



# INEW COMMENTS ON THE DRAFT POLITICAL DECLARATION TEXT (29 JANUARY 2021)

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The International Network on Explosive Weapons (INEW) expresses our appreciation to the government of Ireland for its leadership of the process, and its efforts in developing the political declaration text. The draft declaration text (29 January 2021) provides a good basis for further discussion, and holds the potential to be an effective tool for strengthening the protection of civilians from the use of explosive weapons in populated areas (EWIPA). This document contains INEW's comments on the text and proposed changes to strengthen its provisions and humanitarian protection measures.



Views of Beit Hanoun, a neighbourhood heavily affected by bombing in Northern Gaza. © Yann Libessart/MSF

## SUMMARY

- × **The use of explosive weapons in populated areas causes a well-documented pattern of harm in conflicts around the world, consistently causing high levels of civilian death and injury, psychological distress, and damage and destruction to buildings and infrastructure. As such, there needs to be a stronger and more accurate description and acknowledgement of the civilian harm and suffering that has resulted from the use of explosive weapons in populated areas and which continues to occur, in the preamble. The corresponding commitments also need to be strengthened to address these harms.**

Of note, in particular:

- The title is far too permissive of continued use of explosive weapons with wide area effects in populated areas, running counter to the humanitarian aims and purpose of this initiative.
- The recurrent descriptions that explosive weapons “can cause” harm is dismissive of the extensive and widely documented civilian harm that has already been and continues to be experienced.
- The preamble, which provides background to the issue and descriptions of human suffering and the humanitarian impacts from the use of explosive weapons, requires elaboration of some key points, and would benefit from restructuring in some areas. In particular, it does not sufficiently describe the direct impacts of explosive weapons use in towns, cities, and other populated areas. More comprehensive descriptions of experiences of harm would promote better understandings and responses.
- It is important that the text continues to be focussed on the use of explosive weapons in populated areas, and not limited to “indiscriminate use”. Narrowing the focus of the declaration to “indiscriminate use” would undermine the humanitarian value of a future declaration, making it only a political affirmation by states’ obligations to follow the law, and in doing so would severely limit its effectiveness. Furthermore, assertions that harm only results from illegal use is not supported by facts.
- × **The concept of explosive weapons with wide area effects is not sufficiently addressed or described in the text, its scope is too narrow, and the operative commitments to address wide area effects should be strengthened.**
- The factors that produce ‘wide area effects’ need to be better described in the preamble to promote understanding of this concept. ‘Wide area effects’ should include not only blast and fragmentation effects, but also inaccuracy of delivery, and / or the projection 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 the specific military objective, which presents a significant risk of harm to civilians when the weapon is used in populated areas.

- By inserting ‘wide area effects’ in the title and throughout the document, the scope of the declaration is unnecessarily narrowed. There is also a moral imperative that some elements of the declaration focus broadly on all use of explosive weapons in populated areas rather than a narrow focus on just those with wide area effects, such as data collection and assistance to victims.
- The key operative commitment aimed at addressing civilian harm from wide area effects (3.3), should be further strengthened to establish a presumption against use through a commitment to “avoid the use of explosive weapons with wide area effects in populated areas”. A strong commitment against the use of explosive weapons with wide area effects in populated areas should be central to the declaration and would provide the best practical mechanism for reducing civilian harm. The qualifying description of what wide area effects is not needed in commitment 3.3 and a broader description of the concept and factors that produce wide area effects should be included in the preamble instead.
- × **The core value of the political declaration is to establish a tool that can drive effective actions to protect civilians from the use of explosive weapons in populated areas, and to establish an inclusive framework for implementation. This should be more effectively represented in the text.**
- An inclusive framework for implementation will provide the best basis for driving positive implementation. The text should be careful to avoid inadvertently suggesting that implementation is undertaken exclusively or primarily by military actors, as to exclude other actors, such as the UN, ICRC, INEW and other civil society organizations concerned with humanitarian protection - which is already a challenging dynamic in certain contexts. Humanitarian and other international, and civil society organisations gather and provide important data and evidence on experiences and patterns of civilian harm, including through their humanitarian operations and programming. Civil society organisations also provide important inputs into government policy and practice to respond to civilian harm. The declaration should also avoid framing commitments aimed only at armed forces.
- The text misses opportunities to drive actions that have central significance to this issue and to promote understandings of the operative commitments in this political declaration, and instead focuses on actions related to international humanitarian law (IHL) which are already separate legal obligations. Instead it should:
  - Promote understandings and assessments of the area effects of weapons and the specific contexts of use and specificities of the urban environment, as well as establish measures to protect civilians and avoid civilian harm, civilian casualty tracking mechanisms and training of armed forces in these areas.
  - Promote the dissemination and understandings of the political declaration and the commitments it entails to parties to armed conflict.

- Stronger humanitarian commitments can also strengthen the declaration’s impact in understanding civilian harms, and providing effective responses. They include strengthening the commitment to assist victims of explosive weapons; gathering and sharing data on civilian harm and explosive weapon use; as well as tracking civilian harm in military operations; and ensuring unimpeded access to principled humanitarian aid.

## DETAILED COMMENTS

### TITLE

- × The title change is highly problematic, as it is now far too permissive of continued use of explosive weapons with wide area effects in populated areas, running counter to the humanitarian aims and purpose of this initiative – that being, to strengthen the protection of civilians from the humanitarian consequences arising from the use of explosive weapons in populated areas.
- × The inclusion of the qualifier “wide area effects” should be removed, as there are elements of the declaration that merit a broader approach than focussing solely on wide area effects, including data collection, assistance to affected communities including victims, and describing the work of civil society on this issue. Limiting the scope of the text in this way is morally unjustifiable as it suggests that civilian harm does not arise from explosive weapons that do not have wide area effects.
- × The phrase “can arise from” should be removed, and revert back to “arising from” instead. The suggestion that humanitarian consequences *can* arise from use of explosive weapons with wide area effects in populated areas downplays the extent and severity of civilian harm that has been widely documented by different actors.

### SECTION 1.

#### 1.1

- × This section should refer to the “risk of harm” to civilians. It should also refer broadly to explosive weapons in populated areas, and not just those with “wide area effects”.

#### 1.2

- × The statement that explosive weapons “can” have a devastating impact on civilians, which is frequently repeated elsewhere in the text, is dismissive of the extensive civilian harm already experienced, which has been widely documented and continues each year. This should say that explosive weapons “have” or “have had” a devastating impact.
- × Whilst removing of the word ‘beyond’ in the sentence that describes the immediate deaths and injuries from EWIPA use, it still does not place enough emphasis on the direct effects. This provision would

be better split in two, with 1.2 focussed entirely on direct effects, including statements that:

- Tens of thousands of civilians are killed each year from the bombing and shelling of towns and cities
  - Yet more civilians suffer complex and life-changing injuries and impairments.
  - People also experience psychological and psychosocial harms from the terrifying experience of living through bombing. This should describe people’s experiences of living through bombing as per documented reports and instead of the term ‘urban warfare’.
  - A reference could also be included here on the particular vulnerability of and specific impacts on children, and the gendered impacts and differential experiences of men, women, boys and girls.
  - × Whilst a central concept in the text is explosive weapons with “wide area effects”, in this draft of the declaration, the factors that cause these effects are limited to just blast and fragmentation. The concept of explosive weapons with wide area effects should be expanded upon in a separate provision to include factors resulting from blast and fragmentation, as well as inaccuracy of delivery, and / or the projection of multiple firings or multiple warheads across an area. Further, the declaration should explain that these factors result in the significant likelihood that the effects extend beyond, or occur outside the specific military objective, presenting a significant risk of harm to civilians when used in populated areas.
  - × Descriptions of indirect and reverberating effects and consequent causes of civilian suffering would be better moved into subsequent provisions, separate from direct effects, and expanded upon as noted in the comments below on 1.3.
- ### 1.3
- × This paragraph would be best focussed on describing the impacts of damage and destruction to property, buildings, and infrastructure and the consequent effects, including indirect and reverberating effects, to include:
    - Damage as well as destruction
    - Damage and destruction to hospitals, places of work, and market places, in addition to housing, schools and cultural heritage sites
  - × Stating that damage and destruction to housing, schools and hospitals etc. “aggravates” civilian suffering, misrepresents the fact that these are fundamental causes of civilian harm.
  - × Descriptions on reverberating effects, should include and expand upon the current language in 1.2, including:
    - The reference to damage and destruction to critical infrastructure includes energy networks, water and sanitation systems, but should also include communications and transport infrastructure

- The impacts on service should encompass impacts not only on healthcare but also on other services including education, and the impact on food security.
  - The preamble should keep the text that describes how, due to their interconnected nature, damage or destruction to one component or service can negatively affect services elsewhere, causing harm to civilians beyond the weapon’s impact area.
  - This paragraph should be expanded to include longer-term, compounded impacts, such as on livelihoods, social and economic inclusion, and employment.<sup>1</sup>
  - × Reference to the impact on the environment is welcome, but it would be better as “environment” than “natural environment” and the qualifier that it “can” have this impact should be removed as the impact of explosive weapons on the environment is well-documented.
  - × As mentioned in our comments on 1.1, a point on psychological and psychosocial harm could be included in a description of the direct effects in 1.1, and should be described in relation to the use of explosive weapons in populated areas and of documented reports of people’s terrifying experiences of living through bombing which should be directly described in the text, and not broadly in reference to ‘urban warfare’.
- 1.4**
- × The word ‘together’ in relation to the impact on displacement should be removed as more often than not, just one of these effects is enough to be a trigger or driver of displacement.
  - × The reference to the Sustainable Development Goals sits awkwardly here, the broader impact of the use of explosive weapons in populated areas hindering development would be better-placed if it were separated from the point on displacement, which could be a standalone point.
  - × ‘Explosive remnants of war’ (ERW) is more encompassing than ‘unexploded ordnance’, and more representative of the situation in affected areas. ERW does impede the return of displaced people, and so the reference to “can” should be removed here.
- 1.5**
- × This section should be moved to section 2.
- 1.6**
- × This section should be moved to the end of section 2, to introduce operative section 3 on military policies and practice. The first sentence should also be more qualified – “some” rather than “many” militaries; and “including efforts to anticipate” rather than “which include a detailed understanding of”. Concerns have been raised over the extent to which collateral damage estimation, for example, allows militaries to properly anticipate the expected impact of the use of explosive weapons in urban areas; and the extent to which battle damage assessments consider the effects of an attack on civilians and the accuracy, therefore, of any estimate of collateral damage.<sup>2</sup>

**1.7**

- × This section should emphasise the importance of tracking civilian harm which can inform understandings of the impacts and responses – not just mitigation strategies. As such, and as this is language in the preamble, it should not include caveats and qualifiers, and should make principled points, avoiding weak language. It should include:
  - The importance of tracking civilian harm in military operations.
  - Collecting data on civilian harm, including data on civilian casualties disaggregated by sex, age and disability, and data on explosive weapons use including locations, types and quantities.
  - Sharing data and reporting on civilian harm.
  - Conducting investigations into all credible allegations of civilian harm.

**1.8**

- × This section comprises several points and should be broken up into different sections.
- × This should reference all explosive weapons in populated areas, not just those with wide area effects, and should avoid misrepresenting civil society’s work as limited to only explosive weapons with wide area effects.
- × A call for research should be moved to section 4 as an operative commitment, and include broader research initiatives, not just research on gender (and should avoid referring to “potential gendered impacts”, as it is already known that there are gendered impacts.)
- × 1.8 could acknowledge the gendered impacts of the use of explosive weapons in populated areas, and differential experiences of men, women, boys and girls.

**SECTION 2****2.2**

- × Emphasising that the law needs to be implemented “in particular within populated areas” is unnecessary.
- × See comments on moving 1.5 and 1.6 into this section.

**2.3**

- × The first sentence should specify all feasible precautions in attack “and against the effects of attack”.

**SECTION 3****3.1**

- × This commitment should be more prescriptive to drive specific actions that would be most effective in protecting civilians from the use of explosive weapons in populated areas by adding that states should develop etc. policy and practice with regard to the protection

of civilians during and after armed conflict “in particular from the use of explosive weapons in populated areas”.

**3.2**

- × Commitments on training (3.2), and dissemination of materials (3.6) should promote actions that are of central significance to this declaration, rather than IHL which is already a legal requirement, and should be lower down as training should be conducted on other more central actions in this section.

For example: “Ensure comprehensive training of our armed forces on this Declaration and measures and good practices to be applied during and after the conduct of hostilities in populated areas to protect civilians and civilian objects from the use of explosive weapons”.

- × This commitment and 3.1 should reference measures and good practices during and after conflict.

**3.3**

- × There should be a stricter commitment to promote a presumption against use of explosive weapons with wide area effects in populated areas, such as a commitment to avoid use, which would have the greatest impact in preventing civilian harm.
- × This commitment or elsewhere in this section, it should suggest specific assessments that would facilitate and promote a clear understanding and implementation of this commitment including prior assessments and understandings, such as:
  - Ensuring prior assessment and understanding of the area effects of weapons
  - Ensuring prior assessment and understanding of the specific context of use and specificities of the urban environment

- × The qualifier that “when the effects may be expected to extend beyond the military objective” should be deleted. It risks suggesting that there are occasions when the effects of the use of explosive weapons with wide area effects in populated areas do not extend beyond the military objective.

- × This commitment, and 3.4, should remove the specific reference to armed forces, in line with other commitments not specifying which entity is responsible, and with the understanding that there is overarching state responsibility for implementation after endorsing the declaration.

- × Commitment 3.3 should be higher up in this operative section, and before training, given its centrality to the declaration and that other commitments such as training stem from this.

**3.4**

- × Instead of “take into account” this commitment could more clearly direct action by stating “Assess and take steps to mitigate the direct, indirect and reverberating effects on civilian and civilian objects which can reasonably be foreseen”.

- × This commitment should suggest specific assessments that would facilitate and promote a clear understanding and implementation of this commitment, such as:
  - Establishing capabilities to track, analyse, respond to and learn from incidents of civilian harm, including damage to civilian objects”.

**3.5**

- × This could include references to risk education in the context of explosive remnants of war.

**3.6**

- × This commitment should focus on dissemination and understandings of the operative commitments in this political declaration to the parties to armed conflict, rather than disseminating IHL, which is already a legal obligation.

**SECTION 4****4.2**

- × Data collection on civilian casualties as well as damage to civilian objects including property, buildings and infrastructure is crucial for understanding and responding to civilian harm from explosive weapons. As such, states should be committed to establishing capabilities to collect such data and parameters for publicly sharing information about incidents, assessments and investigation processes, and without the caveat of “where appropriate”.

“Establish capabilities to collect, share and make publicly available, disaggregated data, on the direct, indirect and reverberating effects on civilians and civilian objects in military operations which we are involved.”

- × With reference to casualty recording standards, this commitment or an additional commitment could stipulate as follows:

“Endeavour to ensure that all civilian deaths are promptly recorded, correctly identified, and publicly acknowledged, by recording any information available to us regarding civilian casualties irrespective of which party is presumed responsible; share this information and make it publicly available promptly”.

- × There should be an additional commitment on gathering data 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 for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war, which would ensure consistency with existing standards in a political declaration and building understandings of impacts and responses to EWIPA use.

“Collect and record the location of areas targeted using explosive weapons; the approximate number of explosive weapons used, the type and nature of explosive weapons used, and the general location of known and probable unexploded ordnance”

- ✗ Data collection and sharing should be on all use of EWIPA, not just that with wide area effects, which anyhow seems unfeasible. There is also a moral imperative to gather data on civilian harm from all explosive weapons used in populated areas not just those with wide area effects.
- ✗ The reference to “our military operations” should be removed, or replaced with “military operations in which we are involved”.

#### 4.3

- ✗ This commitment would be better combined with 4.5 and it should refer to all use of EWIPA, not just that with wide area effects. Limiting data collection to the use of explosive weapons with wide area effects seems unfeasible and misrepresents work by civil society organisations.
- ✗ The word “relevant” in qualifying civil society should be removed.

#### 4.4

- ✗ The commitment to assist victims 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)
  - Longer-term medical care, rehabilitation, psychosocial and psychosocial support, socio-economic inclusion, education
  - Data collection, and risk education aimed at preventing injury to people
  - Capacity development to respond to blast incidents with life-saving first aid, triaging, evacuating casualties, first responder capacities and searching for casualties.
- ✗ The “post-conflict stabilisation” reference should be deleted.
- ✗ The provision on supporting humanitarian relief efforts (previously 4.5) should be reinserted and 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.

#### 4.5

- ✗ The unnecessary qualifications around the provision of support should be deleted, so should “as appropriate”. The phrase “that can arise from” should also be deleted, as this undermines the reality that the use of explosive weapons in populated areas results in civilian harm and damage to civilian objects.

#### 4.6

- ✗ It should be made clear that meetings under the declaration are aimed at reviewing humanitarian consequences arising from the use of explosive weapons in populated areas, and implementation of the political declaration, including specific steps taken by States to this end, and universalization, and not compliance with IHL.
- ✗ Meetings of the declaration should provide the agenda for work and broader framework of activities to be carried out under this declaration. The declaration should not suggest types of activities which could be undertaken by some actors.
- ✗ The declaration should be careful to avoid inadvertently suggesting implementation is undertaken exclusively or primarily by military actors and risking excluding humanitarian and civil society actors in this function concerned with humanitarian protection.

“Meet periodically with United Nations actors, the ICRC, the International Network on Explosive Weapons (INEW) and other civil society and interested non-signatory States, to review, the implementation and universalization of this declaration and identify any relevant additional measures that may need to be taken to strengthen its implementation and the protection of civilians and civilian objects from the use of explosive weapons in populated areas.”

## END NOTES

- 1 A detailed description of harms was included in INEW’s submission (dated April 2020) on the political declaration (dated March 2020): <http://www.inew.org/wp-content/uploads/2020/04/INEW-paper-on-the-draft-political-declaration.pdf>
- 2 See Protection of civilians in armed conflict. Report of the Secretary-General, S/2019/373 (2019), paras. 53-56.

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.

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