

WORKING PAPER ON EXPLOSIVE WEAPONS IN POPULATED AREAS

KEY ELEMENTS FOR A POLITICAL DECLARATION

PRESENTED BY CHILE AND MEXICO

I. INTRODUCTION

For more than a decade, hostilities are increasingly conducted in cities and other densely populated areas with weapons that are for the most part not designed, or otherwise ill-adapted, for use in urban battlefields.

The use of explosive weapons with wide area effects (EWIPA) in populated areas directly impacts civilians, leading to death, grave injury, and severe mental trauma to men, women and children.

Attacks involving EWIPA disrupt vital services such as electricity, water supplies and health care systems. The damage to critical civilian infrastructure by attacks involving EWIPA accumulates over time, in particular when conflict is protracted, making it difficult to plan an effective coordination for reconstruction and hindering the fulfilment of the sustainable development goals (SDG).

Taking into account the changing nature of armed conflicts and the growing trend of urbanization, these patterns of harm are becoming the “new normal” in modern warfare. The protracted, direct and indirect harm that the use of EWIPA inflicts on civilians must be urgently addressed through a Political Declaration.

II. KEY ELEMENTS

In order for a Political Declaration to effectively fulfil its goal to reduce the incidence of civilian harm by the use of EWIPA, the following key elements should be included:

- Recognition and condemnation of the unacceptable human suffering and humanitarian consequences of the use of wide-impact explosive weapons in urban areas.

A Political Declaration should condemn direct and indiscriminate attacks on civilians and expressly recognize the direct and indirect effects of the use of explosive weapons with wide area effects on the life and health – physical and mental- of civilians; acknowledge the interdependence between essential services such as electricity, water and sanitation, healthcare and the reverberating effects from the disruption of such services as a result of damage or destruction of critical civilian infrastructure.

Moreover, a Political Declaration should also acknowledge the impact that continuous destruction has caused to the socio-economic development of affected countries and the relation of *cause-effect* on phenomena such as internal displacement and forced migration among others.

- Acknowledgment of the applicability of international humanitarian law and the obligation of the parties to an armed conflict to fully respect its principles and rules.

The use of explosive weapons in populated areas is not per se prohibited by international humanitarian law. Hence, a Political Declaration is not intended to establish a ban on the use of specific weapons, but rather to establish a threshold for their use that effectively minimizes harm to civilians and ensure compliance with the principles of distinction, precaution, precaution and the obligation of States to respect the rules of International Humanitarian Law.

Nevertheless, considering the pattern of harm observed, a Political Declaration will have the added value of reiterating the commitment of the International Community to the observance of existing international humanitarian law.

A Political Declaration would allow for states to be fully aware of the applicability of International Humanitarian Law in the EWIPA context, be it in its doctrines, technical tactics procedures, orders and operational directives and rules of procedure, as appropriate.

- Need for Review and Adaptation of Military Policies and Practices and the use of explosive weapons in urban areas.

Noting the applicability of international humanitarian law, the non-existence of a prohibition on the use of explosive weapons and considering that collateral damage is not illegal per sé, - provided that it is not disproportionate and that all feasible precautions are taken-, specific commitments should be discussed in order to effectively address the unacceptable pattern of harm caused by the use of wide-impact explosive weapons in urban areas.

Considering that explosive weapons with wide area effects are not designed for use in urban contexts and that it is very difficult to use them in such contexts in compliance with the International Humanitarian Law prohibitions of indiscriminate and disproportionate attacks, it should be recognized that the use of said weapons requires a more demanding analytical process during the planning phase, as well as the adoption of decisions pressed by time constraints in complex situations.

One of the expected results of the Political Declaration in this regard would be a commitment to the review of policies, military practices and doctrines and the identification and exchange of good practices on a regular basis, in order to form a community of critical mass necessary to strengthen the protection of civilians.

The development of international standards would also be beneficial. Likewise, the establishment of a follow-up mechanism for the commitments adopted in the declaration seems appropriate and will also help to establish responsibilities if necessary.

- Avoid the use of explosive weapons with a wide impact area in populated areas.

Based on empirical facts, it can be affirmed that it is very difficult to use explosive weapons with wide area effects in populated areas in conformity with key international humanitarian law principles. Their use entails a high risk of violating the prohibitions against indiscriminate and disproportionate attacks.

Given the reality of attacks directed against military targets located in populated areas and the situation of potential vulnerability of civilians, it is necessary to establish that the choice of means and methods to attack a military objective located in a populated area is a critical factor that can aggravate or reduce civilian harm. Such choice should be made taking into account humanitarian, legal, technical-military and political aspects.

In particular, the Political Declaration should call for all actors to adopt measures in accordance with the “*Avoidance Policy*” as explained by the International Committee of the Red Cross: EWIPA should not be used unless sufficient mitigation measures are taken to limit their wide area effects and the consequent risk of civilian harm.

- Non-State Actors and Use of wide-impact explosive weapons in populated areas.

In this regard it should be recalled that the rules and principles of International Humanitarian Law are binding upon non-state actors who are party to an armed conflict. The use of EWIPA to target civilians or civilian objects is a violation of International Humanitarian Law.

- Humanitarian and Protection Measures.

In addition, the following specific measures of practical implementation should be part of a Political Declaration:

- Commitment to give unrestricted access to humanitarian aid in a timely manner.
- Commitment to deliver international cooperation to comply with the provisions of the Political Declaration.
- Commitment to redouble efforts to collect information in accordance with the provisions of legally binding instruments such as Protocol V of Explosive War Remnants and in the SG Reports on the protection of civilians in armed conflicts.
- Refine the collection of information, in terms of type of weapons and in relation to victims disaggregated by sex, age and type of disability.
- Recognise that a complete picture of the harm caused by explosive weapons, including those used by non-state actors, can only be achieved through comprehensive casualty recording.

- Victim Assistance.

The use of explosive weapons with wide area effects has affected millions of lives. More than 90% of victims when explosive weapons are used in populated areas are civilians. The way the use of explosive weapons with wide area effects has affected and continues affecting civilians' lives has been the trigger of the diplomatic process towards the negotiation of a future Political Declaration.

In this regard, and based on a humanitarian approach, a Political Declaration, should ensure that adequate assistance to victims is considered a key element to reduce the civilian harm caused by EWIPA. the provision of timely, adequate assistance to victims, without exception or discrimination. This could be achieved including a standalone commitment recognizing the rights and needs of victims.

Furthermore, such a commitment -in line with the highest International Humanitarian Law standards on victim assistance- should commit states to collect and analyse data about victims, provide emergency medical care, physical rehabilitation, psychosocial support and socioeconomic inclusion, as well as support towards the full realisation of their rights and full participation in the societies as well as adopting appropriate laws and policies.