

Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas

April 2022

Center for Civilians in Conflict (CIVIC)¹ welcomes the draft *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas* circulated by Ireland on March 3, 2022.²

CIVIC commends Ireland's efforts on the Political Declaration in recognizing the direct and indirect/reverberating effects on the civilian population from the use of explosive weapons in populated areas (EWIPA), affirms compliance with international humanitarian law and specifically during the conduct of hostilities, and outlines commitments by states to enhance protection of civilians when armed conflict takes place in populated areas. We also welcome the removal of qualifiers such as "can" or "could", that was in prior drafts, when referring to the humanitarian impact of explosive weapons in populated areas.

CIVIC offers the following comments for consideration to strengthen the declaration to contribute to efforts to protect civilians with proposed changes italicized and underlined.

Part A: Preamble

Section 1

1.1. As armed conflicts become more protracted, complex, and urbanised, the risks to civilians have increased. This is a source of major concern and must be addressed. The causes of these risks involve a range of factors, including the use of explosive weapons in populated areas, and pose complex challenges for the protection of civilians. *The risks are increased when weapons have an impact that extend beyond the military objective due to the large destructive radius, inaccuracy, or because they are designed to fire multiple munitions simultaneously over a wide area.*

- CIVIC recommends inserting language acknowledging that explosive weapons with wide area effects be added in the preamble to highlight the correlation between wide area effects and risk of civilian harm. This additional language would better relate to language in 3.3 where there is recognition of weapons whose effects extend beyond the military objective.

1.2. The use of explosive weapons *in populated areas* can have a devastating impact on civilians and civilian objects ~~in populated areas~~. Blast, debris and fragmentation effects from explosive weapons cause deaths and injuries, including lifelong disability. *The use of explosive weapons in populated areas can also*

¹ Since 2012, CIVIC has participated in EWIPA talks 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. www.civiliansinconflict.org. CIVIC is also on the Steering Committee of the International Network of Explosive Weapons (INEW).

² CIVIC submitted comments to prior drafts of the Political Declaration in February 2020, April 2020, and March 2021.

result in psychological and psychosocial harm to civilians. Beyond these direct effects, civilian populations are exposed to severe and long-lasting indirect effects – also referred to as ‘reverberating effects’. Many of these indirect effects stem from damage to or destruction of critical civilian infrastructure. When critical civilian infrastructure, such as hospitals, energy, food, water and sanitation systems, are damaged or destroyed the provision of basic needs and essential services, such as healthcare and education are, disrupted. In urban areas, these services are often interconnected and, as a result, damage to one component or service can negatively affect services elsewhere, causing harm to civilians that can extend far beyond a weapon’s impact area.

- CIVIC recommends stating the key direct effects in para 1.2, including psychological and psychosocial harm. We recommend adding hospitals to list of critical civilian infrastructure. We also recommend adding “urban areas” when discussing infrastructure due to the nature of civilian dependencies on such essential services in urban settings.

1.3. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, and the natural environment can also be impacted by the use of explosive weapons, leading to the contamination of air, soil, water, and other resources. ~~Explosive ordnance of remnants war also prevent return of displaced persons and cause casualties and disabilities long after hostilities have ended. The use of explosive weapons in populated areas can also result in psychological and psychosocial harm to civilians.~~

- CIVIC recommends moving language on harm from explosive remnants of war to para 1.3. to reflect the direct effects of the use of explosive weapons. We also recommend to replacing explosive remnants of war with explosive ordnance as its broader and includes landmines and IEDs.

1.4. These effects often result in the displacement of people within and across borders, and have a severe impact on progress towards the Sustainable Development Goals. ~~Following the conduct of hostilities, explosive remnants of war and unexploded ordnance impede the return of displaced persons and cause casualties long after hostilities have ended.~~

1.5 ~~Many~~ Some militaries already implement have enacted operational policies and practices designed to avoid, and in any event minimize, civilian harm during military operations, which include a detailed understanding of the anticipated effects of explosive weapons on a military target and its surrounding areas and the associated risk to civilians in populated areas. However, there is scope for practical improvements to understand the anticipated direct and indirect effects of explosive weapons on a military target and risk to civilians and civilian objects, in order to comply with ~~achieve compliance with,~~ obligations under International Humanitarian Law. Broadening and strengthening initiatives designed to share military policies and practices on protecting civilians, including as part of security assistance and during partnered operations can further support the promotion and better implementation of International Humanitarian Law.

- CIVIC welcomes this paragraph to highlight the scope of improvement in policies and practices. We recommend acknowledging that **some** militaries and not **many** have enacted policies and practices, but that much more is needed to implement and improve measures to strengthen protection norms. We also recommend adding language that good practices be shared as part of security assistance and partnered operations as many militaries are engaged in coalitions or provide security assistance to a party to conflict.

1.6. We recognize the importance of efforts to ~~record and track~~ civilian harm incidents, i.e., to collect, record and analyze relevant information about them. We recognize the importance of the use of all ~~practical practicable~~ measures to ensure appropriate data collection, including, where possible, data disaggregated by sex, age, and disability. Such tracking efforts by armed forces should be supplemented by information from external organizations, media, and civil society, who record and investigate civilian harm. Where feasible, To improve transparency on mitigation efforts, this data should be shared and made publicly available. ~~Improved d-~~Data on civilian harm ~~casualties-~~ would also help to inform policies designed to avoid, and in any event minimize, civilian harm, improve training, aid efforts to investigate harm to civilians, support efforts to determine or establish accountability, enhance lessons learnt processes in armed force.

- CIVIC recommends using language of “tracking” of civilian harm by the military, which is the lexicon used by those that have created such a tool. We also offer some additional language on the utility of this tool and its effectiveness. CIVIC has helped create civilian harm tracking mechanisms within militaries (Afghanistan and Ukraine) and with multinational forces (AMISOM and G5 Sahel) to track civilian harm incidents and identify root causes of civilian harm in order to mitigate them. In our experience, a tracking tool works more effectively when the military’s or multinational force’s tracking is supplemented by information being recorded from outside the military by NGOs or the UN. This allows for more comprehensive analysis on all possible incidents and remedial measures to acknowledge and mitigate civilian harm.

1.7 We stress the imperative of addressing the short and long-term humanitarian consequences resulting from armed conflict involving the use of explosive weapons in populated areas. We welcome the on-going work of the United Nations, the International Committee of the Red Cross (ICRC) and civil society on the ~~impacts and long term humanitarian consequences~~ direct and reverberating effects arising from the use of explosive weapons in populated areas.

- CIVIC appreciates the strengthening of the original version of this paragraph. To increase consistency across the document, we recommend amending “short and long-term humanitarian consequences” and just using “*direct and reverberating effects*” as defined in para 1.2

1.7bis We also welcome work to empower, ~~and amplify,~~ and integrate the voices of all those affected, including women, boys, and girls, and we ~~encourage further research into~~ acknowledge the gendered impacts of the use of explosive weapons.

- CIVIC recommends including impact on boys and adding “acknowledge” instead of researching the gendered impact of explosive weapons use in order to support tailored mitigation and assistance measures to women, boys, and girls.

Section 2

2.1 We reaffirm our obligations and commitments under applicable international law, including International Humanitarian Law and International Human Rights Law, including our obligation to investigate and hold accountable those responsible for violations, and our commitment to end impunity.

- CIVIC recommends adding “investigate” as a key step of the accountability process.

2.2 Existing International Humanitarian Law provides the legal framework to regulate the conduct of armed conflict, and is applicable to the use of explosive weapons in all operating environments, and to all parties to an armed conflict, including both State and non-State armed groups. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and to avoid, and in any event minimize, civilian harm when conducting hostilities, ~~in particular within populated areas.~~

- CIVIC recommends removing reference to populated areas when referring to general obligations of IHL, which are applicable irrespective of whether operations are in populated areas or not.

2.3 We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law under all circumstances, ~~including when conducting hostilities in populated areas,~~ and recall in particular the obligation to distinguish between combatants and civilians as well as between civilian objects and military objectives, and to direct operations only against military objectives; the prohibitions against indiscriminate and disproportionate attacks; and the obligation to take all feasible precautions in attack and against the effects of attacks. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations, and to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

2.4 We condemn tactics designed to exploit the proximity of civilians or civilian objects to military objectives in populated areas, as well as the use of improvised explosive devices directed against civilians or civilian objects, and other violations of International Humanitarian Law, including by non-State armed groups, which further exacerbate the risks to civilians and are of grave concern.

2.5 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.

Part B: Operative Section

Section 3

Committed to strengthening the protection of civilians and civilian objects during and after armed conflict, strengthening compliance with applicable International Humanitarian Law, and addressing the humanitarian consequences arising from armed conflict involving the use of explosive weapons in populated areas, we will:

3.1 Review, implement, and, where necessary, develop or improve national policy and practice with regard to the protection of civilians during and after armed conflict in populated areas.

- CIVIC recommends extending protection to times both during and **after** armed conflict because harm caused by explosive weapons in populated areas lasts beyond the duration and armed conflict.

3.2 Ensure comprehensive *scenario-based* training of our armed forces on International Humanitarian Law, *adapted to the challenges of fighting in urban areas*, and on the measures and good practices, *including means and methods*, to minimize risk to civilians and civilian objects ~~harm, including means to be applied during the conduct of hostilities. in populated areas to~~

- CIVIC recommends adding language to strengthen training contextualized to urban areas, which is the most challenging given density of population, terrain, and infrastructure. Based on our on-the-ground engagement with armed actors, significant gaps exist in factoring in direct and indirect risk to civilians and civilian objects during urban operations.³

3.3 Ensure that our armed forces adopt and implement a range of policies and practices to ~~avoid~~ *minimize* civilian harm, including by *avoiding* ~~restricting or refraining from~~ the use of explosive weapons with *wide area effects* in populated areas, when the effects may be expected to extend beyond a military objective, ~~in accordance with International Humanitarian Law.~~

- CIVIC supports language in the declaration for states to commit to adopt policies and practices that will protect civilians from the effects of explosive weapons. The language refraining or restricting use of explosive weapons however, falls short of the action needed to protect civilians as it gives parties to conflict options of choosing to refrain or restrict the use of weapons. We therefore recommend using language to **avoid** using explosive weapons and add **with wide area effects in populated areas** unless sufficient mitigation measures can be taken to limit their wide area effects and risk of civilian harm. CIVIC supports the call of the ICRC and the Secretary General of the United Nations, as well as a number of states, urging commitments to avoid the use of explosive weapons with wide area effects in populated areas.⁴ We also recommend removing qualifiers such as “*in accordance with IHL*” as it creates confusion on existing legal obligations and policy commitments.

3.4 *Develop and implement capabilities to ensure* that our armed forces take into account the direct and reverberating effects on civilians and civilian objects which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas, conduct *post strike battle damage assessments, and track and analyse causes of civilian harm, to the degree feasible, to identify support new policies, training, identify lessons learned, and support accountability mechanisms.*

- CIVIC recommends including the more comprehensive post strike assessment and tracking of civilian harm, and not just battle damage assessment. The purpose of initial BDA is to assess targeting of

³ See e.g., Center for Civilians in Conflict, *Policies and Practices to Protect Civilians: Lessons from ISF Operations in Urban Areas*, 2018, https://civiliansinconflict.org/wp-content/uploads/2020/11/ISF-Report_PRINT_Revise_hires.pdf; Center for Civilians in Conflict, *Emerging Patterns of Civilian Harm in Ukraine*, 2022, <https://civiliansinconflict.org/emerging-patterns-of-civilian-harm-in-ukraine/>;

⁴ ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared for the 33rd International Conference of the Red Cross and Red Crescent, Geneva, 2019; UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Doc. S/2021/423, 24 May 2021, p. 3; Oslo Global Conference on Reclaiming the Protection of Civilians under International Humanitarian Law, May 2013, co-chairs’ summary: https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/recommendations_final.pdf; Council of Delegates, “Weapons and International Humanitarian Law”, adopted by Resolution 7 of the 2013 Council of Delegates (CD/13/R7), para. 4; Maputo Regional Meeting on Protecting Civilians from the Use of Explosive Weapons in Populated Areas, Communique, 28 November 2017: <https://www.inew.org/maputo-regional-conference-on-the-protection-of-civilians-from-the-use-of-explosive-weapons-in-populated-areas/>; Santiago Regional Meeting on Protecting Civilians from the Use of Explosive Weapons in Populated Areas, Communique, December 2018: <https://www.inew.org/wp-content/uploads/2018/12/Santiago-Communique-EWIPA.pdf>.

military objective and not discovering civilian harm and has been known to miss civilian deaths based on our analysis of examining military investigation reports.⁵ We also recommend linking such a tool as a way to support the commitments mentioned in the declaration on policies, lessons learned, and accountability mechanisms and correlate to paragraph 1.6.

3.5 Undertake policies and practices to ensure the marking, clearance, and removal or destruction of explosive ordnance remnants of war as soon as possible after the end of active hostilities, and the provision of mine risk education. ~~in accordance with our obligations under applicable international law.~~

- CIVIC welcomes commitments on the general duty to take precautions in attack under Additional Protocol I and customary IHL to protect civilians from the dangers of military operations, such as explosive ordnance. However, as formulated the paragraph refers to obligations of States party to the Convention on Certain Weapons (CCW) Protocol V. We, therefore, recommend distinguishing between legal obligations under IHL and policy commitments. We also recommend using explosive ordnance as it's a broader term and includes landmines and IEDs.

3.6 Facilitate the dissemination and understanding of International Humanitarian Law, and commitments that are undertaken in support of this Declaration, and promote ~~its~~ their respect and implementation by all parties to armed conflict, including by non-State armed groups.

- CIVIC recommends including language on disseminating commitments undertaken in this declaration as it would strengthen efforts to protect civilians against the effects of explosive weapons in populated areas.

Section 4

4.1 Strengthen international cooperation and assistance among armed forces, including as part of security assistance and during partnered operation to a party to armed conflict, and other relevant stakeholders—with respect to exchanges of technical and tactical expertise, and humanitarian impact assessments, in order to develop good practice to enhance the protection of civilians, particularly with regard to the use of explosive weapons in populated areas.

- CIVIC welcomes language committing to strengthening international cooperation on good practices to enhance the protection of civilians including with relevant stakeholders. Given the growing practice of military coalitions and security assistance to parties to a conflict, CIVIC re-iterates our call that good practices and policies enacted pursuant to this Political Declaration be shared in security assistance and partnered operations. We have seen all too often that were some militaries have enacted good policies and practices, these are not shared with partner forces thereby missing a critical opportunity, to minimize civilian harm by such forces.

4.2 Collect and, where feasible and appropriate, share and make publicly available disaggregated data, on the direct and reverberating effects on civilians and civilian objects of military operations involving the

⁵ See, CIVIC, *In Search of Answers: US Military Investigations*, 2021, https://civiliansinconflict.org/wp-content/uploads/2021/10/In-Search-of-Answers-Report_Amended.pdf

use of explosive weapons in populated areas. Record location of area, type and sizes of explosive weapons used to support unexploded ordnance clearance activities after hostilities end.

- CIVIC recommends adding language collecting data of civilian objects to have a comprehensive analysis on civilian harm to improve military tactics, techniques, procedures, and support for follow on measures such as restoration of essential services and reconstruction initiatives. We also recommend adding language to record the location of use of explosive weapons to better support the work of organizations involved in mine clearance and risk awareness activities.

4.4 Provide, facilitate and support assistance to - people critically injured, survivors, families of people killed and/or injured - and communities affected by armed conflict in a holistic, integrated, gender-sensitive and non-discriminatory manner, taking account of the rights of persons with disabilities *and age*, and supporting post-conflict recovery and durable solutions. Victims assistance includes physical rehabilitation, psychosocial support, and socio-economic reintegration.

- CIVIC welcomes the improvement of this paragraph and encouraged by the more comprehensive understanding of victim. We however, recommend adding age as a consideration, along with gender and disabilities, in victims assistance programs. CIVIC re-iterates its recommendation to add types of victims assistance as recognized in landmines and cluster munitions frameworks.
- CIVIC supports the language proposed by INEW on recommending states to provide safe, rapid, and unimpeded access to humanitarian relief by inserting new paragraph 4.4. bis:

Provide and facilitate safe, rapid, and unimpeded access for principled humanitarian relief in line with international norms and standards for providing principled and inclusive humanitarian assistance.

4.2 Collect and, where feasible and appropriate, share and make publicly available disaggregated data, on the direct and reverberating effects on civilians and civilian objects of military operations involving the use of explosive weapons in populated areas. Record location of area and type of explosive weapons used to support unexploded ordnance clearance activities after hostilities end.

- CIVIC recommends adding language to record the location of use of explosive weapons to better support unexploded ordnance and mine clearance activities.

4.3 Facilitate the work of the United Nations, the ICRC and relevant civil society organisations collecting data on the impact on civilians of military operations involving the use of explosive weapons in populated areas, as appropriate.

4.4 Provide, facilitate and support assistance to *victims*- people critically injured, survivors, families of people killed and/or injured - and communities affected by armed conflict in a holistic, integrated, gender-sensitive and non-discriminatory manner, taking account of the rights of persons with disabilities *and age*, and supporting post-conflict recovery and durable solutions. Victims assistance includes physical rehabilitation, psychosocial support, and socio-economic reintegration.

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Provide and facilitate safe, rapid, and unimpeded access for principled humanitarian relief in line with international norms and standards for providing principled and inclusive humanitarian assistance.

4.5 Facilitate the work of the United Nations, the ICRC, other relevant international ~~organisations~~ and civil society organisations aimed at protecting and assisting civilian populations and addressing the direct and reverberating impact ~~indirect humanitarian impact~~ arising from the use of explosive weapons in populated areas, as appropriate.

- CIVIC recommends consistency in the document with language using “direct and reverberating impact” from the use of explosive weapons to capture.

4.6 Meet on a regular basis to review the implementation of this Declaration and identify any relevant additional measures that may need to be taken to improve compliance with International Humanitarian Law and strengthen the protection of civilians and civilian objects with regard to armed conflict involving the use of explosive weapons in populated areas. As a starting point, a group of interested States, with the participation of the United Nations, the ICRC, other qualified relevant international ~~organisations~~ and civil society organisations, could develop a compilation of good practice, which could form the basis for structured military-to-military and other exchanges, workshops, and seminars.

4.7 Actively promote this Declaration, distribute it to all relevant stakeholders and seek its adoption and effective implementation by *parties to armed conflict*. ~~the greatest possible number of States.~~

- CIVIC recommends that this declaration be applicable to all parties to armed conflict to include state armed forces and non-state armed groups.