Which are at Tension with Strengthening the Protection of Civilians

Intertwined with the issue of group consensus is the fact that many of the GoF's members are highly militarised states with strong vested interests relating to the preservation of military freedom in the conduct of hostilities as well as to the development and trade of military technologies. With regards to both the use of EWIPA and scrutiny surrounding arms transfers, this report has shown that states like France and the UK – who have strong motivations to avoid making contributions that may lead to further restrictions upon their military freedoms – are likely to be responsible for the GoF's failure to engage with these matters.

In cases like these, serious questions are raised about the function of the GoF. If the Group is unable to be a leading, progressive voice on the protection of civilians because of the conservative interests of its members, then the position they appear to claim within the policy space must be more intensely scrutinised.

3. The Group Under-Represents States with Endangered Civilian Populations

It is also consequential that the Group of Friends significantly under-represents states where civilian populations are actually at risk. The obvious exception here is

the tremendous harm to civilian populations which has been brought about by the conflict in Ukraine. Though it remains to be seen how this ongoing conflict will affect the GoF's contributions to Security Council PoC debates, recent statements do not include specific references to the invasion of Ukraine and exhibit no significant differences from previous statements. Beyond Ukraine, the only other member of the GoF which has seen a significant risk to civilian populations in recent decades is Kuwait.

There are, of course, practical and political reasons for this lack of representation. Nevertheless, it remains notable that a group which over-represents states who can be implicated (directly or indirectly) in civilian harm whilst under-representing its victims exhibits a sustained reluctance to address some of the core issues and causes of contemporary civilian harm in conflict. (Though, it must be noted that experiencing armed conflict does not necessarily translate into progressive state positions on mitigating civilian harm.)

Conservatism Emerging from the Objectives and Scope of Security Council PoC Debates

The conservatism of the Group of Friends cannot be attributed solely to the composition of the Group itself: the forum in which the Group makes its contributions serves to significantly influence the content of the Group's statements and provides opportunities for states with a more conservative orientation to civilian protection issues to take advantage of the format in which debates are conducted.

1. The Objectives of Open Debates on the Protection of Civilians are Relatively Modest

Foremost among these is that the Security Council open debates are fairly modest in their objectives. To take an example, here is the stated agenda for open debate which took place on the May 25th, 2021:

"The open debate is intended to deepen dialogue on the issue of the protection of civilians in armed conflict, to draw attention to the global state of the protection of civilians, with a focus on the protection of medical care, to urge compliance with international humanitarian law by all parties to conflicts and to mobilize greater efforts by the international community towards a global ceasefire, conflict prevention and conflict resolution, among other things."³³

Essentially, the agenda for the meeting highlights a couple of topics which were perhaps particularly pertinent at the time – such as the reference towards achieving a global ceasefire in response to the coronavirus pandemic – and otherwise sets out some fairly generic objectives such as 'deepening the dialogue' or 'drawing attention to the global state of the protection of civilians'.

33 UN, 2021. 'Protection of civilians in armed conflict - Security Council, VTC Open Debate' Online: <https://media.un.org/en/asset/k1d/k1d8jngy84>.

Whilst there is considerable room for participants to exceed the stated scope of the debates, there is equally little pressure for states to go beyond providing a summary of some of the present issues on the PoC agenda and encouraging states to comply with international law in all of the relevant areas. This is, unsurprisingly, the route that the Group of Friends embarks upon year after year.

2. The Range of Topics Covered Under the PoC agenda is Extremely Large

In fairness, this practice of listing the relevant issues is commonplace – and a tremendous range of issues presently falls under the ‘protection of civilians’ agenda. Given the limits on the maximum length of statements, coupled with the sheer volume of topics that contributors are required to cover, contributors can face practical difficulties in giving strong and clear positions on all the key issues. Inversely, this characteristic of the debates allows the GoF to make non-committal statements on a range of issues in a manner which may not appear to contest those of more progressive actors, despite their positions being significantly different.

3. Many of the Topics Covered Under the PoC Agenda are Static

Not only is the PoC agenda extremely large, the debates which surround many of these issues are often static and offer little opportunity for truly progressive engagement. For example, the overwhelming majority of states are in agreement that civilians should not be indiscriminately targeted during periods of armed conflict; that the avoidance of harm to medical personnel is an essential requirement; that humanitarian access must be protected wherever possible; and that starvation or sexual violence are illegitimate as methods of war. These are undoubtedly serious humanitarian issues, but they are also straightforward violations of the laws of war and as such there is extremely limited scope for debate on these subjects. In fact, it is almost unimaginable that a participant to debates surrounding the protection of civilians would express any alternate position on these matters.

As noted above it should be recognised that repetition is an important part of reinforcing existing norms, but the point here does not relate to the continued prevalence of IHL violations, nor to the cynicism with which certain actors might make reference to them. Instead, it once again provides a reminder that many of the ‘debates’ which fall under the protection of civilians agenda overwhelmingly consist of the repetition of a single position: parties to conflict must comply with the law.

Moving forward, it will be important to interrogate the adequacy of this status quo, and to build acknowledgement that IHL compliance cannot be unproblematically conflated with the protection of civilians. Real progress on policy initiatives to protect civilians will, rather, emerge from a shared understanding that IHL compliance is the *baseline* for the protection of civilians, not the ceiling.

Conclusions

This report has sought to demonstrate the moderacy of the Group of Friends of the Protection of Civilians by reference to Group's stance on the use of EWIPA and scrutiny surrounding arms transfers. For each case study, it has been shown that the Group not only failed to be a progressive voice for humanitarian policymaking, but ultimately makes interventions that could contribute to the aim of eliding them from the Security Council's PoC agenda.

In concluding, it is worth elaborating further why the contributions of this self-appointed group of states are consequential, and why its distinctive shortcomings reflect upon a broader set of challenges in the PoC space:

1. If the title 'Group of Friends' is to have any meaning within the UN Security Council, then some level of scrutiny is required regarding the stances that such a group maintains on PoC issues. Though the GoF's role within Security Council PoC debates remains largely unclear, it can, at the very least, be said to involve taking seriously the issues which are raised by the UN Secretary-General's reports on the protection of civilians, and contributing to issue framing within the Security Council PoC debates. In adopting the title 'Group of Friends', we would argue that these functions should be the Group's *responsibilities*. In failing to meaningfully address – or even *acknowledge* – core issues in the contemporary PoC landscape, the GoF has fallen far short of what are ultimately a relatively modest set of standards.
2. The title 'Group of Friends' might be taken to imply that the Group's contributions to Security Council PoC debates reflect a *progressive consensus*. In light of the analysis presented above, it is clear that the disproportionate influence of a distinctively conservative group of states has seen the Group's contributions run counter to progressive positions regarding both EWIPA and arms transfers. In stark contrast to representing progressive consensus, therefore, the Group appears to provide a means by which certain militarised states can promote a moderate political agenda via an apparently neutral coalition.
3. Within that context, it is important to recognise that the strategies which militarised states have deployed in order to legitimise their own conduct are reflected in the work of the GoF. Most notably, the GoF's contributions to Security Council PoC debates reinforce the harmful conflation of IHL compliance with the protection of civilians. As this report has shown, the GoF's overwhelming preoccupation with straightforward violations of IHL ultimately works to the detriment of PoC issues which are characterised by longer term harms, more complex chains of causality, and less straightforward adjudications of legality. Though the use of EWIPA and scrutiny surrounding arms transfers occupy very different positions within the PoC landscape, they each powerfully reflect these characteristics. As the GoF has either been slow to accept that these issues are relevant to the protection of civilians, or has failed to do so entirely, it can be said that the Group's engagement with these matters has entirely failed to facilitate progress.

4. As a final word, it should be stressed that these omissions are not merely incidental. Rather, they are the product of a sustained project by which militarised states have sought to establish that, provided their conduct cannot be characterised as being *unlawful*, then their conduct is legitimate.³⁴ In treating the law as a wholly sufficient mechanism for ensuring the protection of civilians, such efforts reduce complex humanitarian issues into narrowly conceived legal categories, which do not provide clear pathways towards mitigating against civilian harm. Crucially, this is not a criticism of IHL: instead, it is a rejection of a mode of discourse which seeks to propose that IHL can do more than it was ever designed to do, whilst also absolving its proponents of any meaningful responsibility for civilian harm. Though it is often discreet in its expression, the inappropriate characterisation of IHL compliance as the sole means by which civilians can be protected from harm is inherently harmful to humanitarian progress, and should be challenged at every turn.

34 Article 36 have written about this matter elsewhere, see Moyes, 2021. 'A Perspective on Protecting Civilians'. Online: <https://article36.org/wp-content/uploads/2021/08/A-perspective-on-protecting-civilians-Richard-Moyes.pdf>; See Holder, 2021. 'The Compliance Trap and the Protection of Civilians'. Online: <https://article36.org/wp-content/uploads/2022/01/compliance-trap-alexander-holder-singlepage.pdf>.