

U.S. Opening Statement
Ireland-Hosted Informal Virtual Consultation Titled “Protecting Civilians in Urban Warfare: Towards a Political Declaration to Address the Humanitarian Harm Arising From the Use of Explosive Weapons in Populated Areas”
March 3-5, 2021

- Since this is my first time taking the floor, let me thank our Irish colleagues for their excellent facilitation of an open, inclusive process, and for their hard work to take on board so many suggestions for a wide range of participating delegations. Overall, we believe this new draft of the Declaration offers a number of improvements.
- We continue to believe that this process can best promote our shared goal of strengthening protections for civilians by promoting practical, realistic solutions to improve the implementation of IHL in the field, through a text that militarily active states are able to sign up to. We are hopeful that we can get to this outcome together, and look forward to working with you and other delegations to achieve that goal.
- The causes of harm to civilians in urban warfare can be complex and involve a range of factors, including incidental harm caused during lawful attacks directed against military objectives, mistaken or lack of identification of the presence of civilians, deliberate targeting of civilians in violation of IHL, or the use of human shields by terrorist groups. This Declaration should reflect this complexity and the challenges of protecting civilians during urban warfare, particularly when fighting terrorist groups that intentionally put civilians at risk. Similarly, promoting a broad range of practical measures undertaken by responsible States in their military operations could yield immediate and concrete results in strengthening protections for civilians.
- To that end, I would like to lend my full support to the points offered by France and the United Kingdom earlier this morning, and offer a few general comments in addition:
- First, the Declaration – and especially Section I – should create a balanced and accurate picture of the complex causes of harm to civilians in urban warfare. In particular, IHL places obligations on parties both when conducting attacks and when defending against attacks. The challenge of non-state actors emplacing military objectives in populated areas, using civilians as human shields, and otherwise disregarding their obligations under IHL should be noted.
- Second, we continue to be concerned about the stigmatization of explosive weapons. Under international humanitarian law, explosive ordnance is a legitimate means of warfare the use of which may be needed to protect civilians during armed conflict. We think that the Declaration should make clear that the use of such weapons is a standard and lawful practice, if done consistent with IHL.
- Third, to be useful, we continue to note that this declaration should not attempt to introduce new interpretations of existing IHL, create new standards, or propose commitments based on novel terminology not reflected in existing IHL, such as

“reverberating effects.” To that end, we are particularly concerned with the use of the phrase “wide area effects” in Sections 3 and 4, and throughout this draft more generally. As a practical matter, in some cases, weapons with “wide area effects” may be the best option for reducing the likelihood of civilian casualties. Trying to produce the same or similar effect through the use of other weapons that produce a “narrower effect,” could require using more weapons over a relatively greater period of time and thereby create greater incidental harm to civilians and civilian objects.

- As others have already noted, the restrictions on the use of explosive weapons proposed by paragraph 3.3 exceed what is required by IHL. Moreover, it would not achieve the goal of strengthening efforts to protect civilians, particularly for responsible militaries such as that of the United States that need such capabilities to mitigate civilian casualties and who already undertake extensive efforts to comply with IHL and mitigate civilian harm from their use.
- Fourth, we believe the Declaration should establish a positive, collaborative way forward for implementation that focuses on voluntary military-to-military exchanges of technical expertise and good practices to improve compliance with IHL and efforts to mitigate civilian harm.
- Finally, as a conceptual matter and as previously mentioned, we are concerned that this draft has narrowed its focus to those explosive weapons “with wide area effect.” This is not an existing class of weapons or a term that is defined in existing IHL. Its use in this document could contribute to an unhelpful stigmatization of the lawful, responsible use of certain explosive weapons. For example, focusing only on explosive weapons with wide area effects would also mean the declaration and any follow-up implementation discussions would not address improvised explosive devices – a troubling cause of civilian casualties in urban warfare.
- We intend to offer specific textual edits this week from the floor and in writing to achieve these objectives, and we thank our Irish facilitators and other colleagues for working together to conclude a Declaration that can meaningfully contribute to states’ efforts to protect civilians.