

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

April 2020

Center for Civilians in Conflict (CIVIC)¹ welcomes the draft “Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm from the use of Explosive Weapons in Populated Areas” circulated by Ireland on March 17, 2020.²

The draft text recognizes the humanitarian consequences from the use of explosive weapons with wide area effects, stresses on compliance with international humanitarian law, and sharing of good practices to strengthen protection of civilians.

CIVIC offers the following comments for consideration by Ireland to strengthen the declaration to effectively protect civilians with proposed changes italicized and underlined.

Title

CIVIC, as noted in our February 10 comments, again recommends replacing “humanitarian harm” with *civilian harm* to broadly encompass harm to civilians and civilian objects as humanitarian harm is vague and associates “humanitarian” with a negative term of harm.

Part A: Preamble

Section 1

Paragraph 1.1

Recommend changing “contemporary conflicts” with *armed conflicts* and replacing “the proportion of civilian casualties is increasing” with *civilians bearing the brunt*.

¹ CIVIC 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 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, Ireland, 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

² CIVIC submitted comments to prior draft declaration on February 10, 2020.

Paragraph 1.4

CIVIC recommends breaking this paragraph up with sentences on good practices to be separate and offers clarifying language. Based on our experience, CIVIC continues to see challenges in implementing policies and practices, lack of transfer of such practices during partnered operations or in security assistance, and the need to constantly adapt and learn on new approaches to mitigate civilian harm.

- While many militaries have enacted operational policies and good practices to reduce civilian harm, there is scope for better implementation of these policies and good practices. Such evolving policies and good practices on mitigating civilian harm should be exchanged as part of trainings, security assistance, during partnered operations, and through workshops or seminars to strengthen efforts on protection of civilians and compliance with international humanitarian law.

Paragraph 1.6

CIVIC has provided input into civilian casualty tracking mechanisms enacted by some militaries to track civilian harm incidents and identify root causes of civilian harm to mitigate them. Such a tool works more effectively when self-reporting is supplemented by information being recorded from outside the military for more comprehensive analysis on all possible incidents and remedial measures to acknowledge and mitigate civilian harm are enacted. CIVIC offers the following amendments:

- We recognize the importance of efforts to track civilian casualties and the use of all practical measures to ensure appropriate data collection, including, where possible, data disaggregated by sex, age, and disability. Such tracking efforts by armed forces should include mechanisms for external organizations, media, civil society, who are recording civilian casualties to share incidents with militaries. Comprehensive analysis on data can aid efforts to investigate harm to civilians, effective acknowledgement and assistance to victims, inform lessons learnt processes in armed forces to include new policies, practices, trainings to mitigate civilian harm, and establish accountability.

Section 2:

Paragraph 2.1

CIVIC recommends more direct language in this paragraph.

- We recall our obligations under applicable international law, particularly International Humanitarian Law and International Human Rights Law, and reaffirm our commitment to hold violators accountable.

Part B: Operative Section

Section 3

Paragraph 3.1

CIVIC recommends that national policies on protection of civilians not be limited to urban areas as civilians present outside urban centers are impacted by armed conflict as well.

- Develop, review, implement, and where necessary, improve national policy and practice with regard to protection of civilians during armed conflict in populated areas.

Paragraph 3.2

CIVIC proposes the following amendment to strengthen trainings based on our experience and seeing gaps that exist in factoring in risk to civilians:

- Ensure comprehensive training of armed forces on International Humanitarian Law, scenario based trainings on how to reduce risk of civilian harm, identifying lessons, and good practices during the conduct of hostilities to effectively protect civilians and civilian objects.

Paragraph 3.3

CIVIC re-iterates its recommendation on the previous draft urging commitments on avoidance of use unless sufficient mitigation measures to limit effects can be undertaken.

- Commit to not using explosive weapons with wide area effects in populated areas unless sufficient mitigation measures have been taken to limit their use effects and risk of civilian harm.

Paragraph 3.4

CIVIC proposes the following amendment to clarify the commitment.

- Ensure that our armed forces make reasonable efforts in the planning of military operations and the execution of attacks in populated areas to consider direct, indirect (reverberating) effects on civilians and civilian objects, and take appropriate mitigation measures.

Paragraph 3.6

CIVIC recommends deleting this paragraph as redundant, as paragraphs in section 1, 3 and 4 sufficiently capture identification and development of good practices.

Section 4

Paragraph 4.1

CIVIC welcomes language committing on strengthening international cooperation on good practices to enhance the protection of civilians, but recommend broadening the consultation beyond armed forces to include subject matter experts, civil society, humanitarian organizations who have important insights from armed conflicts to share. We also re-iterate that that good practices and policies should be shared in security assistance and partnered operations as in many cases such practices and policies are not integrated, and offer language recognizing that practices evolve and change as better approaches are identified. CIVIC proposes the following amendments:

- Strengthen international cooperation and assistance with respect to exchange of policies and good practices to enhance the protection of civilians and compliance with international humanitarian law. Such evolving good practices and policies should be shared as part of trainings, security assistance, during partnered operations, and exchanged through workshops or seminars. A working group of interested parties could facilitate exchange of evolving good practices and policies.

Paragraph 4.2

CIVIC welcomes the importance of data collection, and suggest the following amendments to include evidence based analysis to develop new guidance, trainings, and policies.

- Collect and, where appropriate, share and make public data, disaggregated by sex, age, and disability on the impact of explosive weapons on civilians and civilian objects for analysis to identify causes of harm to improve policies, trainings, and effective acknowledgement and assistance to victims.

Paragraph 4.5

CIVIC recommends removing the paragraph on facilitation of humanitarian aid from the operations section of the Declaration, which are policy commitments and moving it to section 2, which discuss binding IHL obligations.

Paragraph 4.4

CIVIC recommends adding types of victims assistance as recognized in landmines and cluster munitions frameworks:

- Victims assistance includes physical rehabilitation, psychosocial support, and socio-economic reintegration.

CIVIC recommends removing language on post conflict stabilization efforts from paragraph 4.4 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

CIVIC is unclear on what the role of States is to encourage cooperation with civil society experts and humanitarian organizations. This should be clarified further or deleted. As noted in amendments to paragraph 4.1 including subject matter experts, humanitarian organizations, and civil society insights on impact of explosive weapons in populated areas will strengthen commitments made in this Political Declaration and should be encouraged.