

PROTECTING CIVILIANS FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS: 10 ESSENTIAL ELEMENTS FOR A SUCCESSFUL POLITICAL DECLARATION



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Each year tens of thousands of civilians are killed and injured by bombing and shelling in towns and cities. Many more suffer from the damage and destruction of homes, hospitals and schools, as well as essential infrastructure, affecting the provision of vital services such as water and electricity. States, international and civil society organisations are currently engaged in negotiations, expected to conclude later in 2021, on an international Political Declaration that can set stronger standards to protect civilians from use of explosive weapons in towns, cities and other populated areas.

This political declaration offers the chance to increase the protection of civilians living through conflict, but only if it contains commitments that drive genuine change. To do so, the political declaration must:

1 ACCURATELY AND HONESTLY DESCRIBE AND ACKNOWLEDGE CIVILIAN HARM AND SUFFERING, AS WELL AS THE IMPACT ON THE ENVIRONMENT

Current text: The title is far too permissive of continued use of explosive weapons with wide area effects in populated areas. Moreover, descriptions throughout the text that explosive weapons “can cause” harm are dismissive of the extensive and widely documented civilian harm experienced in conflicts throughout the world. The description of harm also fails to include harmful impacts on the environment.

What’s needed: The title needs to be reformulated to reflect the humanitarian aims and signpost the purpose of this initiative. There also needs to be a more honest and accurate description and acknowledgement in the preamble of the civilian and environmental harm that has resulted and continues to result from the use of explosive weapons in populated areas, which has been well-documented.

2 DO MORE THAN SIMPLY REAFFIRM THE IMPORTANCE OF INTERNATIONAL HUMANITARIAN LAW

Current text: Section two of the text reaffirms key obligations of international humanitarian law (IHL), while operative sections three and four rightly focus on laying out new commitments under this political declaration. Some states, however, are proposing that this political declaration merely restate existing legal obligations and focus only on the unlawful use of explosive weapons. However, the continuing and well-documented pattern of civilian harm from the use of explosive weapons in populated areas raises serious concerns over how key rules of IHL are being interpreted, applied and complied with. A political declaration that merely restates the law would be insufficient in addressing the continuing and well-documented pattern of civilian harm.

What’s needed: The political declaration should go beyond merely restating existing law and should call for the revision of existing, or the development of new, operational policies and practices that place clear restrictions on the use of explosive weapons in populated areas as the only genuine means of strengthening the protection of civilians and civilian objects from such use.

3 DESCRIBE THE FACTORS THAT PRODUCE ‘WIDE AREA EFFECTS’ TO PROMOTE UNDERSTANDING OF THE RISKS THIS PRESENTS TO CIVILIANS WHEN THIS OCCURS IN A POPULATED AREA

Current text: The concept of ‘wide area effects’ is not sufficiently described in the preamble, nor are the factors that produce wide area effects.

What’s needed: The text should promote a common understanding of ‘wide area effects’ based on blast and fragmentation effects, inaccuracy of delivery, and/or the use of multiple warheads or multiple firings across an area. Further, the preamble should stipulate that these factors result in the significant likelihood that the effects of the weapon will extend beyond, or occur outside of, the specific military objective, and that this presents a significant risk of harm to civilians and civilian objects when the weapon is used in populated areas.

4 INCLUDE A COMMITMENT BY STATES THAT ESTABLISHES A PRESUMPTION AGAINST THE USE EXPLOSIVE WEAPONS WITH WIDE AREA EFFECTS IN POPULATED AREAS

Current text: Paragraph 3.3 is the key operative commitment aimed at addressing civilian harm from explosive weapons with wide area effects. This could be strengthened and currently contains too many qualifiers.

What’s needed: This commitment should be strengthened to establish a presumption against use. States should commit to “avoid the use of explosive weapons with wide area effects in populated areas” which would provide the best practical mechanism for reducing civilian harm. This should be reinforced by commitments elsewhere in Section 3 that (a) promote prior assessment and understanding by militaries of the area effects of their weapons and the context in which those weapons are being used – such as the location of civilians and key infrastructure – and (b) establish capabilities to track civilian harm during military operations, and ensure the training of armed forces on these and other commitments in the declaration.

5 COMMIT STATES TO TRACKING CIVILIAN HARM IN MILITARY OPERATIONS

Current text: There is no explicit requirement for states to track civilian casualties and other harms in real-time during military operations

What's needed: Collection of data on civilian casualties as well as damage to civilian objects is crucial for understanding and responding to civilian harm from explosive weapons. The declaration should include a commitment to establish capabilities to track, analyse, respond to and learn from incidents of civilian harm, including damage to civilian objects.

6 STRENGTHEN THE COMMITMENT ON GATHERING AND SHARING DATA ON CIVILIAN HARM

Current text: The call to collect, share and make publicly available disaggregated data on civilian harm has the caveat of “where appropriate” and is focused on explosive weapons with wide area effects rather than all explosive weapons use.

What's needed: There is a moral imperative to gather data on civilian harm from all explosive weapons use in populated areas, not just those with wide area effects. States should be committed to establishing capacities for collecting and sharing information about incidents, assessments and investigation processes without the caveat of “where appropriate”. The text should also include a commitment to ensure all civilian casualties are promptly recorded, correctly identified, and publicly acknowledged irrespective of which party is presumed responsible.

7 INCLUDE A COMMITMENT TO GATHER AND SHARE DATA ON EXPLOSIVE WEAPON USE

Current text: There is currently no requirement for states to gather and share data on the use of explosive weapons in the draft text, including on types and locations.

What's needed: There should be an additional commitment on gathering and publicly sharing data on the types, quantities and locations of explosive weapons used, and the general location of known and probable unexploded ordnance. This should be on all use of explosive weapons in populated areas, not just those with wide area effects.

The International Network on Explosive Weapons (INEW) is an international network of NGOs that calls for immediate action to prevent human suffering from the use of explosive weapons in populated areas.

8 INCLUDE A ROBUST COMMITMENT TO ASSIST VICTIMS OF EXPLOSIVE WEAPONS

Current text: States are called on the “make every effort” to assist victims, their families and communities

What's needed: The commitment should be strengthened to “provide, facilitate and support assistance to victims”, and it should be made clear that victims are understood to include those injured, survivors, family members and affected communities. The type and breadth of assistance required should also be listed, including providing for basic needs, longer-term medical care, psychosocial support, socio-economic inclusion, education, medical capacity-building to respond effectively to blast incidents, and risk education aimed at preventing injury.

9 COMMIT STATES TO PROVIDE RAPID AND UNIMPEDED ACCESS FOR PRINCIPLED AND INCLUSIVE HUMANITARIAN ASSISTANCE

Current text: This commitment is notably missing from the current text, although it was in the previous draft text.

What's needed: The text should include a provision on supporting humanitarian relief efforts which urges all parties to armed conflict to provide and facilitate rapid and unimpeded access for principled and inclusive humanitarian assistance in line with international norms and standards.

10 FOLLOW-UP PROCESS: DRIVING IMPLEMENTATION AND HOLDING REGULAR, OPEN AND INCLUSIVE MEETINGS

Current text: Though there is a commitment to meet on a ‘regular’ basis, neither the frequency nor the focus of such meetings is specified. As drafted, the text also risks inadvertently suggesting that implementation is undertaken exclusively or primarily by military actors.

What's needed: A follow-up process should be initiated early and include the promotion and dissemination of the political declaration and its commitments as well as the inclusion of other actors such as the UN, International Committee of the Red Cross (ICRC), International Network on Explosive Weapons (INEW) and other civil society organisations. Meetings under the declaration should be aimed at reviewing the civilian harm of explosive weapons use in populated areas, implementation of the political declaration, and universalisation – not compliance with IHL.