



**Consultations on the Elements of a Political Declaration on the
Use of Explosive Weapons in Populated Areas**

Geneva, February 10, 2020

Collected Statements from Human Rights Watch

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General Statement by Human Rights Watch

Geneva, February 10, 2020

Thank you, Chair.

The current draft text provides a good starting point for a strong political declaration to address the harms associated with the use of explosive weapons in populated areas. It includes all of the key elements common to political declarations on armed conflict-related issues that Human Rights Watch identified in a November publication.

Further changes to this draft text are needed, however, to achieve the declaration's goal of ensuring civilians are adequately protected from the effects of the use of explosive weapons in populated areas.

The declaration should clearly commit states to avoid the use of explosive weapons with wide area effects in populated areas. The current language in paragraph 3.4, which merely "restricts" use, falls far short of maximizing civilian protection. On a related note, the declaration should express a presumption against the use in populated areas of explosive weapons with wide area effects because the effects of such use are foreseeably indiscriminate.

The declaration's language on victim assistance also needs to be stronger and more detailed. It should commit states to do more than "make every effort" to assist victims, and it should specify types of assistance to be provided. Elsewhere, the text should call for the voices of victims to be not only "amplified" but also taken into account, in order to ensure affected individuals are actively involved in decision-making,

There remains some ambiguity in the draft text between the terms "explosive weapons in populated areas" and "explosive weapons with wide area effects in populated areas." The declaration should retain its references to wide area effects in certain places, such as paragraph 3.4, while recognizing that other paragraphs apply to the use of all explosive weapons in populated areas.

Section 1 of the draft clearly describes some of the immediate and long-term harms associated with the use of explosive weapons with wide area effects in populated areas. It should also highlight the reverberating effects of these weapons. For example, the destruction of a power

plant can shut down the provision of electricity and water, and thus interfere with health care services.

While the draft includes two paragraphs on data collection, it should emphasize the importance of sharing as well as gathering data.. Moreover, the current draft language focuses on civilian casualty data. To promote a better understanding of the problem and improved responses, data collection should also encompass information on the types of weapons used, the locations of attacks, and other effects.

Finally, the declaration should include a more specific commitment to hold follow-up meetings. It should call for an annual meeting at which to review the implementation of the declaration and share best practices.

We will expand on some of these points in our interventions today, and we have published a detailed analysis of the text, which will be available at the back of the room and online.

Thank you.



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**Statement by Human Rights Watch on Section 2: Legal Framework
Delivered by Bonnie Docherty**

Geneva, February 10, 2020

Thank you, Chairperson.

The current draft text reiterates key provisions of international humanitarian law in several places and outlines measures to improve implementation. It should do more, however, to clarify how international humanitarian law applies in the context of the use of explosive weapons in populated areas.

Paragraph 2.2 recognizes the importance of “fostering clarity” as well as “enhancing the implementation” of existing obligations under this body of law, and it should be retained. But the paragraph only welcomes the initiatives of others, and the declaration as a whole does little itself to promote clarity of the law.

We recommend states seize the opportunity presented by this declaration to clarify how international humanitarian law applies to the use of explosive weapons in populated areas. Clarification can come through additions to or amendments of the draft text.

Clarifying the law involves more than simply restating existing rules. It must also address how they should be understood in a specific context. At the same time, clarification does not involve creating new law, which a political declaration by nature cannot do.

The last sentence of paragraph 2.2 illustrates the potential for clarification. That sentence implies that the use of explosive weapons with wide area effects in populated areas is acceptable even if it presents difficulties in practice. Field research shows, however, the foreseeability of the immediate and reverberating effects of the use of such weapons in populated areas. Armed forces should take these foreseeably indiscriminate effects into account when assessing the proportionality of an attack, and given the likelihood an attack would be disproportionate, we agree with the International Committee of the Red Cross that there should be a presumption against using explosive weapons with wide area effects in populated areas.

Therefore, we recommend deleting the clause in paragraph 2.2 that reads, “We recognize the difficulty in directing explosive weapons with wide area effects against specific military

objectives within populated areas.” States could amend it to enhance legal clarity by stating, “We recognize the difficulty of using explosive weapons with wide area effects in populated areas in a way that is fully compliant with international humanitarian law.”

This kind of clarification would promote consistency in states’ interpretation and implementation of international humanitarian law. In so doing, it would also increase the protection of civilians from the harm this political declaration seeks to address.

We have provided comments on other paragraphs of Section 2 in our written submission.

Thank you.



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Statement by Human Rights Watch on Section 3: Operational Commitments Delivered by Steve Goose

Geneva, February 10, 2020

In order for the Political Declaration to have a meaningful humanitarian impact, it must include a clear commitment to avoid the use of explosive weapons with wide area effects in populated areas.

There are many commendable commitments in the draft elements document, but if the Political Declaration is to make a real difference in the protection of civilians, it must result in the curtailment of the use of explosive weapons with wide area effects in populated areas, with the aim of stopping such use.

The Political Declaration should also clearly state that there is a presumption against the use of explosive weapons with wide area effects in populated areas, as argued by the ICRC so convincingly. There should be a presumption that such use is unacceptable given the foreseeable indiscriminate harm to civilians.

This would clarify IHL, not create new law.

On the ground research has clearly shown that explosive weapons with wide area effects pose the gravest dangers to civilians in populated areas; they cause the most civilian casualties, and cause the most devastating, long-term reverberating effects, compounding the misery of civilians for years to come.

Human Rights Watch has just released a document that highlights some of the uses of explosive weapons with wide area effects in populated areas over the past decade and the harm they have caused. Copies are available.

While a Political Declaration does not need to have a precise definition, wide area effects should be understood to include a large blast or fragmentation radius, inaccuracy of delivery, and/or the delivery of multiple munitions at the same time. The ICRC and the UN have made the same observation.

It is also worth noting Article 36's concept that wide area effects are effects that are excessively wide in relation to the military objective being targeted, and where effects are likely to occur outside of the military objective.

More specifically related to the draft elements document—Human Rights Watch has also just released an analysis of the precise language in the draft, paragraph by paragraph, copies of which are available. It notes that paragraph 3.4 on wide area effects is the most important paragraph in the document, but is seriously flawed on multiple fronts. It downplays the threats posed by the use of explosive weapons with wide area effects in populated areas and creates a presumption that such use is acceptable if “restricted.” In this way it risks normalizing such use.

The Human Rights Watch paper suggests changing the language in paragraph 3.4 so that it reads: “In fulfilling existing obligations under IHL, we will ensure that our armed forces adopt policies and practices to *minimize* civilian harm by *avoiding* the use of explosive weapons with wide area effects in populated areas *because* indiscriminate effects *are foreseeable*.”

In closing, the purpose of the Political Declaration is to better protect civilians. The best way to do that, the essential way to do that, is to commit to avoid the use of explosive weapons with wide area effects in populated areas, and to adopt a presumption against such use.



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Statement by Human Rights Watch on Section 4: Operational Commitments Delivered by Steve Goose

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The success of the Political Declaration will of course depend on the strength of the text. But, at least equally important will be effective implementation and universalization of the Declaration. What happens after Dublin may be more important than what happens in Dublin.

In looking to the future, paragraph 4.7 of the draft elements document simply commits states to review implementation. This is fine as far as it goes, it will help the long-term effectiveness of the Political Declaration, but more substance and detail are needed.

In particular, states should agree to create a mechanism for review and commit to holding regular meetings. At least in the early years of the Declaration, these meetings should be annual, as it is in the early years that the most intense work should be devoted to universalization and to establishing best practices for implementation.

The meetings would allow states to promote and to assess the status and implementation of the Declaration and to share best practices and lessons learned. They would also give an opportunity to analyze any ongoing effects of the use of explosive weapons in populated areas and consider whether the Declaration's measures are sufficient. Such meetings should be inclusive, with all endorsing states, those that have not yet endorsed, the UN, international organizations, and NGOs.

It would also be desirable to hold other meetings in addition to the annual one, perhaps on a regional basis. They could be focused on operational policies, practices, and procedures, as well as data collection and sharing, and victim assistance.

NGOs can play a crucial role in promoting universalization and full implementation, and in communicating the importance of the Declaration. NGOs can also play a vital role in monitoring and reporting, which will be essential.

In these ways, we would be building a community of practice that would underpin the effectiveness of the Declaration in offering better protections for civilians.