



INEW comments to Germany on “A Food for Thought Paper: Possible approach to support national implementation of the Political Declaration dedicated to protecting civilians from humanitarian harm that can arise from the use of explosive weapons in populated areas”

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These are INEW’s comments on Germany’s Food for Thought Paper on national implementation of the future political declaration on ‘*Strengthening the protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas*’.

Whilst it is important to think ahead and consider how to best support national implementation of a political declaration, the key priority first is for the text of the political declaration to be negotiated and agreed. The political declaration should set a strong humanitarian standard and presumption against use of explosive weapons with wide area effects in populated areas, and the declaration’s commitments should guide national actions towards this, which will provide the basis for implementation work.

The key focus of national implementation work must be in relation to the text of the *political declaration* and aimed at addressing use of *explosive weapons in populated areas*.

Focus on explosive weapons in populated areas. The scope of the Food for Thought paper differs from the scope of the draft political declaration. The Food for Thought paper focuses broadly on the protection of civilians and urban warfare instead of focusing on the use of explosive weapons in populated areas (EWIPA), which is the subject of the draft political declaration.

Remove narrow focus on indiscriminate use. The paper also references national implementation to address *indiscriminate* use of EWIPA, which is not the focus of the draft declaration, and which would limit the declaration to simply being a political reaffirmation of states’ obligation to follow international humanitarian law and serve to undermine the humanitarian value of a future declaration.

A focus on policy and operational change, instead of the law. The paper suggests that the declaration should seek to strengthen implementation of international humanitarian law, but the draft declaration contains operational commitments requiring states to make changes at the policy and operational level aimed at *strengthening the protection of civilians from humanitarian harm arising from the use of explosive weapons in populated areas*. This should be the reference point in guiding implementation, rather than a focus on the law.

A clear focus on implementation of commitments in the declaration. National implementation should be focused on implementation of the operational commitments in the political declaration, especially on addressing civilian harm from the use of explosive weapons with wide area effects in populated areas, and developing new national policies and procedures that drive action to this end. Without having this as a central focus of national implementation, an implementation framework is unlikely to have a meaningful impact in fulfilling the humanitarian potential of the political declaration, nor in reducing civilian harm from EWIPA.

Remove repeated emphasis on measures being voluntary. The strong emphasis on the voluntary nature of the commitments, whilst technically correct, is not needed and risks further detaching the proposed implementation framework from the commitments contained in the political declaration and discouraging implementation work.

The Food for Thought paper focuses on exclusive efforts, and military-to-military dialogue.

Promote an inclusive approach with humanitarian actors. The approach in the Food for Thought paper suggests setting up an informal technical working group that focuses on working with military actors to compile voluntary contributions of military policy. It suggests a limited engagement of humanitarian actors including civil society organisations which would be by invitation only, and as defined by the working group. However, the implementation process would clearly benefit from continuing to engage a broad range of actors including organisations working directly on understanding and documenting the humanitarian impacts of EWIPA. Whilst military engagement is one area where sharing of policies and good practice can be useful, it is not the primary or only area of engagement. The declaration process so far has benefitted from an open and inclusive approach, and the implementation work under the future declaration would benefit from continuing from this same open and inclusive approach, rather than setting up parallel groups, especially at this point in time.

Meetings of the political declaration as the key forum for implementation discussions. Whilst there is scope for a broad range of activities to support implementation work, future meetings of a declaration should provide the primary framework for reviewing implementation and agreeing a programme of work to support states' implementation and universalization. Plans for working groups and activities at this level do not fit in the text of the declaration but should be discussed at subsequent meetings of the declaration by endorsing states. The first meeting of endorsing states would be the best place for an initial discussion on implementation of the political declaration, to set an expectation for implementation and to start to plan work towards this.

Focus on driving national actions. The paper focuses on compiling national policies, making assessments and exchanging information. Whilst this is important, a focus initially should be on getting states to endorse the declaration at the first opportunity, and then driving implementation actions at the national level including reviewing and developing national policies. A technical focus in the first instance should be towards encouraging states to understand technical characteristics of explosive weapons, such as the area effects of explosive weapons in their possession.

Draw on a broad range of relevant literature. Further, implementation work should draw on the broad range of literature available concerning relevant aspects of implementation and addressing civilian harm from EWIPA, including OCHA's *Compilation of Military Policy and Practice: Reducing the Humanitarian Impact of the Use of Explosive Weapons in Populated Areas*, Article 36 and PAX's report *Areas of Harm: Understanding Explosive Weapons with Wide Area Effects*, the ICRC's Expert Meeting report on *Explosive Weapons in Populated Areas: Humanitarian, Legal, Technical and Military Aspects*, to name a couple of examples.
