

REMARKS ON THE DRAFT POLITICAL DECLARATION ON THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM
APRIL 2020

WILPF welcomes the draft political declaration on the use of explosive weapons in populated areas (EWIPA), circulated by the government of Ireland in March 2020. Given the unconscionable levels of death and destruction currently caused by bombing of towns, cities, and villages, it is imperative that the declaration becomes a meaningful tool for strengthening civilian protection and preventing human suffering and environmental degradation.

This draft declaration has moved in a positive direction from the draft elements circulated previously. In particular we are pleased that the text focuses on state practice that needs to change in order to better implement international law and prevent civilian harm.

The main challenge with the current text, however, is that it suggests that the use of EWIPA will continue. The political declaration must promote a presumption against the use of explosive weapons with wide area effects in populated areas. Any policies or practices it suggests must work to end such use.

The declaration should also be more precise and robust in terms of description of the human suffering caused by the use of EWIPA. As written, it suggests that bombing in towns and cities can cause some harm to civilians. In reality, the patterns of violence, which are well documented by civil society and humanitarian agencies, show that the use of explosive weapons leads to devastating and long-lasting physical, social, psychological, environmental, and economic harm.

SECTION 1

1.1 suggests that conflict will become “more protracted, complex and urbanised” and that the number of civilian casualties will continue to increase. This suggests that it doesn’t matter what commitments governments undertake or changes armed forces make to their conduct, which is a strange framing for a political declaration meant to reduce human suffering and work to prevent the use of EWIPA. Instead of asserting the continuation of urban warfare and civilian harm, the declaration should describe current harms, as in 1.2, and emphasise that states must take action now to prevent and end the practices that lead to human suffering and environmental degradation.

1.2 does an improved job of describing the damage caused by the use of EWIPA. However, its suggestion that such use “can” have the impacts described is weak; it will have these effects and that should be stated clearly.

It is strange to say that the “the destruction of housing, schools and cultural heritage sites further aggravates civilian suffering,” when these are some of the core damages that cause suffering and death. It creates a hierarchy between suffering caused by the destruction of hospitals, energy networks, and water and sanitation systems and that caused by homes and schools, etc. The destruction of markets should be included in this section.

Instead of saying “urban warfare can also result in psychological and psychosocial harm to civilians,”



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the declaration should specifically reference the use of EWIPA, or living with bombing and bombardment, and it should acknowledge that such practices lead to traumatic experiences.

The declaration should also mention the effects on people with physical and mental disabilities, as the psychological and physiological harms can disproportionately affect such people and exacerbate existing conditions.

This paragraph should also address the environmental harm caused by EWIPA. This could include the long-term harm posed by toxic remnants of war introduced or released into the environment by explosions, including hazardous chemicals, heavy metals, and fuel hydrocarbons.

1.3 should be reorganised to start with displacement and challenges posed by explosive remnants of war, and end with a reference to how this has a negative impact on achieving the Sustainable Development Goals.

1.5 is currently too permissive of the use of EWIPA. Its description of inherent difficulty of “directing and limiting” the effects of explosive weapons is somewhat improved from the elements paper. However, if these challenges are inherent (which they are) then their use will increase, not “can increase,” civilian harm. As written, the tone of this paragraph does not reflect the urgency of action or the scale of IHL violations caused by the use of EWIPA.

It would be good to add a description of the wide area effects of explosive weapons.

The third sentence on sharing military policies should be removed, as it does not fit in the description of harms in the preamble.

1.6 should call for collection of data on the type and effects of weapon(s) used, in order to better track which weapon systems are causing harm. This will be relevant for understanding the impacts of particular weapons as well as for making arms transfer assessments as mandated by the Arms Trade Treaty and other relevant instruments.

Data collection should also include gender and disability along with sex and age. Furthermore, the declaration should note that sex must not be used as a presupposition of civilian status, as it has been in certain drone strike targeting practices.¹

1.7 has too many elements and should be divided up. The third sentence could be moved to a new point.

The call for “further research into potential gendered impacts” should delete the word potential, as it is already known that there are gendered impacts of all armed conflict. The call for research could perhaps also be moved to section 3 or 4 as an operative commitment, while 1.7 could acknowledge that there are gendered impacts of the use of EWIPA.

In addition, rather than committing to “empower and amplify” the voices of those affected, the declaration could say “amplify, integrate, and respect,” or other terms that suggest such perspectives will be taken on board as credible interventions for policy making and not simply listened to in a tokenistic way.

SECTION 2

2.1 does well to reference the accountability of IHL and human rights violations.

2.2 should remove the reference to “with wide area effects,” as IHL deals with all use of EWIPA.

2.4 is slightly more nuanced in its reference to the work of the UN Security Council than the draft elements paper, but it still gives this body way too much credit for strengthening the protection of civilians and compliance with IHL. Among other problems, the permanent members of the Security Council profit from transferring weapons that are used in populated areas and most use their veto to prevent action to protect civilians if that will interfere with those profits. It’s not clear what this paragraph adds to the political declaration.

SECTION 3

The key policy commitments, in 3.3 and 3.4, should come first in this section and the other commitments should flow from those.

3.1 should remove “where necessary,” as it is necessary to improve national policy, and to do so continuously in response to growing understandings of harm and ways to prevent it. This point could also add “with particular attention to EWIPA” to connect it to the focus of the declaration.

3.3 has improved by no longer referencing indiscriminate effects. However, the reference to “whose effects extend beyond the immediate area of military objective,” should be deleted. This description of wide area effects could be moved to 1.5 but is not appropriate as a qualifier to this commitment.

The commitment should be to stop or end the use of explosive weapons with wide area effects in populated areas rather than to restrict such use. As Human Rights Watch and the International Human Rights Clinic of the Human Rights Program at Harvard Law School point out, such a commitment would have the greatest impact on preventing civilian harm.² Furthermore, IHL already restricts the use of EWIPA. It is imperative that this declaration promote the presumption of non-use of EWIPA rather than normalise it or suggest that certain use is acceptable, which will only undermine existing IHL and lead to civilian harm.

3.3 and 3.4 frame the commitments in terms of armed forces, whereas other commitments in this section do not specify which entities are responsible for implementation. It would be better to remove the specification of armed forces here.

3.5 could include references to risk education and risk reduction in the context of explosive remnants of war.

3.6’s reference to “good practices to reduce aggregate risks to civilians during military

operations in urban warfare” suggests that military operations in populated areas will continue, and that there are good practices for that conduct. This declaration should not assert or suggest either things but instead should be focused on preventing the use of EWIPA.

SECTION 4

4.2 should remove the reference to “our” military operations, as this suggests that all states are using and will continue to use EWIPA, and that this declaration endorses that use. It also is problematic for coalition forces and joint operations.

The reference to “where appropriate” in terms of data sharing is also problematic; data should always be shared in order to help prevent civilian harm.

4.3 should refer to “in populated areas” rather than “urban areas”. The list of actors should also include civil society. And the role of these actors is not to “complement and support” the role of states, as often the role of these actors is to criticise the actions of states and work to hold them accountable.

4.4’s commitment to “make every effort” in relation to victim assistance is still not strong enough. This commitment also needs to acknowledge that families and communities are included as victims.

The “post-stabilisation” reference should be deleted. This para, or a separate one, could refer to “supporting humanitarian responses” or other language that reflects a commitment to humanitarian programming.

4.6 should reference all use of explosive weapons, not just those with wide area effects.

4.7 could be clarified and integrated with 4.3 or 4.4.

4.8 is very important as it is imperative to review the implementation of this declaration to ensure it has meaningful impact.

NOTES

1. See *Sex and drone strikes: gender and identity in targeting and causality analysis*, Reaching Critical Will of the Women's International League for Peace and Freedom and Article 36, October 2014
2. *A Commitment to Civilians: Precedent for a Political Declaration on Explosive Weapons in Populated Areas*, Human Rights Watch and International Human Rights Clinic, Human Rights Program at Harvard Law School, November 2019.

This submission was prepared in consultation with WILPF partner Women Now for Development.

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For more resources on EWIPA and the political declaration process, see www.reachingcriticalwill.org and www.inew.org.

RESOURCES ON EWIPA FROM WILPF



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