

Protecting Civilians in Urban Warfare

Final Consultation on the draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas

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Thank you, Ambassador Gaffey, and the rest of the Irish team for your tireless work over the past several years on this important political declaration. It has been a long and sometimes intense process, and we appreciate Ireland's efforts to address and incorporate views of a wide range of delegations into the final text. We are confident that this text, reflecting political commitments of the signatories, allows for the promotion of practical and realistic measures that States can readily implement to strengthen their implementation of international humanitarian law (IHL) and to improve the protection of civilians in armed conflict. Although the Declaration is to be adopted and implemented by States, the negotiations and the resulting text were significantly enhanced by the participation and contributions of civil society organizations and international organizations.

The United States is pleased to announce that we are prepared to endorse the draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas that was circulated in advance of our meeting today. We hope and expect that this Declaration will help States improve the protection of civilians and reduce human suffering in armed conflict.

We also appreciate this opportunity to provide points of clarification with respect to our understanding of certain key aspects of the Declaration. We will post this statement on the website of the U.S. Mission to International Organizations in Geneva. Subject to these understandings, the United States is prepared to participate in the signing ceremony in Dublin.

Paragraph 3.3 of the Declaration reflects an important commitment by States for their armed forces to adopt and implement a range of policies and practices to help avoid harm to civilians and civilian objects during military operations. This commitment is not limited to policies and practices focused solely on the use of explosive weapons, but would include broader measures,

for example, policies and practices related to the appropriate mix of strategies and tactics to accomplish mission objectives, including those to protect civilians affirmatively, and to avoid incidentally harming civilians and civilian objects.

Within this broader context, the relevant policies and practices would include, as appropriate, measures restricting or refraining from the use of explosive weapons in populated areas. Paragraph 3.3 represents an important policy commitment, but it does not reflect a legal principle, an emerging customary international law norm, or a policy presumption against the use of EWIPA. Rather, paragraph 3.3 reflects a commitment for armed forces to adopt and implement a range of policies or practices that effectively implement IHL protections for civilians and that, as the competent authorities within each national system deem appropriate, may in some cases be more protective of civilians than what IHL requires. For example, it can be appropriate to take steps, not required by IHL, to mitigate the risk of harm to civilians and civilian objects in planning and conducting an attack, even if the expected death or injury to civilians or damage to civilian objects incidental to that particular attack would not be excessive in relation to the concrete and direct military advantage anticipated. The United States military already takes such steps, where appropriate, along with its implementation of IHL.

At the same time, the commitment recognizes that restricting or refraining from the use of explosive weapons in populated areas may not be appropriate in some circumstances. In our view, whether restricting or refraining from the use of explosive weapons is appropriate in particular circumstances would be a decision made by the military operational command. Military commanders would take into account a variety of considerations, including humanitarian and military considerations, such as potential effects on mission accomplishment, the risk to one's own forces, as well as the risks to civilians. Whether it would be appropriate to restrict or refrain from the use of explosive weapons would be considered by the commander in light of potential alternative means and methods of warfare, including the practical availability of such alternatives and the risks that the use of such alternatives would pose to civilians. In some circumstances, the use of an explosive weapon might be the best option to mitigate the risks to civilians during military operations. At a minimum, States must comply with IHL, by, for example, taking feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians and other persons and objects protected from being made the object of an attack.

Another point we would like to emphasize is that good practices can help strengthen compliance with and improve the implementation of applicable IHL outside the context of the use of EWIPA. While we appreciate the ways this Declaration focuses on EWIPA, we should be mindful that harm to civilians in armed conflict arises in many different contexts and for many different reasons.

Policies and practices developed by States with regard to the protection of civilians in armed conflict should be implemented with regard to non-explosive weapons and when weapons are used outside of populated areas. Therefore, the intention of the United States is to apply its good practices for the protection of civilians on the broadest possible basis, and we encourage all other States to adopt a similar approach in implementing their IHL obligations and this Declaration.

We would also like to take this opportunity to provide some technical comments regarding the discussion of IHL in the Declaration. We would first state our general understanding that this document, which is non-legally binding in nature, is an effort to develop a set of political commitments and not an effort to negotiate new IHL, amend existing IHL, or ascertain customary international law. Although it is important and useful for the Declaration to refer to relevant IHL obligations, we interpret the Declaration to be consistent with IHL, rather than evidence of an interpretation of existing treaty or customary law. In addition, specifically in regard to paragraphs 2.3 and 4.4, we would like to note that not all States that may sign this Declaration are parties to the same treaties. Accordingly, the international law obligations referenced in these paragraphs, including relating to humanitarian access, may not apply to all States in the same manner.

Finally, we would like to underscore the importance of implementation to the success of this Declaration. Adoption is just an initial step. States, especially States that conduct military operations, also need to implement the Declaration for it to have a real-world humanitarian impact.

We believe the commitments set forth in this Declaration are already reflected in existing U.S. military policy and practice. But, nonetheless, the U.S. military continually strives to improve its policies and practices relating to the protection of civilians in armed conflict. As a case in point, the U.S. Department of Defense is currently conducting a Department-wide review

and effort to develop and implement recommendations to improve protection of civilians. We will continue to work with a number of allies and partners on improving civilian protections in armed conflict. We hope to share information about those efforts with other States, and learn from their good practices, in the context of this Declaration.

In this regard, the impact of this Declaration will be significantly enhanced if the follow-on mechanism described in paragraph 4.7 provides an avenue for militaries from around the world to learn from each other and continue to improve their policies and practices. The United States regularly collaborates with our allies and partners on supporting and improving efforts to mitigate and respond to civilian harm. We are eager to enhance our collaboration through the continued development and exchange of good practices and lessons learned in a non-politicized and non-contextualized manner. To this end, we would like to highlight the draft technical compilation of Practical Measures to Strengthen the Protection of Civilians During Military Operations in Armed Conflict that was jointly submitted in 2019 by Belgium, France, Germany, the United Kingdom, and the United States. We hope this compilation can form a basis for future exchanges, workshops, and seminars among our militaries.

In conclusion, the United States would like to reiterate our thanks to Ireland for facilitating our work and to all the delegations that contributed to the productive negotiations on this Declaration over the past several years. We look forward to working with interested States to strengthen the protection of civilians and to reduce human suffering in armed conflict.

Thank you, Mr. Chair.