



## **INEW key advocacy points on the *Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas***

**April 2020**

This paper contains INEW's key comments on the draft political declaration text (dated 17 March 2020). These comments highlight the most significant changes that INEW would like to see in the next version in order to provide stronger humanitarian protections.

Based on the input received, the text has been positively improved since the elements paper. The most important changes required to develop this draft political declaration into a valuable tool for civilian protection, are:

**A commitment to avoid the use of explosive weapons with wide area effects in populated areas** (3.3), and a corresponding preamble section which describes how 'wide area effects' are created - and emphasises the **direct relationship between wide area effects and the risk of harm to civilians**.

**Clearer descriptions of the human suffering and humanitarian impacts** from the use of explosive weapons in populated areas (preamble), and stronger humanitarian provisions to address these through **collecting and sharing data** on the impact and weapon use (4.2) and providing **victim assistance** (4.4).

The text would benefit from more '**human**' **language and lay terms** to describe the civilian harm and enable a broad audience to understand the problem, and a **shorter text** with less duplication in its commitments which would help to promote the key operative actions to address this problem.

### **A clearer description of the specific impact on people and the environment, from the use of explosive weapons in populated areas.**

- Overall, the text would benefit from more descriptive language around the human impact and civilian suffering that result from the use of explosive weapons in populated areas, and which provides the rationale for this initiative. Use of language in lay terms – notably in the preamble – would help a broader range of actors to understand and relate to the declaration. Some more 'human' language would be preferable to legalistic or resolution-style language in the preamble. The Safe Schools Declaration, for example, uses the terms "bombing" and "shelling", which could be used in this declaration and provide more appropriate terms than "urban warfare".
- The title should remove the reference to "humanitarian harm", and simply refer to "harm" arising from the use of explosive weapons in populated areas.
- The description of civilian harm resulting from the use of explosive weapons in populated areas is consistently caveated with references to where it "can cause harm"<sup>1</sup>, but the impact

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<sup>1</sup> 1.2: "explosive weapons with wide area effects can have a devastating on civilians and civilian objects", "civilian populations can be exposed to severe and long-lasting reverberating effects", "Urban warfare can also result in psychological and psychosocial harm". 1.3:

on civilians from the use of EWIPA has been widely documented, and in a document designed to respond to this harm this concern should be assertively referenced - especially where it is referring to explosive weapons with wide area effects.

- Descriptions of the civilian harms have been widely documented and should be elaborated in the preamble, to include:
  - death, and physical, life-changing injuries such as collapse of vital organs, amputation, blindness, and other impairments from blast and shrapnel, as well as the specific impacts on children.
  - the psychological and social impacts as a consequence of living in a place that is being bombed and shelled directly resulting in the death and injury of loved ones, the particular experiences of children, including emotional and behavioural changes, and continued significant insecurity about the future.
  - threats to basic needs including safety, given the risk of death and injury from explosive weapons use, the destruction of education facilities, as well as housing and lack of basic shelter, risk of homelessness and the particular threats this presents to vulnerable people, and presence of unexploded ordnance.
  - the threat to healthcare provision from the destruction and damage to hospitals and healthcare facilities, combined with a rising number of patients, hindering the provision of lifesaving emergency medical care, provision of treatment and quality of care, making it difficult to manage treatable injuries and diseases.
  - the destruction and damage to sanitation systems, which creates problems maintaining basic levels of hygiene, and significantly increases risk of further onset of illness and disease.
  - the destruction and damage to electricity, energy, power, commercial buildings, and transport systems which can further compound adverse impacts, prevent people from accessing vital provisions such as food, and in some instances the civilian population from fleeing the area.
  - the gendered impacts, to include the differential experiences of men, women, boys and girls.
  - the longer-term impacts of the above, as well as socio-economic inclusion, and access to decent employment.
- In 1.2. in describing civilian deaths and injuries for the first time, it says “beyond deaths and injuries” whereas this should be noted in itself as a direct impact. Further, the destruction of housing and schools are causes of civilian suffering and should be stated as such (rather than *aggravating* civilian suffering, as described above).
- The **terrifying experience** of living in a town where explosive weapons are being used should be referenced, as above, and instead of a broad reference to “urban warfare” as a catch-all category (1.2).
- The preamble describes some of the indirect impacts (1.2) but should also describe the **interconnectivity of critical infrastructure and essential services, and the dependency of civilians on these services** (also known as “reverberating effects”, but descriptive, lay terms would be preferred). It should state that damage or destruction to one component or service can impact a larger section of the population than those located in the area of the initial attack.

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“These effects can have a negative impact on progress towards the Sustainable Development Goals and can result in displacement”, “explosive remnants of war can impede the return of displaced persons”, 1.5: “... can increase the likelihood of civilian harm”. 1.6 “collection of data can inform policies designed to mitigate civilian harm”. 1.7: “...long-term humanitarian consequences that can arise from the use”, “long-term humanitarian consequences that can result from the conduct of hostilities in urban areas”.

- The bombing and shelling of towns and cities is a trigger and a cause of forced **displacement**, and should be described as such, in addition to the presence of unexploded ordnance further impeding the return of displaced persons (1.3).
- The importance of **civilian casualty tracking and casualty recording should be stated as a key function towards preventing, mitigating, responding to and understanding civilian harm incidents** (1.6). A commitment to better practice should be based on an **evidence-based** approach as a result of assessment, tracking and reporting of civilian harm. This would serve to inform future operations and ensure better protection outcomes for civilians.
- **Further, data should be disaggregated on** civilian casualties by sex, age and disability, and on explosive weapons use including types, locations and effects, and **sharing of data** as well as transparency in reporting, which can inform understanding of the impacts and responses (not just mitigation strategies). “Efforts to” record civilian casualties, and a call to share data “where possible” should be deleted, especially in the preamble section.
- The declaration should reference consequences for the **environment**, and by extension for the health of civilians. Environmental risks include: acute exposure risks from toxic industrial chemicals from facilities located within urban areas, inhalational exposure from toxic energetic materials and pulverised building materials such as asbestos, and the contamination of soils and groundwater with munitions constituents and pollutants from damaged water and energy infrastructure. The environmental consequences of the use of explosive weapons extends well beyond the conflict in situations where national authorities are required to dispose of vast quantities of debris.
- The use of the term “civilian objects” throughout the document is generally not needed, it also dehumanises the text and is unnecessarily legalistic.

### **Enforcing stricter provisions against use of explosive weapons with wide area effects**

- Expressing concern over the “inherent difficulty in directing and limiting the effects of **explosive weapons with wide area effects** to specific military objectives located in populated areas can increase the likelihood of civilian harm” (1.5), is too permissive of continued use of explosive weapons with wide area effects in populated areas.
- Further, 1.5. is too technical, especially for a preamble which should focus on describing the particular problems that are to be addressed. Therefore, it should **describe the specific problems that explosive weapons with wide area effects present to civilians when used in towns, cities and other populated areas** and the correlation with civilian harm, which is central to this declaration. For example, it could describe concerns around the scale of blast and fragmentation, and inaccuracy of delivery, and the likelihood of effects extending beyond or occurring outside the area of a specific military objective exposing civilians to a significant risk of harm.
- In the operative section, there must be a **stricter commitment to avoid the use** in populated areas of explosive weapons with wide area effects (3.3). This change would provide a simpler formulation that does not give the user discretion that certain explosive weapons with wide area effects do not have effects that may extend beyond or occur outside of the target (cut the final clause of 3.3). This commitment should also be the first commitment in this operative section, given its centrality to the declaration.

- Commitments on training (3.2), and dissemination of materials (3.7) should not be only or primarily relevant to IHL, but of more central significance to this declaration and issue, aimed at understanding and assessing the area effects of weapons, the context of use, and measures to protect civilians.

### Strengthening provisions for victim assistance

- The commitment to assist victims (4.4) should be strengthened from “Make every effort”, to “**Provide, facilitate and support assistance to victims**”. It should also be clear that victims, are understood to include those injured, survivors, family members of people killed and/or injured and affected communities.
- The type and breadth of assistance required, including through humanitarian programming, should be listed to include ensuring that **basic needs are met** (safety, shelter, food, water, medical care, hygiene, sanitation), as well as **longer-term medical care, rehabilitation, psychosocial and psychosocial support, socio-economic inclusion, education and data collection, and risk education** aimed at preventing injury to people, and capacity development to respond to blast incidents with life-saving first aid, triaging, evacuating casualties, first responder capacities and searching for casualties etc.
- This provision should also be split from the reference to post conflict stabilisation.
- The provision on supporting humanitarian relief efforts (4.5) should be strengthened to urge all parties to armed conflict to provide and facilitate rapid and unimpeded access for principled humanitarian relief in line with international norms and standards for providing principled and inclusive humanitarian assistance.

### Strengthening data collection and sharing to understand and respond to the issue

- As referenced above, data collection is crucial for understanding and responding to civilian harm from explosive weapons, as such states should be committed to **collecting data and establishing parameters for publicly sharing information about incidents, assessments and investigation processes** without the caveat of “where appropriate” with regards to sharing.
- Data collection (4.2) should include mention of casualty recording, and civilian tracking **mechanisms** and reference to “our military operations” should be removed. Data collection should also be gathered on civilian harm in “populated areas”, not “urban areas”. Further, the commitment should be expanded to include **data gathering on the use of explosive weapons**, including types, locations and quantities used. There is a precedent set by the UN Convention on Certain Conventional Weapons (CCW) Protocol V for gathering this set of information in order to alleviate civilian risk, which would ensure consistency with existing standards in a political declaration.
- **Civil society** should be listed in 4.3 given its foundational role in gathering data on civilian harm from the use of explosive weapons in populated areas, which is aimed at understanding the humanitarian impacts, and not merely aimed at supporting states (4.3) in their duties in understanding civilian harm.

### Building a community of practice

- The commitments should be structured to be binding upon endorsing states, and without singling out particular commitments as binding only upon “armed forces”. Overall, the

declaration should be careful to avoid inadvertently suggesting implementation is undertaken exclusively or primarily by military actors and risking excluding humanitarian and civil actors in this function concerned with humanitarian protection.

- States should be required to “**meet annually**” or “**meet biannually**” (4.8) setting an expectation for a regular programme of meetings to review universalisation and implementation of the political declaration, rather than meeting “periodically”.
- Meetings of the declaration should provide the agenda for work and broader framework of activities to be carried out under this declaration rather than a suggestion in 4.1 of some types of activities which could be undertaken by some actors. The sentence which begins “As a starting point” in 4.1 should be cut.
- The universalisation commitment can be broadened to **promote both the political declaration itself, and the commitments it entails** to emphasise specific policy recommendations, in particular with regards towards ending use of explosive weapons with wide area effects in populated areas.