

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

February 10, 2020

Center for Civilians in Conflict (CIVIC)¹ works to strengthen protection of civilians by engaging armed actors and civilians to develop and implement solutions to prevent, mitigate, and respond to civilian harm.

CIVIC welcomes the draft circulated by Ireland on the elements of a forthcoming political declaration “to ensure the protection of civilians from humanitarian harm arising from the use of explosive weapons in populated areas.”

The draft text recognizes the complex challenges for the protection of civilians in armed conflict, focusing on the use of explosive weapons with wide area effects in populated areas, and recognizes the harm these weapons cause. It stresses the importance of protecting civilians and complying with international humanitarian law and identifies operational tools and practices to support this goal.

We would like to offer additional suggestions for strengthening the declaration to effectively protect civilians with proposed changes in italics.

Title

CIVIC recommends replacing “humanitarian harm” with *civilian harm* to broadly encompass harm to civilians and civilian objects as humanitarian harm is vague and associates “humanitarian” with a negative term of harm.

Parts A and B

CIVIC welcomes reference to international humanitarian law (IHL) obligations, but the mix of IHL obligations and policy commitments creates uncertainty about what States would be committing to as a matter of policy and what are already existing IHL obligations. CIVIC recommends reference to IHL obligations in part A and referencing to policy commitments in Part B.

¹ CIVIC is a Steering Committee member of the International Network on Explosive Weapons (INEW). Since 2012, CIVIC has participated in EWIPA talks held by OCHA, ICRC, Austria, Norway, and INEW, during which we have contributed to discussions on known good practices and policies on explosive weapons in populated areas, as well as civilian harm mitigation policies and tools adopted by armed actors. CIVIC defines civilian harm mitigation as “all measures taken by armed actors to prevent, minimize, and address civilian harm resulting from their own presence, activities, and operations.” www.civiliansinconflict.org

Section 3 – Operational commitments: including existing legal framework, military policy and practice, sharing good practice on the protection of civilians

Paragraph 3.2

The language refrain in paragraph 3.2. does not amount to a prohibition when referring to inherently indiscriminate weapons.

We recommend amending the sentence to read *“Do not use any weapons that is inherently indiscriminate.”*

Paragraph 3.3

States should commit to develop, review, improve, and implement policy and practice with regard to the use of all explosive weapons in populated areas. We recommend removing the phrase “with wide area effects” from paragraph 3.3 as policies and practices on use of all explosive weapons should be improved.

We also recommend the last clause be amended to read *“to ensure full compliance with international humanitarian law and strengthen protection of civilians by adopting best practices on civilian harm mitigation.”*

Paragraph 3.4

We recommend reference to IHL in this paragraph and referring to policy commitments of states to avoid use of explosive weapons with wide area effects.

Paragraph 3.4 can be edited in the following ways:

We will ensure that explosive weapons with wide area effects are not used in populated areas unless sufficient mitigation measures have been taken to limit their use effects and risk of civilian harm.

Paragraph 3.5

CIVIC has long urged states to adopt civilian harm mitigation good practices and share as part of security force assistance and in partnered operations. Paragraph 3.5 recognizes the exchange of good practices to enhance protection of civilians in urban warfare and enumerates tools and practices. We propose additional language to ensure these policies, practices, and tools are tailored to protect civilians and civilian objects, specifically we propose:

“We commit to identifying, developing and exchanging good practices to enhance the protection of civilians in urban warfare before, during, and after operations. Specifically, the mission and mandate should include command emphasis on protection of civilians and issuance of rules of engagement to protect civilians. The planning phase should include collateral damage estimates that contribute to identifying risk to civilians and objects and

alternatives to mitigate them. The ~~weapon target matching and~~ targeting procedures should promote positive identification and weaponizing process that take into account risk to civilians and civilian objects including reverberating effects; ~~planning and training that sufficiently factors in presence of civilians and location of infrastructure~~; and real-time information sharing on impact on civilians and objects; The assessment phase should include battle damage assessments, including civilian harm tracking efforts that are sufficiently resourced to analyze impact on civilians and civilian objects. All such tools and practices should take into account foreseeable and reverberating effects on urban population and infrastructure.

Paragraph 3.7

Paragraph 3.7 can further specify that trainings sufficiently integrate civilian protection. We propose the following amendment:

Ensure adequate training of armed forces on international humanitarian law, scenario based practical trainings on how to reduce risk of civilian harm, identifying lessons, and new practices to be applied during the conduct of hostilities in populated areas to effectively protect civilians and civilian objects.

Section 4 – Operational commitments: including data collection, victim assistance, cooperation and review

Paragraph 4.2

We welcome the importance of data collection, but suggest the following amendments to include impact on civilian and objects by all explosive weapons to allow for analysis, mitigation, and response mechanisms. Disaggregated data allows for evidence based on analysis to develop new guidance, trainings, and policies.

“Collect and share data, disaggregated by sex and age, on the impact of explosive weapons on civilians and civilian objects for analysis to identify causes of harm to improve policies, trainings, and effective acknowledgement and assistance to victims.”

We recommend replacing paragraph 4.3 with language proposed by Humanity & Inclusion:

Ensure that victims—people critically injured, survivors, family members of people killed and/or injured and affected communities—receive adequate assistance based on their needs in a non-discriminatory manner, including in the form of emergency medical care, physical rehabilitation, psychosocial support and socio-economic inclusion, as well as support towards the full realization of their rights and full participation in the societies.

We recommend removing language on post conflict stabilization efforts from paragraph 4.2 to a separate paragraph to recognize the comprehensive nature of post-conflict stabilization efforts. Such efforts can include, but are not exhaustive: safe and voluntary return of displaced persons, adequate housing for returnees, clearing of unexploded ordnance (UXO), rubble removal, rebuilding of essential services, schools, and hospitals, reopening of courts, and establishing local security. To this end we propose a new paragraph.

In consultation with affected communities, plan and support, post conflict stabilization efforts.

Paragraph 4.7

We welcome language committing states to review implementation of this declaration and recommend adding language committing states to bi-annual or annual meeting to assess the implementation of the political declaration, good practices and policies adopted, new tools developed, and how to strengthen commitments in practice.