

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

**February 2020**

Center for Civilians in Conflict (CIVIC)<sup>1</sup> 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 support recommendations submitted by INEW on the draft declaration and offer additional suggestions for strengthening the declaration with proposed changes in italics.

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

#### *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.

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<sup>1</sup> 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](http://www.civiliansinconflict.org)

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*

Paragraph 3.4 can be further clarified in the following ways:

“In fulfilling existing obligations under IHL, we will ensure that our armed forces adopt policies and practices to ~~avoid~~ *minimize* civilian harm by ~~restricting~~ *avoiding* the use of explosive weapons with wide area effects in populated areas when indiscriminate effects ~~may be expected~~ are foreseeable.”

The “avoid civilian harm” language should be changed to *minimize* civilian harm as it is more in line with article 57 of Additional Protocol I and replace “restricting the use” with “*avoiding the use*” of explosive weapons with wide area effects in populated areas “when indiscriminate effects *are foreseeable*” to strengthen realization of first, second, and third effects of explosive weapons in populated areas.

#### *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:

“Strengthen international cooperation and assistance with respect to the identification, development and exchange of good practices to enhance the protection of civilians in urban warfare. This would include *command emphasis on protection of civilians; issuance of rules of engagement to protect civilians; weapon-target matching and targeting procedures that take into account risk to civilians and civilian objects; planning and training that sufficiently factors in presence of civilians and location of infrastructure; real-time information sharing on impact on civilians and objects; collateral damage estimates and 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 populations 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.

*“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 response mechanisms.”*

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, and how to strengthen commitments in practice.