

## **Draft Political Declaration on Strengthening the Protection of Civilians in Urban Warfare from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas**

*U.S. Comment: We remain fundamentally concerned with the reference to the “use of explosive weapons in populated areas” (EWIPA). We believe it is important to address harm to civilians that arises from military operations more generally and not focus on “explosive weapons.” In particular, the United States cannot join an initiative that would seek to stigmatize the use of “explosive weapons,” which are legitimate means of warfare under international humanitarian law. Moreover, the good practices and measures that States can take to strengthen protection should apply wherever military operations in armed conflict are conducted, not just to military operations involving “explosive weapons” or those in “populated areas.” Instead, we have recommended “urban warfare,” as used in the title of the Austrian-hosted conference. “Urban warfare” better captures the complexity of the causes of the harm to civilians which is giving rise to concerns. Such causes cannot simply be reduced to the use of explosive weapons. We have made this edit in a number of places in the document.*

### **Part A: Preamble**

#### Section 1

1.1 As ~~contemporary~~ conflicts become more protracted, ~~complex~~ and urbanised, the ~~proportion likelihood~~ of civilian casualties ~~is increasing~~ increases. The causes of civilian casualties involve a range of factors, including ~~the use of explosive weapons in populated areas~~ deliberate targeting of civilians in violation of international humanitarian law or the use of human shields by terrorist groups, as well as incidental harm caused during lawful attacks directed against military objectives, such as through mistaken or lack of identification of the presence of civilians, and pose complex challenges for the protection of civilians.

*U.S. Comment: The available data does not support the assertion that there is a greater proportion or number of civilian casualties today than during past conflicts, particularly World Wars I and II, the Spanish Civil War, and the Afghan Civil War, much less the genocides in Cambodia and Rwanda. However, we are concerned about the number of civilian casualties in armed conflicts, and we also agree that the likelihood of civilian casualties increases as armed conflicts become more protracted and urbanized. We have omitted “complex” as the complexity of the conflict does not necessarily affect the risk of civilian casualties. Unfortunately, “simple” conflicts can involve significant civilian casualties.*

*We have listed some of factors that lead to civilian casualties so that the issues related to addressing their causes can be better understood. We do not agree that explosive weapons are properly understood as the cause of such harm; conducting operations without explosive weapons could in some circumstances result in even greater civilian casualties.*

1.2 Urban warfare ~~Explosive weapons with wide area effects~~ can have a devastating impact on civilians and civilian objects ~~in populated areas~~. Beyond immediate deaths and injuries from being near the fighting, civilian populations can be exposed to severe and long-lasting

~~reverberating~~ effects. These occur in particular when urban warfare is protracted, critical civilian infrastructure is damaged or destroyed, such as hospitals, energy networks, and water and sanitation systems, and such infrastructure is not repaired or replaced. The destruction of housing, schools and cultural heritage sites can further aggravate civilian suffering. Urban warfare can also result in immediate psychological and psychosocial harm to civilians, especially when civilians are not evacuated or have been prevented from doing so.

*U.S. Comment: First, in line with our general comments, we believe that a focus on “wide area effects” would not be useful. For example, 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 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. We have suggested removing the reference to “reverberating” because the term is being used to attribute effects to the use of particular weapons, when, in our view, that harm has more proximate causes than the use of a particular weapon. In the same vein, we have revised the next sentence because whether effects are “severe” and “long-lasting” depends at least in part on whether the authorities in control of the population are willing and able to repair or replace damaged or destroyed infrastructure. We have also deleted “critical civilian” before infrastructure because the damage or destruction of such infrastructure may affect civilians but the infrastructure would not necessarily be a civilian object under IHL. We have sought to refine the reference to “psychological and psychosocial harm” because all persons, even combatants, could suffer such harm from armed conflict.*

1.2bis. We also note that terrorist groups have a history of storing weapon caches, including improvised explosive devices, and establishing factories for IED production in urban areas, which results in extensive risks to the civilian population. Terrorist groups have also indiscriminately emplaced large numbers of booby traps and IEDs throughout urban areas, which directly threaten civilian populations and impede their return.

*U.S. Comment: We further recommend either a new paragraph 1.2bis or an insertion at the end of paragraph 1.2 to reflect a particularly important challenge often faced during recent military operations – use of urban areas by terrorist groups to build and store IEDs and those groups indiscriminately emplacing large number of booby-traps and IEDs throughout urban areas. Such activities have caused great harm to civilians and should be acknowledged in this introductory section.*

1.3 These effects can have a negative impact on progress towards the Sustainable Development Goals and can result in the displacement of people within and across borders. Following urban armed conflict warfare, explosive remnants of war can also impede the return of displaced persons and cause casualties long after hostilities have ended.

1.4 Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, such as the use of “human shields,” the use of improvised explosive devices directed against civilians and civilian objects, and other violations of International Humanitarian Law, including by some non-State armed groups, all can exacerbate these challenges and are of grave concern.

*U.S. Comment: The use of IEDs directed against civilians or civilian objects is already a violation of IHL, as is the use of “human shields.” We have inserted this clarifying edit and have also added “other” to avoid the implication that those acts would not also constitute violations of IHL. We added “can” to make it more clear that this paragraph is referring to the illegal tactics in the abstract, rather than any particular actor. As an alternative to adding “can,” we would support substituting “particularly” for “including” because the actors that have used these illegal tactics, in particular, have been certain non-State armed groups, like ISIS.*

1.5 ~~The inherent difficulty in directing and limiting the effects of explosive weapons with wide area effects to specific military objectives located in populated areas can increase the likelihood of civilian harm.~~ While many militaries implement good operational policies and practices designed to protect civilians, there is scope for practical improvements in the universal full implementation of, and compliance with, their obligations under International Humanitarian Law, and in such good practices. Broadening and strengthening initiatives designed to share military policies and good practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

*U.S. Comment: We do not agree that there is “inherent difficulty” with the use of explosive weapons in the circumstances described. For example, there may be circumstances in which the use of explosive weapons with wide area effects are the means least harmful to civilians in comparison to other lawful means and methods of war. We have revised “universal” to “full” for consistency with paragraph 2.2 (stressing the importance of “full compliance”) and added “their obligations under” because not all parties to armed conflicts have the same obligations under IHL. Some States have ratified treaties that other States have chosen not to ratify.*

1.6 We recognise the importance of efforts to record available information about incidents of civilian casualties, and the use of all practical measures to ensure appropriate data collection, including, where possible and relevant, data disaggregated by sex and age. The collection of data on civilian casualties can inform policies designed to mitigate civilian harm, aid efforts to investigate unanticipated harm to civilians, support efforts to determine or establish accountability in the case of potential violations and enhance lessons-learned processes in armed forces.

*U.S. Comment: We inserted the first clause because as a practical matter, information about incidents of civilian casualties might be quite limited. We added “and relevant” because sex and age is not always relevant to a particular inquiry that is the purpose of the data collection, such as determining whether a violation of IHL occurred or whether actions could be taken to prevent a future similar occurrence of civilian casualties. Edits to the final sentence are for specificity and accuracy.*

1.7 We welcome the on-going work of the United Nations, the International Committee of the Red Cross (ICRC) and civil society to raise awareness of the impacts and long-term humanitarian consequences that can arise from urban warfare ~~the use of explosive weapons in populated areas~~. We also welcome work to empower and amplify the voices of those affected,

including women and girls, and we encourage further research into the potential gendered impacts. We stress the imperative of addressing the short and long-term humanitarian consequences that can result from the conduct of hostilities, including in urban areas warfare.

## Section 2

2.1 We recall ~~the our~~ obligations ~~and commitments~~ under ~~applicable~~ international law, particularly International Humanitarian Law and International Human Rights Law, as applicable, and reaffirm our commitment to support measures to hold accountable those responsible for violations of international law.

*U.S. Comment: As a legal terminology matter, “commitments” typically refer to non-legally binding measures, so it would not be appropriate to reference “commitments under applicable international law.” We have moved the “as applicable” for clarity and because not all IHL or IHRL would always be “applicable.”*

2.2 Existing International Humanitarian Law provides the framework to regulate the conduct of hostilities and activities for the protection of war victims ~~armed conflicts~~, and provides obligations ~~is~~ applicable to conducting and defending against attacks ~~the use of explosive weapons with wide area effects~~ in all operating environments, and to all parties to an armed conflict. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and mitigate civilian harm when conducting hostilities, including in urban warfare.

*U.S. Comment: We have suggested using “hostilities” for consistency with the terminology in paragraph 2.3. We have also suggested adding reference to “and activities for the protection of war victims” to account for obligations under the Geneva Conventions of 12 August 1949 for the Protection of War Victims. The relevant IHL obligations (e.g., precautions, proportionality) apply to “attacks” rather than to “EWIPA.”*

2.3 We recall the obligations on all States and parties to armed conflict to adhere to International Humanitarian Law when conducting hostilities, including in populated areas urban warfare, including the requirements to distinguish between combatants and civilians as well as between other military objectives and civilian objects; and the principles and requirements of proportionality, military necessity, the prohibitions against indiscriminate and disproportionate attacks ~~and the obligation to take all feasible precautions of parties subject to attack and~~ in conducting attacks. We also recall the other obligations under International Humanitarian Law ~~to provide civilians with general relating to the protection against dangers arising from military operations of civilians.~~

*U.S. Comment: We have added “other” before “military objectives” because combatants are regarded as a type of military objective under IHL. Stating specific obligations in this paragraph creates distinctions between States that are Parties to the 1977 Additional Protocol I to the 1949 Geneva Conventions and States that are not. Therefore, we have suggested formulations that can reference these rules without requiring a lengthy negotiation. We do not*

*believe it would be appropriate to renegotiate existing IHL in this document, and in particular, obligations that are applicable only to certain States.*

2.4 We welcome the work of United Nations Security Council to strengthen the protection of civilians during armed conflict and to strengthen compliance with International Humanitarian Law, and recall to that end UNSC Resolutions on the protection of civilians in armed conflicts, including Resolutions 1265 (1999), 1894 (2009) and 2417 (2018).

## **Part B: Operative Section**

### Section 3

Committed to strengthening the protection of civilians and civilian objects in armed conflict, strengthening compliance with International Humanitarian Law, and, in particular, addressing the humanitarian harm that can arise in urban warfare from the use of explosive weapons with wide area effects in populated areas, we will:

3.1 Review, develop, ~~Develop, review~~, implement, and, where necessary, improve national policy and practice with regard to the protection of civilians during armed conflict, including in urban warfare areas.

*U.S. Comment: We suggest reversing the order of “review” and “develop” because States have existing practices that they should review before developing new policy and practices.*

3.2 Ensure comprehensive programs for training of our armed forces on International Humanitarian Law, and on ~~the measures~~ national policy and good practices to be applied during the conduct of hostilities ~~in populated areas~~ to protect civilians and civilian objects and mitigate civilian harm more effectively, including in urban warfare.

*U.S. Comment: The training that is warranted for particular members of the armed forces can vary significantly depending on a person’s duties, so we added a reference to “programs” to clarify “comprehensive.” Referring to “national policy and practices” makes this paragraph more cohesive with paragraph 3.1 (which refers to “national policy and practice”) and also helps clarify the training commitment.*

3.3 Ensure that our armed forces adopt and implement policies and practices to ~~avoid~~ mitigate civilian harm, including in urban warfare by restricting the use of explosive weapons with wide area effects in populated areas whose effects extend beyond the immediate area of a military objective.

*U.S. Comment: We have changed “avoid” to “mitigate” because good practices should be applied to reduce civilian harm even when it cannot be avoided. We oppose efforts to stigmatize the use of explosive weapons, and we strongly believe that this document should remain a high-level political document and should not seek to set new standards or alter IHL requirements for military operations. Negotiating specific practices in the political declaration itself will not be productive. The restrictions proposed in the original draft of this paragraph will not actually*

*avoid civilian harm and will not be practically useful for militaries in their operations. In fact, there may be circumstances in which the use of explosive weapons, an essential and legitimate means of warfare, may actually be the best means to mitigate harm to civilians.*

3.4 Ensure that our armed forces make every necessary efforts in the planning of military operations and the execution of attacks, including in urban warfare, in populated areas to consider direct, indirect and reverberating the expected effects on civilians and civilian objects which can reasonably be foreseen, and take appropriate mitigation measures to limit the risk of harm to civilians and civilian objects.

*U.S. Comment: We've revised this paragraph to reflect existing IHL. We strongly believe that this document should remain a high-level political document and should not seek to set new standards or alter IHL requirements for military operations. Negotiating specific practices in the political declaration itself will not be productive.*

3.5 Ensure the marking, clearance, and removal or destruction of explosive remnants of war as soon as possible after the end of active hostilities in accordance with applicable international law.

3.6 Enhance the protection of civilians by identifying, developing and exchanging good practices to reduce aggregate risks to civilians during military operations in urban warfare.

*U.S. Comment: The reference to "aggregate" is unclear and unnecessarily limiting. Good practices should seek to reduce even non-aggregate risks.*

3.7 Facilitate, where appropriate, dissemination and understanding of International Humanitarian Law by all parties to armed conflict.

*U.S. Comment: When a party to an armed conflict is a group like ISIS, it may not be appropriate to engage in this way. Dissemination and understanding of IHL are activities that should be conducted even when a State is not a party to an armed conflict.*

3.7 bis Consider the good military practices, annexed to this declaration, regarding the protection of civilians during military operations that other States have contributed to this process for inclusion, as appropriate, within their armed forces.

*U.S. Comment: We recommend including this paragraph as a way of encouraging States to begin sharing good practices on civilian protection immediately as part of this declaration. Working with other States, the United States has continued to refine its technical compilation of practical measures and would welcome the opportunity to have this submission be reflected as a part of the Irish process.*

## Section 4

4.1 Strengthen appropriate international cooperation and assistance among armed forces with respect to exchanges of technical information and tactical doctrine expertise in order to develop a

~~community of good practice to~~ enhance the protection of civilians. As a starting point, an informal working group composed of representatives of interested ~~parties~~ States could ~~agree to a toolbox~~ participate in the sharing of their good practice, which could form the basis for structured military-to-military exchanges, workshops, and seminars.

*U.S. Comment: We have offered some streamlining edits throughout the paragraph, and we have made a more general reference to “technical and tactical expertise” in order to broaden the scope of exchange. We also would avoid using the term “parties” (which is reserved for legally binding instruments) and would delete “agree” for the same reason. Lastly, we have changed the reference to a “toolbox” because we think States should immediately begin sharing of good practice rather than having to wait for development of a new document.*

4.2 ~~Collect and, w~~Where feasible and appropriate, collect and share ~~disaggregated~~ data, on the ~~direct and indirect~~ impact on civilians of our military operations, including those involving the use of explosive weapons in urban areas warfare,

*U.S. Comment: As noted above, disaggregation of data will often not be operationally feasible and would therefore unduly limit the nature of information that might be collected and shared. Additionally, it is not clear what is meant by “indirect” impacts, and we think by eliminating “direct and indirect” the paragraph conveys the need to collect and share, where appropriate, data on different types of impacts on civilians of States’ military operations.*

4.3 ~~Recognize Support~~ the efforts of the United Nations, the ICRC and other organisations ~~capturing to collect~~ data on the impact of military operations ~~involving the use of explosive weapons~~, including in urban areas warfare, as appropriate, to complement and support the role of States in this area.

*U.S. Comment: We think this paragraph is better framed as a recognition of all the work that has been done, and that continues to be done, by these entities, rather than formulating it to ask States to make an advance commitment to support all of the work when they may not be in a position, including financially, to do so. Grammatical streamlining edits have also been inserted.*

4.4 Make appropriate every efforts to assist war victims, families, and ~~affected~~ communities affected by armed conflict in a holistic and, integrated ~~and non-discriminatory~~ manner, taking account of the rights-situation of persons with disabilities, and to supporting post-conflict stabilisation.

*U.S. Comment: We’ve replaced “every effort” with “appropriate efforts” to make this sentence more realistic. We have inserted “war” before victims for consistency with the terminology in the 1949 Geneva Conventions. We have removed “non-discriminatory manner” because U.S. law may require certain prioritization when providing assistance to civilians. We have also replaced “rights of” with “situation of.” Not every State is Party to the Convention on the Rights of Persons with Disabilities (CRPD) (including the United States). Even for States that are Parties, some of its obligations may not be applicable in the context of an armed conflict, nor extraterritorially.*

4.5 Provide and facilitate ~~rapid and unimpeded~~ access for humanitarian relief to ~~all persons~~ civilian populations and other war victims in need.

*U.S. Comment: There may be legitimate reasons (e.g., the safety of personnel of humanitarian organizations or measures to prevent the diversion of relief) for managing the passage of humanitarian relief such that it would not always be characterized as “rapid and unimpeded.” “All persons” would include combatants, so we have recommend changing this phrase.*

4.6 ~~Recognize Support~~ the United Nations, the ICRC, other relevant international organisations and relevant civil society organisations for their~~in~~ actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact of armed conflicts, including the use of explosive weapons with wide area effects in populated areas in urban warfare.

*U.S. Comment: Same explanation as paragraph 4.3. Not all international organizations will be relevant, so we suggest adding that term before “international organisations.”*

4.7 Encourage appropriate cooperation with local stakeholders, civil society experts, and humanitarian organisations specialised in this field.

4.8 Meet periodically to exchange good practices and lessons learned on ~~review~~ the implementation of this declaration ~~and identify any relevant additional measures that may need to be taken with a view to improve~~ improving compliance with existing International Humanitarian Law and strengthening the protection of civilians and civilian objects, including in urban warfare with regard to the use of explosive weapons with wide area effects in populated areas.

*U.S. Comment: The focus of future meetings should be States sharing information on their implementation of the declaration, including through sharing good practices, rather than attempting to make backward-looking assessments.*

4.9 Actively promote this declaration, distribute it to all relevant stakeholders and seek ~~adherence to it~~ its support by the greatest possible number of States.

*U.S. Comment: We believe “adherence” is inappropriate here because this document is a political document and not a legally binding one. Other acceptable alternatives to “adherence to it” could be “endorsement of it” or “engagement on it.”*



**ENDS**