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We should not be afraid to do more:

Mines Action Canada's comments on the January 2021 draft political declaration text

Mines Action Canada (MAC) welcomes the Government of Ireland's work on the revised draft political declaration on the use of explosive weapons in populated areas (EWIPA), circulated by the government of Ireland in January 2021. The evidence is clear that the use of explosive weapons in populated areas causes unacceptable harm to civilians.

As a member of the International Network on Explosive Weapons (INEW), Mines Action Canada fully supports the paper submitted by INEW. Mines Action Canada also supports the submissions made by Women's International League for Peace and Freedom (WILPF), Human Rights Watch and the International Human Rights Clinic at Harvard Law School (HRW/IHRC), Humanity and Inclusion, and Mines Advisory Group (MAG). In an organizational capacity, MAC submits the following recommendations.

The purpose of this political declaration is to change military behaviour and therefore the text must go beyond merely restating International Humanitarian Law (IHL). The evidence gathered over the past decade has shown that harm continues even when IHL is applied. IHL is the bare minimum and militaries must take additional measures to prevent harm to civilians when using explosive weapons. In the last three decades there have been numerous additions to IHL in response to the changing nature of conflict and human settlement. These changes have been motivated by preventing the death, injury and destruction that civilians have suffered from different weapon systems. They have been welcome additions to IHL making it more robust. Nevertheless, we should not be afraid to do more than existing IHL requires to protect civilian populations. The recent Safe Schools Declaration successfully shows other means can also be useful in achieving those aims.

One strength of a political declaration over a legal document is the increased availability of descriptive and human-centred language. There are a number of areas where more descriptive and human-centred language would strengthen the declaration. As INEW writes, the use of EWIPA "causes a well-documented pattern of harm in conflicts around the world, consistently causing high levels of civilian death and injury, psychological distress, and damage and destruction to buildings and infrastructure." There is significant evidence of the harm caused by EWIPA, therefore, the use of the word "can" in the title and in paragraphs 1.2, 1.3 and beyond should be removed. The evidence shows that when explosive weapons are used in populated areas, civilian harm will result.

Section 1

Paragraph 1.1 The addition of wide area effects is unnecessary in this paragraph as it narrows the scope of the declaration. Any use of explosive weapons in populated areas poses complex challenges for the civilian population.

Paragraph 1.2 Articulating the harm caused by explosive weapons use in populated areas is a key part of the political declaration. These paragraph should clearly outline the direct, indirect and reverberating effects of EWIPA. A direct mention of the gendered impacts would be welcome.

Paragraph 1.3 Reference to environmental harm is welcome. This point could be strengthened by referring to the environment rather than the natural environment and eliminating the word “can”. Replacing the word urban with populated would strengthen this paragraph by not limiting it to one type of populated area.

Paragraph 1.4 The term “unexploded ordnance” should be changed back to “explosive remnants of war,” which includes both unexploded ordnance and abandoned ordnance since they both cause harm to civilians. Explosive remnants of war is the appropriate technical term for this document. This change is also in line with the mention of explosive remnants of war in paragraph 3.5.

Paragraph 1.7 The addition of data sharing is an improvement over the previous text, however including the phrase where possible weakens this paragraph. HRW/IHRC has additional notes on how to strengthen this paragraph by including data gathering on disability as well as gender and age.

Paragraph 1.8 We welcome the reference to the need for additional data on the gendered impacts of EWIPA, however, the word potential should be removed as there is significant evidence that there are gendered impacts of explosive weapons use. The reference to “wide area effects” in this paragraph should be deleted.

Section 2

Paragraph 2.2 The reference to “wide area effects” should be removed as all use of explosive weapons is governed by IHL. The addition of “in particular within populated areas” at the end of this paragraph is not necessary.

Section 3

Paragraph 3.3 This paragraph should tilt against the use of EWIPA. States should commit to avoiding the use of explosive weapons in populated areas. The phrase “when the effects may be expected to extend beyond a military target” limits the scope of the paragraph and the declaration and should be deleted.

Paragraph 3.5 This paragraph should also reference explosive ordinance risk education in addition to marking and clearance. Risk education does not need to wait until the end of active hostilities.

Section 4

Paragraph 4.1 Similar to our suggestions under Paragraph 1.3, the reference to urban warfare should be deleted in this paragraph.

Paragraph 4.2 We welcome the commitment to make data collected public, however, we would like to see the phrase “where possible” deleted as it weakens this paragraph.

Paragraph 4.3 This paragraph, like others, should refer to all use of EWIPA, not just that with wide area effects. The word “relevant” in qualifying civil society should be removed.

Paragraph 4.4 This paragraph should be strengthened significantly to avoid differential obligations towards victims of different weapons. Humanity and Inclusion, a member of INEW, has proposed some strong language that should be considered for inclusion into this paragraph.

As mentioned above, Mines Action Canada strongly supports the submission made by INEW and has drafted this submission to highlight some key points based on our long experience working in humanitarian disarmament. We urge states to be ambitious and ensure that this political declaration sets high standards for behaviour in order to protect civilians during armed conflict and post-conflict.