



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

PAX WRITTEN SUBMISSION
20 February 2020

PAX, a founding board member of the International Network on Explosive Weapons, would like to commend Ireland for laying the foundation of what could *potentially* become a significant step towards greater protection of civilians against the impact of the use of explosive weapons in populated areas.

Good progress has been made, the elements paper reflects a good overview of the issue at stake, and the structure of the paper provides a good base for further discussions.

In order for a future political declaration to really protect civilians against the direct and indirect impact of EWIPA, its elements should be strengthened in several ways however.

First of all the elements paper lacks a central notion that the use of EW with WAE should be avoided in populated areas.

Research shows that explosive weapons with wide area effects are most problematic from a civilian perspective, as they tend to have an impact that extends beyond their military target. In populated areas, effects that extend beyond or occur outside a military objective can be expected to cause harm to civilians and damage to civilian objects.¹

This is at the core of the matter.

A political declaration should therefore commit states to factor in the risk of wide area effects in populated areas in their military operations, and in fact to avoid the use of weapons that will have these wide area effects in populated areas.

This presumption on non-use should in fact be the central notion of a political declaration. This would be in line with the recommendation by the UN Secretary-General and the ICRC to “*avoid the use of explosive weapons with wide area effects in populated areas*”, as well as the Maputo declaration and Santiago Communique, supported by over 40 states.

More importantly, it will be the key distinction between a political declaration which unintentionally risks legitimizing ongoing use of EWIPA, or a political declaration that will effectively contribute to the protection of civilians against the horrific impact of EWIPA.

¹ Wide area effects of explosive weapons are commonly understood to be created through three characteristics, individually or in combination, namely a large blast and fragmentation radius, inaccuracy of delivery and the use of multiple munitions.

To address this issue section 3.4, as suggested by others including Human Rights Watch, could be changed into the following:

“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*.”

Furthermore, and more specifically art 3.3 should recognize the link between wide area effects of explosive weapons and the risk they pose to civilians, and:

- encourage states to assess the possible area effects of their explosive weapons;
- assess how operation factors may influence area effects in different circumstances;
- review operation policies and procedures to ensure that the factors are reflected in decisions making as well as legal evaluations;

Lastly, the text should better reflect the complex and interrelated pattern of harm that results from the reverberating effects.

Reverberating effects, are more likely to occur in populated areas where infrastructure is densely connected, and many people rely on this infrastructure. Reverberating impact should be understood to include environmental impact.

Destruction of infrastructure vital to the civilian population, including water and sanitation, housing, schools and hospitals, deprives civilians of access to basic necessities and results in a pattern of wider, long term suffering.

The report “[operating under fire](#)” by PAX and Harvard Law School’s International Human Rights Clinic, in which we documented the reverberating effects of damaged water pipes and electricity plants and other infrastructure on the quality, availability and accessibility of healthcare in Eastern Ukraine is just one example.

A future text of a political declaration should include a commitment to ensure the foreseeable reverberating effects, including on essential urban services as well as environmental impact, are considered in the planning of military operations and legal evaluations, either in 3.3 or in a separate article.

ANNEX 1 : “ EXPLOSIVE WEAPONS WITH WIDE AREA EFFECTS AND RISKS TO CIVILIANS”; a background note to the consultations on a political declaration on explosive weapons in populated areas prepared by Article 36 and PAX.