

A Food for Thought Paper: Possible approach to support national implementation of the Political Declaration dedicated to protecting civilians from humanitarian harm that can arise from the use of explosive weapons in populated areas

Submitted by Germany

This paper presents an approach that States could take to elaborate an implementation framework for the Political Declaration. Section I provides context. Section II provides considerations pertaining to national implementation. Section III offers recommendations that can facilitate the introduction of the implementation framework into the Declaration process. Annex 1 represents an illustrative model for the implementation framework.

I. Context

1. On 17 March 2020, the Government of Ireland shared a draft of the Political Declaration dedicated to protecting civilians from humanitarian harm that can arise from the use of explosive weapons in populated areas. The draft Political Declaration built on the initial draft elements paper (version 21 January 2020), and drew from contributions from States and non-governmental Organizations during, and following, the consultative meetings on this topic held in Geneva on 18 November 2019 and 10 February 2020.
2. Ireland seeks inputs from States and relevant stakeholders on possible approaches for the implementation and review of the Political Declaration during the third round of consultation meeting, which will take place via written consultation in March and April 2020.
3. This paper presents an approach that States could consider in supporting the implementation and the review of the Declaration. The approach outlined in this paper draws on research undertaken by the United Nations Institute for Disarmament Research (UNIDIR) in 2019-20 on this topic, and is supplemented by additional informal consultations undertaken with States and non-State organizations in early 2020.

II. Key considerations

4. The draft of the Political Declaration makes clear that the Declaration seeks to **strengthen implementation of existing International Humanitarian Law (IHL)** instead of trying to create new norms and rules to be applied in the conduct of hostilities. It also recognizes that more can be done to strengthen protection of civilians, including through States further **developing, implementing and sharing practical measures** pertaining to policy and practice (See Section 3 of draft Political Declaration, version 17/03/2020).
5. **Implementation considerations vary considerably among States** and their armed forces based on a number of factors, including but not limited to their respective legal obligations, operational contexts, experience mandate, resources, materiel capabilities and partners. In addition, specific sources of risk to civilians can change in light of all of these factors. Given these variations, it may not be constructive to develop a prescriptive implementation framework that reflects a “one-size-fits-all” model. Implementation should consider the varied needs, challenges and capabilities of the participating States, and provide **flexibility to develop, maintain, and improve their national policy and practice** that aim to protect civilians from humanitarian harm, including harm that can arise from urban warfare through inter alia the indiscriminate use of explosive weapons in populated areas, in line with existing IHL.
6. To this end, the elaboration of an **implementation framework** would benefit from the following:
 - 6.1. **A compilation of policy and practice** States and relevant international organisations have developed and implemented and that they are willing to share voluntarily, to be considered by participating States in their national efforts to develop, maintain and improve national policy and practice to protect civilians from humanitarian harm that can arise from urban warfare through inter alia the indiscriminate use of explosive weapons in populated areas;

- 6.2. A voluntary mechanism to enable States and their armed forces to **identify and share good practices and lessons learned**, and to facilitate **cooperation and assistance**, including through training and exchange of technical and tactical expertise; and
- 6.3. A structured **'self-assessment' approach** to help operationalize the Declaration — a process in which each participating State could assess its own policy and practice at the national level, including with appropriate consideration of the good practices shared by other States within the framework; Such a self-assessment approach would help each participating States to **establish - at the national level and on a voluntary basis - capability baselines and to identify potential vulnerabilities, gaps and opportunities for enhancement**, in policy and practice, in a consistent manner.

III. Recommendations

7. To realize the implementation approach above, the following recommendations are put forward:
 - 7.1. Recommendation 1: States should **commit to assess policy and practice at the national level** as part of the Political Declaration, including with consideration of good practices shared by other States under the implementation framework.
 - 7.2. Recommendation 2: States should introduce **an informal process to help identify and compile good practices under the implementation framework** for the Declaration through **establishing an informal working group** composed of representatives of their armed forces and their legal advisers as well as diplomatic representatives.
 - 7.3. The working group should:
 - 7.3.1. Recommendation 2.1: **Compile States' voluntary contributions of policy and practice** that participating States can commit to consider at the national level to inform efforts to assess, develop, maintain and improve policy and practice with regard to the implementation of IHL and the protection of civilians.
 - 7.3.2. Recommendation 2.2: **Serve as a framework/forum to strengthen dialogue and cooperation between States and, in particular, between their armed forces** in order to identify and share their best practices and lessons learned with regard to the protection of civilians and, as appropriate, to improve their policy and practice. This could constitute a key component for the “review” of the Political Declaration.
 - 7.4. The working group could by consensus:
 - 7.4.1. Recommendation 2.3: **Develop a voluntary self-assessment tool** designed to support States efforts in their national-level assessment of policy and practice based on the work identified above. The working group could request UNIDIR to assist in the development of this tool, in consultation with relevant experts and organizations.
 - 7.4.2. Recommendation 2.4: **Develop** as appropriate, **other tools, such as operational and tactical guides and training modules** guided by the work identified above, that States could also consider, as appropriate, in their national implementation.
 - 7.4.3. Recommendation 2.5: **Invite relevant experts and organizations to support the work of the Working Group**, as appropriate, including in assisting participating States upon request in the implementation of activities as defined by the Working Group.

Diagram 1. Illustrative model for implementation framework

