



“Elements of a political declaration” on EWIPA

Key points

February 2020

The Elements paper provides a valuable compilation and synthesis of many of the issues raised regarding civilian harm from the use of explosive weapons in populated areas. Its broad structure, spilt across preambular background and operative commitments, is a good basis for a political declaration. It is written in a way that distinctly moves discussion forward towards the development of a text. It is also quite comprehensive in its coverage of the subject and, whilst there are a number of technical points that need to be addressed, it provides a good basis for further work.

However, there are three key points that could be strengthened in drafting a political declaration:

Explosive weapons with wide area effects

It is very positive that the Elements paper engages directly (at 3.3. and 3.4) with the need for specific commitments on operational policies to address the severe problems caused by the use, in populated areas, of explosive weapons that have wide area effects.

However, to have humanitarian effect, it is urgent that the text of a political declaration promote a clear presumption *against* the use of such wide area weapons in villages, towns and cities. As drafted, the paper risks normalising such use - which could weaken the protection afforded to civilians in policy and in law.

Promoting policy and practice (at 3.3) *about* the use of wide area explosive weapons in populated areas will only strengthen civilian protection if such policies and practices are *working to avoid that use*. The formulation at 3.4 is in danger of undermining the legal obligation to avoid harm to civilians which applies even if an attack is not indiscriminate. Additionally, attacks that are expected to be indiscriminate are already clearly prohibited under the law, and therefore ‘restricting’ such attacks is insufficient.

The United Nations Secretary-General, the International Committee of the Red Cross, African states adopting the 2017 Maputo Communiqué, Latin American and Caribbean states adopting the 2018 Santiago Communiqué, and others, have all called for states to avoid the use of explosive weapons with wide area effects in populated areas.

A political declaration where states commit to avoid the use, in populated areas, of explosive weapons with wide area effects is a key step towards stopping the use of these weapons. It recognises that wide area explosive weapons cause particular humanitarian concerns and it builds recognition of the need for operational policies and procedures to prevent their use in towns and cities.

At various places, the text uses “explosive weapons with wide area effects” where it should apply to all explosive weapons. For example, (2.1) IHL applies to the use of all explosive weapons in armed conflict, not just when they have wide area effects; and (4.2) data should be collected on the impact of all explosive weapons, not only when they have wide area effects.

‘Reverberating’ effects

Significant attention has been drawn in recent years to the capacity for damage from explosive weapons to cause ‘reverberating’ effects, where damage to one component of infrastructure has implications for other systems and services. Thus damage to power or water systems, whether intended or accidental, can affect the provision of healthcare or sanitation for example. In populated areas, the interconnection of infrastructure upon which a substantial population depends means that harm can extend broadly and affect large numbers of people.

The current Elements paper makes no mention of these reverberating effects. This issue should be addressed explicitly in the preamble (1.2 is closest) and in the operative section. In their intervention to the November consultations, the ICRC highlighted the importance of:

“ensuring that foreseeable reverberating effects on essential urban services are considered in planning of military operations and the execution of attacks.”

We would urge states to propose and support such a formulation in the development of a political declaration.

Assistance to victims

INEW welcomes the inclusion at 4.3 of a commitment to assist victims of explosive weapon use, in a non-discriminatory manner. We welcome also the reference to the rights of persons with disabilities. However, we urge states to speak in support of this paragraph and to see it strengthened.

“Make every effort” for victim assistance is too weak. It should commit states to ensure assistance for victims. It should be clear that “victims” encompass those critically injured, survivors, families of those killed and injured, and affected communities.

Humanity and Inclusion has proposed the following language:

“Ensure that victims - people critically injured, survivors, family members of people killed and/or injured and affected communities – receive adequate assistance based on their needs in a non-discriminatory manner, including in the form of emergency medical care, physical rehabilitation, psychosocial support and socio-economic inclusion, as well as support towards the full realisation of their rights and full participation in the societies.”

The additional commitment in that paragraph (supporting post-conflict stabilisation) is valuable in its own right but should be moved elsewhere in order to add clarity and specificity to the commitment to assist victims.