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

Statement by Human Rights Watch on Section 3: Operational Commitments Delivered by Steve Goose

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In order for the Political Declaration to have a meaningful humanitarian impact, it must include a clear commitment to avoid the use of explosive weapons with wide area effects in populated areas.

There are many commendable commitments in the draft elements document, but if the Political Declaration is to make a real difference in the protection of civilians, it must result in the curtailment of the use of explosive weapons with wide area effects in populated areas, with the aim of stopping such use.

The Political Declaration should also clearly state that there is a presumption against the use of explosive weapons with wide area effects in populated areas, as argued by the ICRC so convincingly. There should be a presumption that such use is unacceptable given the foreseeable indiscriminate harm to civilians.

This would clarify IHL, not create new law.

On the ground research has clearly shown that explosive weapons with wide area effects pose the gravest dangers to civilians in populated areas; they cause the most civilian casualties, and cause the most devastating, long-term reverberating effects, compounding the misery of civilians for years to come.

Human Right Watch has just released a document that highlights some of the uses of explosive weapons with wide area effects in populated areas over the past decade and the harm they have caused. Copies are available.

While a Political Declaration does not need to have a precise definition, wide area effects should be understood to include a large blast or fragmentation radius, inaccuracy of delivery, and/or the delivery of multiple munitions at the same time. The ICRC and the UN have made the same observation.
It is also worth noting Article 36’s concept that wide area effects are effects that are excessively wide in relation to the military objective being targeted, and where effects are likely to occur outside of the military objective.

More specifically related to the draft elements document—Human Rights Watch has also just released an analysis of the precise language in the draft, paragraph by paragraph, copies of which are available. It notes that paragraph 3.4 on wide area effects is the most important paragraph in the document, but is seriously flawed on multiple fronts. It downplays the threats posed by the use of explosive weapons with wide area effects in populated areas and creates a presumption that such use is acceptable if “restricted.” In this way it risks normalizing such use.

The Human Rights Watch paper suggests changing the language in paragraph 3.4 so that it reads: “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.”

In closing, the purpose of the Political Declaration is to better protect civilians. The best way to do that, the essential way to do that, is to commit to avoid the use of explosive weapons with wide area effects in populated areas, and to adopt a presumption against such use.