Submission to the open consultations towards a political declaration to address the humanitarian harm arising from the use of explosive weapons in populated areas

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PAX

Summary

PAX, as member of the International Network on Explosive Weapons (INEW), strongly supports the urgent development of an international political declaration to prevent the humanitarian harm caused by the use of explosive weapons in populated areas. Greatly concerned by the levels of humanitarian harm, direct and indirect, short term and long term, we are encouraged by the fact that a political process to establish a political declaration has now been initiated to address this harm.

Central to a political declaration should be recognition that the area effects of explosive weapons constitute a key determinant of the risk of harm to civilians, especially when used in populated areas. As such, a political declaration should seek to address this through a commitment upon states to stop or avoid the use of explosive weapons with wide area effects in populated areas.

Whilst much diplomatic discussion has revolved around international humanitarian law in relation to civilian protection, it is in the practical policies of military operations that restrict the use of explosive weapons with wide area effects that civilian protection is strengthened. Some states have elaborated on existing policies to manage wide area effects in relation to the context of use. These policies show that there already exist some recognition of the wide area effects of weapons, and the risk they pose to civilians. A political declaration can and should encourage these discussions and when accompanied by the avoidance of the use of explosive weapons with wide area effects in populated areas it will minimize the risk of violating IHL and acknowledge the correlation between area effects and risks of harm.

Wide area effects

In conflicts all over the world – in countries such as Syria, Ukraine and Yemen – the use of explosive weapons in populated areas is a major cause of humanitarian harm and civilian casualties.

When explosive weapons are used in populated areas their effects tend to be indiscriminate, with a great part of death and injuries inflicted on civilians. They often cause high levels of immediate and long-term harm to individuals and communities. Due to the factors creating wide area effects, there are often multiple civilian casualties in each incident.

Due to the high explosive force from blast and fragmentation, explosive weapons have a specific impact on the built environment - tearing down buildings, destroying pipelines, power supplies, water reservoirs and other facilities that causes long term, severe reverberating effects. 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 long term suffering. Victims and survivors of explosive weapons can face long-term challenges of disability, psychological harm, and social and economic exclusion.

When we look at the humanitarian harm caused by explosive weapons, it is especially those explosive weapons that have wide area effects[1] that are problematic when used in towns and cities, for the risk they pose to civilians.

There is broad agreement that wide area effects from explosive weapons can result from three characteristics, either individually or in combination:

- A substantial blast and fragmentation radius resulting from a large explosive content;
- Inaccuracy of delivery, meaning that the weapon may land anywhere in a wide area;
- Use of multiple warheads or multiple firings, sometimes designed to spread, affecting a wide area.

As a matter of fact, in some contexts certain explosive weapons are as likely, if not more likely, to cause harm to the civilian population as to damage a specific military target.

Managing wide area effects in the context of their use

The area effects of certain explosive weapons are already recognized in military policy and practice as having a direct link to the risk posed to civilians. The section below serves as an illustration of some existing yet dispersed reference points that illustrate recognition of the threat to civilians posed by explosive weapons with wide area effects, or the importance of 'populated areas', as a basis for controlling the threat to civilians from weapons.

Firstly, protocol III of the UN Convention on Certain Conventional Weapons (CCW) uses 'concentrations of civilians' as a basis for managing the risks to civilians presented by certain weapons, and the term 'populated areas' has been used in relation to the management of weapons in UN Security Council resolutions.

Secondly, collateral damage estimation methodologies draw heavily on the area effects of weapons, and reducing area effects is a primary mechanism for reducing the likelihood of civilian harm. The methodologies also use assumptions about the size of the civilian population in the area.

Thirdly, operational directives aimed at reducing civilian harm have focused on reducing the area effects of the weapons used. Certain operational directives and 'lessons learned' have highlighted risks posed by certain types of explosive weapons and have promoted efforts to reduce the areas of effects. For example, the ISAF Tactical Directives in Afghanistan restricting air-to-ground attacks and the use of indirect fire explosive weapons on residential compounds and promoting the assumption that areas with civilian buildings are inhabited unless demonstrated otherwise.

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[1] Explosive weapons with wide area effect are sometimes also referred to as `explosive weapons with wide area impact`, or `heavy explosive weapons`; see for example: Article 36 and PAX, "*Areas of harm, Understanding explosive weapons with wide area effects", (2016), available at: http://www.paxforpeace.nl/publications/all-publications/areas-of-harm, a*nd ICRC, "*International Humanitarian Law and the challenges of contemporary armed conflict*", (2019), available at: https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts. For the purpose of clarity we use explosive weapons with wide area effects throughout this submission.

Fourth, area effects are used as a basis for controlling risks to friendly forces. These mechanisms to protect 'friendly forces' from harm are based on the area effects of the weapons that might be used in proximity to those forces in conjunction with mechanisms for ensuring sufficient accountability.

Fifth is an example of a category of weapons that was rejected all together because of their wide area effects, namely cluster munitions. Prior to cluster munitions being banned outright, a number of countries endorsed a position that these weapons should be prohibited from use in populated areas. Furthermore, in the ban treaty itself, the area effects of these weapons are recognised as a key issue of humanitarian concern.

Lastly there are specific weapons designed to have 'reduced' area effects. So-called 'low collateral damage' weapons are based on reducing the area effects of the explosive munitions.

Recognizing the problem and acting accordingly

Both the Maputo[2] and Santiago Communique[3], signed by over 40 states, included a commitment to avoid explosive weapons with wide area effects in populated areas.

The International Committee of the Red Cross has, on numerous occasions, stressed the fact that due to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, the ICRC considers that explosive weapons with a wide impact area should be avoided in densely populated areas. They have furthermore called on all States and parties to armed conflicts to adopt a policy of avoidance of use of heavy explosive weapons in populated areas, regardless of whether or not such use would violate IHL.

Efforts to restrict and limit the area effects of weapons when used in populated areas through policy and practice to reduce and prevent civilian harm are of central importance in order to develop a political declaration that will have a meaningful impact.

The central role of limiting area effects in efforts to improve civilian protection is obscured in existing military policies and procedures because this central factor is dispersed across different legal, policy and operational frameworks.

The severe humanitarian impact of explosive weapons in populated areas ought to make collective political recognition of the fundamental importance of avoiding wide area effects in populated areas a top priority in order to increase civilian protection however.

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[2] December 2018, signed by: Angola, Botswana, Cameroon, Central African Republic, Congo, Ethiopia, Ghana, Kenya, Liberia, Madagascar, Mali, Mozambique, Nigeria, Senegal, Somalia, Togo, Uganda, Zambia, Zimbabwe, full text available at: http://www.inew.org/maputo-regional-conference-on-the-protection-of-civlians-from-the-use-of-explosive-weapons-in-populated-areas/.

[3] November 2017, signed by: Antigua and Barbuda, Argentina, Barbados, Belize, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador , El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay , Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Uruguay, full text available at: http://www.inew.org/wp-content/uploads/2018/12/Santiago-Communique-EWIPA.pdf.