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QUESTIONS AND ANSWERS ON EXPLOSIVE WEAPONS IN POPULATED AREAS AND THE POLITICAL DECLARATION

ABOUT THE POLITICAL DECLARATION

WHAT IS THE POLITICAL DECLARATION ON THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS (EWIPA)?

The “*Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas*”¹ is an international political commitment that aims to address the devastating immediate and long-lasting humanitarian impacts resulting from the use of explosive weapons in populated areas and to strengthen the protection of civilians in conflict.

The text of the political declaration comprises a preamble section which describes the increased risk to civilians as armed conflicts have become more urbanised, and the humanitarian consequences resulting from the use of explosive weapons in populated areas, including direct and indirect, often referred to as ‘reverberating’ effects.

The declaration has two operative sections that contain a series of commitments in each, stipulating actions states must undertake, primarily through changes to national-level policies and practice. Central in this area, is a commitment requiring states to impose limits on the use of explosive weapons in towns, cities and other populated areas in order to avoid civilian harm.

The text of the declaration was finalised by states at a consultation on 17 June 2022. It is the culmination of almost three years of consultations led by Ireland involving States, the United Nations, the International Committee of the Red Cross (ICRC) and civil-society organisations, including the International Network on Explosive Weapons (INEW).

The declaration will be open for signature by States at a Signing Conference in Dublin, Ireland, which will take place at the famous Dublin Castle on Friday 18 November 2022.

WHAT DIFFERENCE WILL THE POLITICAL DECLARATION MAKE?

The political declaration is the first formal international recognition that the use of explosive weapons in populated areas has severe humanitarian consequences that must be addressed urgently. This recognition of the problem is key, as identifying and recognising a problem is the first step towards tackling it.

The declaration also recognises that the use of explosive weapons in populated areas poses unacceptable risks to civilians, particularly when the weapons have wide area effects. It promotes stronger standards for the protection of civilians and commits states which sign the declaration to implement these standards changes to their national policy and practice. The declaration can also provide a basis for stigmatising harmful actions, such as use of explosive weapons with wide area effects in populated areas.

The declaration should be seen as a starting point—not an end point. A key area will be changing military practice away from the use of explosive weapons in populated areas. There is much more that needs to be done to strengthen the protection of civilians and building stronger standards and driving forward significant changes takes time.

WHY IS IT NECESSARY TO STRENGTHEN THE PROTECTION OF CIVILIANS FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS?

The use of explosive weapons in populated areas is the leading cause of harm to civilians in armed conflict. For over a hundred years, explosive weapons have been the weapon of choice in armed conflict.

Each year, tens of thousands of civilians are killed and injured from explosive weapons. Data shows that when explosive weapons are used in populated areas, 90 per cent of the victims are civilians.² They suffer complex and life changing injuries and experience long-term psychological distress from the traumatic experience of living under bombing.

Beyond the risk of death and injury for civilians, the use of explosive weapons systems in populated areas destroys critical civilian infrastructure such as housing, hospitals and schools, as well as power, water and sanitation systems which impacts the provision of essential services to the civilian population. Attacks and the loss of housing and access to essential services, and leftover contamination from unexploded ordnance prompts many civilians to flee or leave their homes.

The use of explosive weapons in populated areas is a persistent pattern of harm that has been documented across different contexts including in Gaza, Ethiopia, Iraq, Libya, Syria, Ukraine, Yemen – to name a few recent examples.

WHY SHOULD STATES SIGN THE POLITICAL DECLARATION?

By signing the political declaration, States will formally acknowledge and recognise that the use of explosive weapons in populated areas has severe humanitarian consequences for civilians which must be addressed. They will, moreover, commit to take action to avoid or reduce harm to civilians in the years ahead, and to provide necessary and lifesaving assistance to victims of armed conflicts.

Moreover, the declaration provides an important framework for future collaboration in addressing this issue, both between states, as well as with the UN, ICRC and civil society, building on the shared goal of reducing harm to civilians and ensure better protection to civilians from explosive weapons.

WHEN A STATE SIGNS THE POLITICAL DECLARATION, WHAT ARE THEY AGREEING TO DO?

States that sign the political declaration are committing to work together, along with the UN, ICRC and civil society to strengthen the protection of civilians from explosive weapons.

Implementing the declaration will require action in a number of key areas, including:

- ✗ Developing national policies to restrict or refrain from the use of certain explosive weapons in populated areas. Ending the use of explosive weapons with wide area effects in populated areas will be central to this work because such effects cannot be limited to a specific military objective (due to the size of the blast and fragmentation radius, inaccuracy of delivery and/or use of multiple munitions across an area) and therefore expose civilians and civilian objects to unacceptable risks.
- ✗ Improved understanding of, and taking steps to limit, the impact of military operations on critical infrastructure which disrupts the provision of vital services to the civilian population giving rise to severe and long-lasting humanitarian impacts, also known as ‘reverberating’ effects.
- ✗ Gathering and sharing data to better understand humanitarian impacts, including data on civilian casualties and damage to civilian infrastructure, and on the use of explosive weapons.

- ✗ Providing assistance to victims, their families, and affected communities, and facilitating humanitarian access to civilian populations in need. This includes enhancing understanding of the multiple challenges of accessing and providing assistance in urban contexts when explosive weapons are being used.

The declaration is a practical tool that sets an agenda for changes to military policy and practice including, critically, changes in the planning and conduct of military operations, as well as humanitarian measures to assist survivors, family members of those injured and killed and affected communities; and commitments to work to address the long-term impacts resulting from the destruction of infrastructure.

States joining the declaration, and other stakeholders, will continue to meet in the future to examine the causes of civilian harm and strengthen policies and practices to prevent that harm. Unlike international treaties and conventions, there are no formal financial requirements associated with joining the political declaration (such as assessed contributions towards the cost of meetings and other institutional costs) - although ongoing funding from states that can contribute will be necessary to support the convening of conferences and other activities under the declaration.

HOW DOES A COUNTRY SIGN?

The “Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas” will open for signature at the Signing Conference in Dublin, Ireland on 18 November 2022.

States wishing to sign the Declaration should communicate this at the earliest possible date by Note Verbale to the Permanent Mission of Ireland in Geneva or the Permanent Mission of Ireland in New York. After the Dublin Signing Conference and on an ongoing basis, States can write to the government of Ireland as the depository of signatures to the political declaration to indicate their intention to sign it. Ireland will maintain a list of signatory states.

Any State can sign the political declaration regardless of whether they have been part of the consultation process to develop and finalise the text, and regardless of whether they possess or use explosive weapons. All States that are committed to strengthen the protection of civilians in conflict and reducing harm should sign the political declaration.

WHAT'S NEXT?

SIGNING THE DECLARATION

The next practical step will be the Signing Conference of the political declaration at the Signing Conference in Dublin, Ireland on 18 November 2022, which will be the first opportunity for states to sign the declaration. INEW encourages all steps to begin the domestic decision-making process in order to be able to sign the declaration.

However, States that are unable to complete internal processes to sign at the signing conference will be able to subsequently sign on to the declaration by writing to the government of Ireland and indicating that they wish to be a signatory.

Continued universalisation to increase the group of States that are signatories to the declaration will be an important focus of work to promote broad adoption and implementation of its standards, and will require dedicated outreach by a range of states and organisations over the years ahead.

INTERPRETATION AND IMPLEMENTATION OF THE DECLARATION

Signatory states will need to begin work to implement the political declaration without delay. A key area of work will be developing policies to operationalise the declaration at the national level which bring about changes in practice in line with its aim and commitments. This will be particularly important when it comes to changing military policy and practice, and more broadly to implement it effectively and in ways that will prevent harm to civilians and make a difference on the ground.

In addition to military policies and practices, a significant effort will need to be invested in establishing mechanisms to gather disaggregated data on the direct and indirect impact of explosive weapon use on civilians and civilian infrastructure and other civilian objects, as well as on explosive weapon use as well as sharing such data to enhance understandings and to direct responses.

Humanitarian commitments, such as assistance to victims and humanitarian access are equally important and will demand significant responsibility from states to work with other actors, such as UN agencies, humanitarian operators, international and civil society organisations, to ensure there is a good understanding of the needs of the civilian populations and how to address them in the context of explosive weapons use.

Interpretation of some commitments in the declaration will require detailed discussion among states, the UN, ICRC and civil society. INEW will continue to work with states to interpret and implement the declaration in ways that produce the strongest protection for civilians.

FOLLOW ON PROCESS

The political declaration was established on the basis that there is an urgent need to protect civilians, and the finalised declaration now provides a framework and platform for this ongoing work. The declaration recognises the importance of building an inclusive community of practice, which brings together representatives of

militaries, humanitarian organisations, governments and others to work together towards the shared goal of reducing civilian harm and establishing stronger standards to protect civilians from explosive weapons. It commits states to hold regular meetings to review implementation of the declaration and to share examples of good policies and practice, and further intergovernmental work including military-to-military exchanges, and to promote the declaration to pursue its adoption and effective implementation by the greatest number of States possible.

WHY A POLITICAL DECLARATION? WHAT DOES INTERNATIONAL HUMANITARIAN LAW (IHL) SAY ABOUT THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS? IS THE LAW NOT SUFFICIENT?

IHL prohibits direct attacks on civilians and civilian objects, and prohibits indiscriminate and disproportionate attacks, and it requires parties to conflict to take all feasible precautions in attack. But IHL does not expressly regulate the use of explosive weapons in populated areas, nor is such use illegal per se.

The primary concern is that use of explosive weapons in populated areas, and particularly those with wide area effects, gives rise to a predictable and significant pattern of civilian harm in both the short and long-term. This includes situations in which parties to conflict assert that their use of explosive weapons complies with IHL.

Furthermore, the rules of IHL represent the minimum standards of behaviour even in the most desperate circumstances of armed conflict. Data and evidence shows that more needs to be done to address the specific problem of explosive weapons in populated areas and that there have been situations where militaries have limited the use of certain explosive weapons in certain situations in order to better protect civilians.

The political declaration builds on states' existing obligations under IHL. It recognises that national policies and practices can go beyond these minimum standards and commits states to develop operational policies and practices that impose limitations and restrictions on the use of explosive weapons in populated areas.

WHY NOT JUST BAN THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS?

Explosive weapons include a broad range of weapons used by military forces in many countries. At the moment there is insufficient political will for an outright ban on the use of explosive weapons in populated areas. Most governments would see an absolute prohibition of their use in towns and cities as too great a limitation on military capacity.

However, imposing certain limits on the use of explosive weapons through changes in policy and practice will have a major humanitarian impact, in particular policies that require militaries to refrain from using explosive weapons with wide area effects in populated areas.

IF WE ARE LIMITING THE USE OF CERTAIN EXPLOSIVE WEAPONS IN POPULATED AREAS, ARE WE ENCOURAGING THE USE OF OTHER, MORE TARGETED WEAPONS?

Stopping the use of explosive weapons with wide area effects in populated areas would protect civilians from one of the most harmful forms of violence, but it will not solve all of the problems that violence produces. While some technical features can improve the accuracy and precision of explosive weapons, they are not on their own sufficient to ensure the effective protection of civilians. Such technical improvements do not prevent harm to civilians from very powerful explosive weapons (even if accurately delivered, such as precision guided munitions), nor from the cumulative impact resulting from the use of multiple explosive weapons in populated areas.

This initiative is an effort to progressively reduce the level of explosive force considered acceptable in areas where civilians are concentrated. INEW does not advocate for the use of alternative weapons, but presents the general pattern of harm associated with explosive weapons and highlights the particularly high risk of harm to civilians that weapons covering a wide area with explosive blast and fragmentation present when used in populated areas.

TAKING ACTION

WHICH STATES SUPPORT THE POLITICAL DECLARATION?

Over 100 states have publicly spoken out to acknowledge the harm caused by the use of explosive weapons in populated areas.³

Around 60-70 states participated in the negotiating process to develop the political declaration – including some major users of explosive weapons and affected countries. INEW hopes a majority of the participating states will be among the first to join the declaration when it is open for signature. At the consultation to finalise the text of the political declaration in June 2022, around 25 states indicated that they would sign the declaration in Dublin later this year or hoped to be in a position to do so.⁴

INEW calls on all states to sign the political declaration at the earliest opportunity and, in doing so, demonstrate their commitment to strengthening the protection of civilians in conflict. A political declaration will benefit from a broad and diverse group of states joining it, including users of explosive weapons, countries that have been affected by conflict, and cross regional support.

Although some major users of explosive weapons are unlikely to join this political declaration (at least immediately), having a committed group of states is an important starting point that can be built on over time to bring about changes in policy and practice. This can also influence the behaviour of states that do not join the declaration as well as non-state armed actors.

WHERE CAN STATES TAKE ACTION ON THIS ISSUE?

In addition to signing the political declaration - which is the immediate next step and priority, States can take action on this issue at both national and international levels.

At a national level States should review their policies and practices regarding the use of explosive weapons in populated areas, in particular those with wide-area effects, and develop operating policies and practices that will reduce civilian harm. States can also review their national policy in other areas relating to the commitments in the political declaration, as well as establishing mechanisms to assist victims and facilitate humanitarian access, collect data and track civilian harm in military operations, among other things.

At the international level, states can continue to speak out on this issue, including the UN Security Council open debates on the protection of civilians in armed conflict, and the UN General Assembly's First Committee on international security and disarmament, and during debates on country situations where explosive weapons are a humanitarian concern.

Furthermore, the use of explosive weapons in populated areas has broad impacts, making it relevant to international policy discussions on a number of themes, including but not limited to: the protection of civilians in armed conflict, children and armed conflict, displacement, the impact of conflict on the environment, victim assistance and people with disabilities, humanitarian access, gendered impacts of armed conflict, unexploded ordnance and risk education.

Raising this issue at the regional-level and in regional and other intergovernmental forums is also important. In 2017 a group of 19 African states endorsed the Maputo Communiqué and in late 2018 a group of 23 states from Latin America and the Caribbean supported a Santiago Communiqué.⁵ Both of these regional instruments supported work towards an international political declaration.

The issue has also been a topic on the agenda of the African Union Peace and Security Council,⁶ raised at the 2016 World Humanitarian Summit,⁷ and been the focus of the Vienna Conference on Protecting Civilians in Urban Warfare in 2019⁸.

WHAT ABOUT THE INTERNATIONAL AND CIVIL SOCIETY ORGANISATIONS WORKING ON THIS ISSUE?

The United Nations Secretary-General and United Nations humanitarian agencies, the International Committee of the Red Cross (ICRC), and civil society organisations comprising the International Network on Explosive Weapons (INEW) have been calling for immediate action to address harm to civilians from bombing and shelling in towns and cities for more than a decade.

Successive UN Secretary-Generals have called on parties to armed conflicts to refrain from and avoid the use in populated areas of explosive weapons with wide area effects.

The ICRC has urged states and parties to armed conflicts to “avoid the use of explosive weapons that have wide area effects in densely

populated areas. This “avoidance principle” suggests a presumption of non-use of such weapons due to the high risk of indiscriminate effects and of consequent harm to civilians.⁹

At the end of 2015, in an unprecedented joint appeal on the impact of contemporary conflicts on civilians, the UN Secretary-General and the President of the ICRC called on parties to armed conflict to stop the use of heavy explosive weapons in populated areas¹⁰, a call they repeated in 2019 warning of civilian devastation and suffering.¹¹

WHAT ABOUT THE STATES THAT DO NOT SIGN THE POLITICAL DECLARATION?

Although some States may not sign the political declaration (at least not immediately), and some actors may ignore stronger standards at first, over time even a small group of states can help to change the behaviour of the majority. Some states show greater responsibility and accountability in their use of force than others, and the presence of the existing rules does not stop certain actors from committing war crimes and other violations. Embracing clearer, stronger standards for civilian protection provides an opportunity to strengthen the authority of those that are committed to act responsibly and to accountability.

WHAT ABOUT THE NON-STATE ARMED ACTORS?

INEW is concerned with the humanitarian effects of the use of explosive weapons by both state and non-state armed actors, and believes all actors should be working together to reduce harm to civilians from military operations.

As with many other international treaties and agreements, the political declaration is open for States to sign. However non-state armed actors are bound by the rules of IHL. They are also strongly encouraged to adopt policy commitments to avoid the use of explosive weapons with wide area effects in populated areas and to strengthen the protection of civilians.

THE ISSUE

WHAT IS THE PROBLEM?

Explosive weapons, particularly explosive weapons that affect a wide area through blast and fragmentation, kill and injure large numbers of civilians when used in populated areas. This pattern of harm that has been widely documented across a number of contexts including recently in Ukraine, as well as Afghanistan, Ethiopia, Gaza, Iraq, Libya, Syria, and Yemen. On average, civilians account for 90% of the victims of explosive weapons every year.

Not only do explosive weapons kill and injure. Their repeated or prolonged use in particular, also causes severe psychological distress including from experiences of living under bombing and from losing – and fear of losing – loved ones. Attacks involving the use of explosive

weapons frequently destroys infrastructure, which impacts the provision of services to the civilian population which is vital to their wellbeing and survival, including through damage and destruction of housing, schools and hospitals, as well as power networks, water and sanitation systems, resulting in displacement, disrupted education and the loss of health-care. Use of explosive weapons creates huge volumes of debris and waste, and release of hazardous materials, posing additional threats to the population years after the conflict has ended, among other severe reverberating effects. Furthermore clearance of unexploded ordnance in amongst rubble is a particularly challenging and resource-intensive undertaking.

WHAT ARE EXPLOSIVE WEAPONS?

Explosive weapons are conventional weapons that detonate explosives to affect an area with blast and fragmentation. They come in a wide range of types and sizes. There are many types of explosive weapons, including mortar bombs, artillery shells, rockets, and aircraft bombs. These weapons explode – killing and injuring people, or damaging vehicles and buildings, through the blast and fragmentation that an explosion creates around the point of detonation. Different types of explosive weapons may be delivered in different ways (some are fired from the ground, others are dropped from the air), and they may vary in the scale of effects that they create, but they share the tendency to affect an area with blast and fragmentation.

Many explosive weapon systems were designed for use in open battlefields and have devastating consequences when used in populated areas with concentrations of civilians and infrastructure essential to their survival.

ARE SOME EXPLOSIVE WEAPONS WORSE THAN OTHERS? WHAT ARE EXPLOSIVE WEAPONS WITH WIDE AREA EFFECTS?

Of particular concern are explosive weapon systems that have wide area effects. Such effects stem from: the accuracy of the weapon’s delivery, the size of the blast and fragmentation radius resulting from the explosive power of the weapon, and the use of multiple munitions across an area. These characteristics can work on their own or in combination to create wide area effects. Using these types of weapons in populated areas puts civilians at grave risk of harm. Even if the attack is aimed at a specific military target it is likely to affect people present in the surrounding area. Some explosive weapons are inherently inaccurate and the user cannot know with sufficient certainty where they will land. Wide area effect weapons include large aircraft bombs, multi barrel rocket launchers, heavy artillery, and mortars and missiles.

WHAT DO YOU MEAN BY ‘POPULATED AREAS’?

Populated areas include villages, towns, cities, and other places where civilians are concentrated or are likely to be present. ‘[D]ensely populated areas’ and ‘concentration of civilians’ are established legal terms in relation to the protection of civilians and the regulation of the conduct of hostilities. The term is also used in Human Rights jurisprudence on the use of force. In international humanitarian law (IHL), Additional Protocol I (1977) to the Geneva Conventions prohibits area

bombardment of targets in “any city, town, village or other area containing a similar concentration of civilians”, and Protocol III to the Convention on Certain Conventional Weapons defines “concentration of civilians” as “permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.”

IS THIS PROBLEM GETTING WORSE?

The use of explosive weapons is not a new phenomenon per se. For over a hundred years, explosive weapons have been the weapon of choice in conflict.

But as the world has urbanised, so too has conflict. As a result high numbers of civilians are confronted on a daily basis with bombing and shelling in the places where they live and work. The way in which wars are fought has also changed, where fighting is often taking place in population centres in amongst the civilian population, and with weapons that have been designed for use in open battlefields.

And although there has been movement away from the carpet-bombing of World War II, the continued use of explosive weapons in populated areas still presents an unacceptable pattern of civilian suffering.

WHAT COUNTRIES ARE MOST AFFECTED?

The use of explosive weapons in populated areas is a widespread problem and pattern of harm that has been experienced in a range of different contexts. Over the past decade, incidents involving civilian harm from the use of explosive weapons has been documented in 123 countries. Some of the most affected countries include Syria, Iraq, Afghanistan, Pakistan, Yemen, Nigeria, Somalia, Libya, Palestine (Gaza), Turkey, Ukraine, Lebanon, and the Philippines.¹²

FURTHER INFORMATION

The International Network on Explosive Weapons (INEW)
www.inew.org

The Explosive Weapons Monitor
www.explosiveweaponsmonitor.org

Ireland
www.dfa.ie/ewipa

ICRC
www.icrc.org/en/explosive-weapons-populated-areas

UN
www.unocha.org/themes/explosive-weapons-populated-areas

ENDNOTES

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