

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 in mid-2022, 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 DESCRIBE AND ACKNOWLEDGE CIVILIAN HARM AND SUFFERING, AS WELL AS THE IMPACT ON THE ENVIRONMENT

Current text: The current text has been much improved by placing due emphasis on the harms resulting from the use of explosive weapons in populated areas. It now more accurately and honestly reflects the harm to civilians which has been widely documented.

What's needed: The text should retain the full and broad acknowledgement of the direct harm to civilians, the description of reverberating knock-on effects that often stem from damage and destruction to infrastructure, and the recognition that meeting people's basic needs (including safety, shelter, food, water, medical care, hygiene, sanitation) is a challenge in crisis situations where explosive weapons are used in populated areas.

2 DO MORE THAN SIMPLY REAFFIRM THE IMPORTANCE OF IHL AND ESTABLISH AN EXPECTATION OF CHANGE IN MILITARY POLICY AND PRACTICE

Current text: The text retains a clear focus on use of explosive weapons in populated areas, not just indiscriminate or illegal use which would severely limit the Political Declaration's purpose and effectiveness. It does, however, risk overstating the extent to which current military policy and practices can sufficiently address civilian harm from the use of explosive weapons in populated areas.

What's needed: The text should more accurately reflect current military policy and practice, including by recognising that there are limitations to the extent that existing military policies and practices - including tools such as battle damage assessments and collateral damage estimation methodologies - sufficiently address civilian harm from the use of explosive weapons in populated areas. The text should also recognise the importance of sharing policies and practices more broadly, and not be limited to only military examples.

3 HIGHLIGHT THAT WHEN EXPLOSIVE WEAPONS HAVE 'WIDE AREA EFFECTS' THIS INEVITABLY AND SIGNIFICANTLY INCREASES THE LIKELIHOOD OF HARM TO CIVILIANS

Current text: The updated text has improved with the removal of references to explosive weapons "with wide area effects" where it is more appropriate to refer to use of explosive weapons in populated areas more broadly. Now, however, it lacks reference to 'wide area effects' and so misses the opportunity to both clarify the concept and describe and demonstrate why wide area effects present a significant and heightened risk of harm to civilians.

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. It should also make clear that where explosive weapons have 'wide area effects' the likelihood of harm to civilians is significantly and inevitably increased. Where an explosive weapons has 'wide area effects', this marks a critical threshold at which additional caution must be applied, including a presumption against the use of the weapon in those circumstances.

4 INCLUDE A COMMITMENT BY STATES THAT ESTABLISHES A PRESUMPTION AGAINST THE USE EXPLOSIVE WEAPONS 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. Though it has been strengthened, there is still scope for further improvement to provide greater clarity as well as to promote clear understanding and implementation of this core commitment.

What's needed: A commitment to "avoid" use of explosive weapons when they have wide area effects in populated areas, would provide clarity and boldness to the core commitment in the declaration and in doing so, help to ensure the strongest protection to civilians. It would also reflect recommendations from the United Nations Secretary-General, the ICRC and other field-based humanitarian organisations, and states. A commitment to avoid use invokes a mindset of needing to undertake prior assessments, and changes to policies to establish a presumption against such use. 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 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 and their armed forces to track civilian casualties and other harms in real-time during military operations.

What's needed: The declaration should include a commitment to establish capabilities to track, analyse, respond to and learn from incidents of civilian harm in real-time, including damage to civilian objects. Tracking civilian casualties in 'real time' tracks the number and rate of civilian casualties to inform how many civilians are being killed and injured, and whether the situation is improving or getting worse from the perspective of harm to civilians. This is in addition to a commitment to collect data on civilian casualties, as well as damage to civilian objects, which can be done by a range of actors.

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 retains the caveat of "where appropriate".

What's needed: There is a moral imperative to gather data on civilian harm from all explosive weapons use in populated areas: 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.

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. Gathering this information is important for the protection of the civilian population, including from the risks and effects of explosive remnants of war, and for building understandings of impacts of explosive weapon use.

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 MAINTAIN A ROBUST COMMITMENT TO ASSIST VICTIMS OF EXPLOSIVE WEAPONS

Current text: The provision on victim assistance has been significantly improved, and could be further strengthened.

What's needed: States should continue to voice their support for this much-strengthened commitment to "provide, facilitate and support assistance to victims". The text could be further improved to describe what victim assistance includes: ensuring basic needs are met, the provision of medical care, physical rehabilitation, psychosocial support and socio-economic reintegration as well as support towards the full realisation of their rights and full participation in their societies."

9 COMMIT STATES TO ENSURING UNIMPEDED ACCESS TO PRINCIPLED HUMANITARIAN AID

Current text: The text has been improved with the inclusion of a reference to the legal obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. However, we are concerned that it only mentions "humanitarian passage" and not "humanitarian access".

What's needed: The text could be further strengthened with the addition of a reference to humanitarian passage for civilians seeking safety. A stronger reference to humanitarian access should also be added in the preamble (1.2 and 2.3), given the urgency of humanitarian needs of affected populations, and a stronger commitment should be added in operative section 4 emphasising the need for sustained humanitarian access and operations.

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

Current text: There is a commitment to meet on a regular basis and to include the United Nations, the ICRC and other international and civil society organisations. This is important for ensuring there is an effective follow-on process for the declaration, including to review implementation of the declaration.

What's needed: The declaration should not suggest a few types of select activities which could be undertaken by some actors, which is unnecessarily limiting. This sits awkwardly within the declaration text which should communicate actions at a higher level across all areas. Meetings of the declaration should provide the agenda for work and a broader framework of activities to be carried out under this declaration.