

Draft Political Declaration circulated by Ireland on 17 March 2020

Written Comments by Austria

1. General comments

Austria thanks and commends Ireland for the high quality of the text of the “Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas” circulated on 17 March 2020. The new text has further improved the already very good first version. As the meeting planned for the week of 23 March had to be postponed, Austria welcomes the opportunity to provide written comments with a view to advance the work and encourage early agreement on the text of the political declaration. Seizing this opportunity Austria wishes to share the following general observations and selected specific comments.

The text contains two major new points: A working group of interested parties forming the basis for structured military-to-military activities to promote the implementation of the political declaration in paragraph 4.1. and periodical meetings to review its implementation and identify any relevant additional measures in paragraph 4.8. Austria welcomes the inclusion of both issues due to our strong conviction that the political declaration should serve as the basis for on the ground improvement for the protection of civilians. Austria intends to participate in and contribute to the work of the working group of interested parties. Periodical meetings to review its implementation and identify any relevant additional measures are an important tool for regularly drawing the attention of states to the issue of EWIPA, both from an angle of national measures as well as international cooperation. The value of such regular meetings has been proven in other similar contexts dealing with the protection of civilians in conflicts.

Austria welcomes the clear structure of the text. The new version has gained in clarity and is well formulated. The draft text is now better focused on the protection of civilians from the use of explosive weapons in populated areas which we consider as sufficient for the scope of the issues dealt with in this text. A clear and limited focus will facilitate implementation and will contribute to achieving effective change on the ground. Other issues relevant for the protection of civilians in armed conflict are and should be dealt with on their own right in other frameworks of the international community. They merit to be more than “add-ons” in this political declaration.

Austria congratulates Ireland for having produced a readable text which is an accomplishment given the ambition to keep the text as short as possible. It is important that the text can be understood not only by experts, but also by a broader public including persons participating in or being affected by armed conflict in urban areas (see also specific comments to section 1).

Austria welcomes that during discussions in the informal consultations as well as through submissions much attention is given to how the political declaration should be implemented and review its implementation. In this regard, we appreciate the food for thought paper submitted by Germany, and look forward to further discussions on the subject matter as we finalize the text.

2. Consistency of language

While it is true that some points dealt with in the text are valid beyond the use of explosive weapons in populated areas, e.g. in urban warfare as a whole, in our view the text would benefit from considering exclusively the use of explosive weapons in populated areas. So we propose to make the relevant changes throughout the text. We refrain from making this point several times in the specific comments for the sake of brevity.

We have noticed the use of different, but in substance not diverging terms in various paragraphs, when it comes to the description of the suffering caused to civilians: humanitarian harm, humanitarian impact, humanitarian consequences. Austria would suggest to use one of these terms consistently throughout the text. Both humanitarian impact and humanitarian consequences are firmly established language, whereas we are more used to civilian harm instead of humanitarian harm.

We see merit in mirroring the language used in the parts on the same topics in part 1 and part 2, e.g. in paragraphs 1.6 and 4.2.

3. Specific comments

1.1. While we do not have any problem with the present formulation, we wonder whether the following slight reformulation would not appear more timeless:

“As **armed** conflicts have become more protracted, complex and urbanised, the proportion of civilian casualties **has increased.**”

1.2. Start the first sentence with “**The use of**”. We are full of admiration how condensed the different effects - direct, indirect or reverberating - are presented here. Since this is the presentation of the problem, especially non-experts might benefit from a more detailed and yet clearly separated description of the various forms of effects. Perhaps first the direct effects that also include psychological and psychosocial harm and where we would like to add disability. Then the indirect or reverberating effects from locally more limited to system-wide effects. We would like to see the following to be mentioned in addition to those already in the text: the loss of civilian livelihoods and environment.

1.3. Perhaps a slight reordering by putting the first half sentence regarding SDGs at the end of the paragraph as a new sentence might appear logical. In the second sentence the inclusion of “humanitarian assistance” between “displaced persons,” and “and” would be welcomed.

1.4. Delete “Tactics designed to exploit” and start with “The exploitation of”. Insert between “and” and “violations” “other”, since the above equally fall under violations of IHL. In this context, Austria wishes to recall that (in accordance with the rule of reciprocity of customary international law) the obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

1.6 Add “and disability” after “age”, changing the “and” into a comma between “sex and age”.

1.7. In our view the three sentences deal with different issues. Each of them would merit a separate paragraph. It seems to us that the appreciation for the work of the United Nations, the ICRC and civil society in providing humanitarian assistance to affected communities equally should be mentioned.

- 2.1. Austria welcomes the clear recall of obligations under applicable International Law, particularly International Humanitarian Law, which provides the criterion for assessing legitimacy of military actions in armed conflict. Consequently, a clear reaffirmation of our commitment to accountability and the importance of holding perpetrators accountable would be welcomed.
- 2.3. We have a preference for “comply with” over “adhere to”.
- 3.5. This paragraph mirrors the obligations under Art. 3 of CCW Protocol V which is valuable especially with a view to those countries that have not acceded to this Protocol. We would encourage the inclusion of language mirroring also its Art. 4. This could be done e.g. by inserting “ after having recorded, retained and, if applicable, transmitted information” between “explosive remnants of war” and “as soon as”.
- 4.1. Austria welcome the new version of this important paragraph. We want to exclude any possible misinterpretation that only armed forces should participate in strengthening international cooperation and assistance in order to develop a community of good practice to enhance the protection of civilians. While we firmly believe in the leading role of armed forces in this endeavour, we would like to insert “and other relevant stakeholders” to signal that also international organisations like the United Nations and the ICRC as well as relevant civil society should make their contributions.
- 4.3. In this context we would prefer to start the paragraph by using “Facilitate the work of” instead of “Support”. Furthermore, we propose replacing “other” by “relevant civil society” before “organisations”. It is not clear to us why here “capturing” is preferred over “collecting”. We understand and subscribe to the thought that it is primarily the task of states to collect data, but regard the “as appropriate, to complement and support the role of States in this area” as problematic for the role of the ICRC and relevant civil society with regard to their impartiality, independence and neutrality. An easy solution could be a simple deletion of these words.
- 4.4. We understand that “holistic” is signalling the comprehensive areas of measures necessary under victim assistance, but would welcome for the sake of better understanding of non-experts a description. A comprehensive one would be to insert after “manner” “based on their needs, including in the form of emergency medical care, physical rehabilitation, psychological support and socio-economic inclusion, as well as support towards the full realisation of their rights and full participation in society.” If this description would be used, this paragraph would stop after “society”. The support of post-conflict-stabilisation is a totally different issue and would better not be considered under victim assistance.
- 4.6. Also here we suggest replacing “Support” by “Facilitate the work of”. If such a change is done, the words “in actions” would become superfluous.
- 4.8. We regard the word “existing” before “International Humanitarian Law” as unnecessary. At the end of this paragraph we would like to see the formulation used in the title of the Political Declaration, since this is the document the implementation of which will be reviewed.