

INEW intervention, delivered by Rasmus Sandvol Weschke, on 4 March 2021

Informal consultations on a political declaration on the use of explosive weapons in populated areas, 3-5 March 2021

On Section 2 of the Preamble of the January 2021 Political Declaration text concerning International Humanitarian War

Thank you, Ambassador.

In this intervention on Part A, section 2, I speak on behalf of INEW.

First, regarding specific comments on the draft text: in point 2.2, it says, among other things, that the law needs to be implemented “in particular within populated areas”. In INEW’s view this is unnecessary, as the law should be equally complied with regardless of where fighting takes place.

In point 2.3, in the second to last sentence, it should specify all feasible precautions... ADDING “in attacks” AND ADDING “and against the effects of attack”. (Similar to ICRC’s comment).

INEW has submitted these and further comments in writing to Ireland.

(In these comments INEW also suggest moving some of the specific references to IHL (more precisely) 1.5 and 1.6 to section two.)

Secondly, let me reflect a bit on the relationship between IHL and EWIPA, which was touched upon in many comments already:

Point 1: Better compliance with IHL is necessary, but not the full answer - it is very important to strive for a continuous improvement in protection of civilians, which has by no means reached its end state.

We are familiar with the assertion that international humanitarian law is sufficient and what is needed is simply greater compliance. Yet we continue to see a very high degree of civilian harm from the use of explosive weapons in populated areas – including in situations when civilians are not deliberately targeted, and by actors who claim to be in full compliance with the law.

When we look at the level of death and destruction in some modern conflicts, where a clear pattern of harm can be identified from the use of explosive weapons in populated areas, especially those with wide area impacts, it is fair to question the interpretation and application of the law in this particular regard. Therefore, simply reaffirming that IHL is sufficient would not be enough.

Point 2: I would also like to comment on limiting this declaration to only the “*indiscriminate use*” of explosive weapons, as some delegations have argued this should be the focus. As INEW, we reject this notion.

Indiscriminate use is already unlawful, as reflected by a prohibition in IHL that many have referred to. And secondly, even lawful attacks cause harm. That is why it is *not useful* to limit the declaration in this way.

As most states tend to argue that they sufficiently comply with IHL already, the notion of indiscriminate use seems to be directed towards adversaries. This risk politicizing the harm experienced by civilians, by disregarding harm caused by one party to a conflict - or its allies - , and placing the label of illegality or indiscriminate use on attacks carried out by an adversary. This would not serve the purpose of the declaration which is to enhance civilian protection more generally.

And secondly, it is not unlikely that many attacks involving EWIPA could be considered indiscriminate as wide area effects cannot be limited to the military objective, hence the questioning of the interpretation and application of the law.

Also, let's not forget that even when an attack is not judged illegal, the reality for civilian victims of that very attack, is still the same.

We recall that states already have a legal obligation not only to avoid illegal attacks, but also to take feasible precautions to avoid or in any event to minimise harm to civilians and damage to civilian objects. If we see the issue as a matter of indiscriminate attacks only, we would be diverting our attention away from the practical measures that a declaration should promote towards avoiding or minimising civilian harm in all situations.

In conclusion, narrowing the focus of the declaration to "indiscriminate use" would undermine the humanitarian value of a future declaration, making it a mere reminder of states' obligations to follow the law, and in doing so would severely limit its effectiveness. Furthermore, assertions that harm only results from illegal use is not supported by facts.

Thank you very much.