



InterAction commentary

Draft Political Declaration on Explosive Weapons in Populated Areas

March 2021

InterAction welcomes the revised draft Political Declaration on the use of explosive weapons in populated areas ([REV 1, 29/01/2021](#)), with thanks to Ireland for convening a round of consultations from 3-5 March 2021 to advance the development of this text and appreciation for its leadership on this critical initiative for the protection of civilians in armed conflict.

This written submission outlines key considerations on the revised text for the drafters' consideration in the process of updating the draft declaration. This paper draws on recommendations for the U.S. Department of Defense developed over the past few years by the Protection of Civilians Working Group convened by InterAction.

This commentary complements other civil society submissions to strengthen the declaration and to act as guidance for States through the draft negotiation process, the finalization and adoption of the Political Declaration, and in its implementation. Examples of good practice and operational measures for States are provided in Section 3 commentary.

Overarching considerations

- **The declaration should include references to avoiding and minimizing civilian harm consistently throughout the text, as a key component of State commitments regarding the use of explosive weapons in populated areas (EWIPA).** While compliance with international humanitarian law (IHL) is a necessary precondition for the protection of civilians in armed conflict, and references in this regard should be maintained in the draft Political Declaration, States should operationalize this commitment to protect civilians by adopting concrete steps in their military operations to minimize civilian harm.
- **The declaration should further elaborate on examples of good practice and operational means for States to anticipate, avoid, minimize, and respond to civilian harm, including by avoiding the use of explosive weapons with wide-area effects in populated areas.** While the draft text calls on States to improve and implement policy and practice to strengthen the protection of civilians, it would be helpful to highlight some examples of good practice and operational measures States can take to avoid and minimize civilian harm in populated areas. In doing so, the declaration would illustrate how it can be operationalized in practice. InterAction understands that the purpose of the Political Declaration is not to outline additional legal requirements for States, and that measures States can take may vary across contexts, given different levels of State capacity or other theater-specific considerations. Illustrative good practice and measures could be incorporated in a companion document to the declaration to serve as basis further discussion and exchange among States upon finalization and adoption of the declaration. Some suggested practical measures are listed in “Practical measures to anticipate, avoid, minimize, and respond to civilian harm from damage to civilian objects during armed conflict in populated” (see Section 3 commentary on page 3 of this submission).

Section 1

While the existing language on civilian objects and impacts from the use of EWIPA is a critical contribution to this section, these should be further elaborated. Section 1 should better reflect the wide array of vulnerabilities and critical dependencies in urban systems and the range of consequences for human suffering and indirect harms civilian populations experience in theaters of military operations.

- **Description of civilian objects.** Privately held property and assets, and public services, should be mentioned alongside the existing reference to critical infrastructure. While public services, like health care, and property, like housing, are mentioned, other private assets such as markets, businesses, and other commercial services also play key roles in sustaining civilian lives and livelihoods in populated areas including urban settings. This point can be incorporated into paragraphs 1.2 and 1.3.
- **Description of impacts of explosive weapons in populated areas.** Reference to food systems and food security in populated areas should be included, considering the direct, indirect, and reverberating effects explosive weapons have on food systems and livelihoods as a result of damage to civilian objects (e.g., markets, businesses, crops, livestock). This inclusion should be in addition to references of health infrastructure and health effects, displacement, and other indirect effects. Drafters may consult [Security Council Resolution 2417](#) on conflict and hunger and borrow language from this resolution, for example regarding disruptions to food production, markets, and distribution systems due to the indirect effects of conflict. With respect to the terminology of “reverberating effects”, usage of this term is not as uncommon a term as some States suggest and it is therefore recommended it be maintained in the Political Declaration alongside “direct and indirect effects.” This point can be incorporated into paragraphs 1.2, 1.3, and 1.5.

Section 2

This section provides a unique opportunity to bolster references to avoiding and minimizing civilian harm as an essential component of the protection of civilians in armed conflict. In doing so, Section 2 would provide for a stronger transition to Section 3 on policy commitments and practical measures to avoid and minimize harm.

- **Avoiding and minimizing civilian harm.** In addition to reinforcing compliance with IHL – particularly the principles of distinction, proportionality, precaution, and the appropriate selection of methods and means of warfare – the declaration should place strong emphasis on the desired result of avoiding, minimizing, and mitigating civilian harm (even if such harm results from military strikes which are technically compliant with IHL) through a posture of operational adaptability and implementation of practical measures to avoid harm. This is especially relevant in cases where incidental damage to civilian objects or other civilian harm is not an IHL violation (after all, IHL language around “reasonable foreseeability” is non-prescriptive and necessitates context-specific adaptation to avoid and minimize civilian harm). Therefore, the measures adopted by States with respect to EWIPA should not be pursued solely for the sake of legal compliance, but principally to avoid and minimize civilian harm resulting from their military operations. This point can be elaborated as part of paragraphs 2.2 and 2.3.

Section 3

The operative section constitutes a critical part of the draft declaration. Therefore, drafters should further build on its language and expand this section by enhancing or adding references to minimizing civilian harm in military planning and provide examples of measures for States to anticipate, avoid, minimize, and respond to harm in populated areas throughout the course of military operations.

- **Practical measures to avoid and minimize civilian harm.** Reference to taking practical measures to avoid, minimize, and respond to civilian harm should be added after the phrase “improving compliance with applicable international humanitarian law” in the chapeau to Part B preceding paragraph 3.1.
- **Military planning.** The focus on measures to protect civilians and civilian objects “during hostilities” is welcome but not sufficient and should encompass planning undertaken prior to military operations commencing. Ideally, reference should be made to adequate preparation and planning before operations commence to anticipate and avoid civilian harm in populated areas. This could be added to paragraph 3.2.
- **Companion document with examples of good practice.** First and foremost, the declaration should commit States to sharing examples of good policy, practice and lessons learned with one another, ideally as part of Section 3. An

additional paragraph between 3.2 and 3.3 could be added to this effect. Further, examples of concrete measures States may take to operationalize the commitments to avoid and minimize civilian harm outlined in this Section, and in the Political Declaration as a whole, are sparse and poorly integrated in the text. Suggested measures to anticipate, minimize, and respond to civilian harm during military operations in populated areas are listed below. While the Declaration necessarily must focus on appropriate policies rather specific operational guidance in its Operative Section, the practical measures suggested below may serve as a point of reference to more fully elaborate this section. More specific guidance from the list below could then be incorporated into a companion publication to the Declaration. In this case, these examples could form the basis for further discussion and exchange of good practice among States upon adoption of the Political Declaration, with a view to operationalizing their commitments therein.

Practical measures to anticipate, avoid, minimize, and respond to civilian harm from damage to civilian objects during armed conflict in populated areas:

A range of practical measures for States may be organized by type, from the policy stage to the operational cycle: policy development; military strategy and planning; conduct of hostilities; post-conflict/post-operations. Beyond the direct deaths and injuries, extensive civilian harm results from damage and destruction to civilian objects including critical infrastructure, buildings, private property, public services, etc. Therefore, the list below focuses on anticipating, avoiding, minimizing, and responding to harm from damage to civilian objects. Practical measures States should take may include:

- **Policy development**
 - Actively encourage and solicit input from civil society and communities in conflict-affected areas in developing national policies and frameworks on the protection of civilians, including to inform avoiding EWIPA use and minimizing civilian harm resulting from damage to civilian objects, risks of forced displacement, and other concerns. Engagement with civil society organizations should be a continuous process with a view to adopting and refining comprehensive and effective measures to reduce the risk posed to civilian populations as well as to acknowledge and mitigate the harm caused.
- **Planning**
 - Develop the means, processes, and systems to analyze the significance, function, and value of civilian objects in relation to sustaining civilian life and livelihoods, using quantitative and qualitative data. Actively consult external experts such as urban planners, engineers, public health experts, and other technical specialists to support information gathering and analysis of civilian objects and potential risks of indirect and reverberating effects and associated civilian harms.
 - Ensure that military strategy and planning anticipate and avoid indirect and reverberating effects of military operations for civilian populations, including indirect harm resulting from damage to civilian objects; set forth and implement all feasible measures to spare civilian objects during military planning and targeting.

Prioritize methods, weapons, and munitions that are discriminate in nature in lieu of explosive weapons with wide-area effects with a view to minimizing and mitigating civilian harm in populated areas. These should be selected and available throughout operations to avoid and minimize collateral damage. States should for instance conduct prior assessment and achieve understanding of the area effects, anticipated blast and fragmentation, and foreseen accuracy and range of explosive weapons stockpiled. Under no circumstances should imprecise munitions (e.g., unguided artillery shells) be used in populated areas. Explosive weapons with wide area effects should be excluded from available weapons systems for military operations undertaken in populated areas.

- **Conduct of hostilities**
 - Continuously assess and evaluate potential and observed indirect effects resulting from damage to civilian objects prior to and during the use of kinetic force (e.g., targeting and strike process) and integrating this information throughout the course of operations.
 - Continuously collect, analyze, and integrate relevant post-strike data on civilian harm in urban settings notably harm resulting from the use of explosive weapons and their wide-area, direct, indirect and reverberating effects in populated areas. Relevant data should be fed in a timely manner into operational decision-making in order to avoid and minimize civilian harm in ongoing operations.
 - Forecast life-threatening indirect and reverberating effects on the civilian population, such as public health, food security, and displacement, and integrate relevant real-time information into operational decisions.
 - Proactively engage with international and local civil society organizations, as well as UN agencies, before and during hostilities to anticipate, minimize, and respond to civilian harm in urban settings, notably resulting from damage to civilian objects.
- **Post-operations/post-conflict**
 - Undertake post-facto assessments of damage to civilian objects and after-action reviews which include information on indirect and reverberating impacts on key services in urban areas and civilian populations.
 - Ensure that reports and assessments of damage to civilian objects and indirect and reverberating effects feed into a continuous lessons learned process which supports policy development and informs future guidance, operational planning, and practices to minimize civilian harm in urban areas.
 - Ensure that lessons learned processes include regular evaluation of potential sources of error and confirmation bias regarding the determination of objects as civilian or military, and objects' protected status.
 - Consider policy options and operational measures to mitigate and respond to the damage to civilian objects as well as indirect harms experienced by civilian populations, during and after conflict. Options may include post-conflict stabilization and reconstruction and post-harm amends. (For further information, see below "Assistance and response" in Section 4.)

Section 4

This section includes useful references to key areas for States to enhance their coordination and processes to learn from, minimize, and respond to civilian harm. However, language should be strengthened so that States can better systematize exchange of good practice and lessons learned, data collection, engagement with civilian actors, and measures for post-harm acknowledgement of harm, assistance, and response. These steps should be pursued with a view to informing continuous learning and operational adaptability of military operations and responses to civilian harm in populated areas.

- **International cooperation and assistance among armed forces.** States should encourage coalition members and security partners, including recipients of security or technical assistance (such as training and weapons), to take comparable measures of their own to operationalize their commitments under IHL, this declaration, and to avoid and minimize civilian harm in populated areas, including by avoiding the use of explosive weapons with wide-area effects. This is particularly important considering contemporary armed conflicts whereby States may rely on partnership with other States and non-State partners to achieve their security objectives. Effective reduction of civilian harm globally depends in part on reinforcing responsibility for measures to minimize such harm through these partnerships. This reference could be included into paragraph 4.1 (as well as 4.6 if necessary).
- **Data collection.** States should continuously collect, analyze, and integrate relevant post-strike data relating to civilian harm in populated areas, including instances where explosive weapons with wide area effects have been

used. This should include attention to direct and indirect harm and reverberating effects. Relevant data should be fed in a timely manner into operational decision-making in order to avoid and minimize civilian harm in ongoing operations, and feed into lessons learned process to inform future guidance and policy. This point could be incorporated into paragraph 4.2.

- **Engagement with affected communities, civil society, and UN entities.** This section should further elaborate that States proactively engage with international and local civil society organizations, including affected communities where possible, before and during military operations to better anticipate, plan for, avoid, minimize, and respond to civilian harm in populated areas, including with respect to the consequences of damage to civilian objects. This could be integrated into paragraphs 4.3 and 4.5.
- **Assistance and response.** States should consider a range of measures to address and respond to damage to civilian objects and indirect harms experienced by civilians during and after conflict. Options should include not only “post-conflict stabilization” as referenced, but also reconstruction, as well as post-harm amends, redress, and restitution to affected civilian populations (including those who were displaced, suffered harms, and/or continue to suffer from the indirect and long-term effects of military operations). Redress mechanisms could be applied at the individual or community level. This may include, for example, public acknowledgement or apology for harm suffered, reconstruction and rehabilitation support, and community-wide restoration. Amends, redress, and other forms of assistance should always be context-specific, designed for accessibility by all vulnerable people, and be culturally appropriate. This point could be integrated into paragraph 4.4.

About InterAction

InterAction is a convener, thought leader, and voice for NGOs working to eliminate extreme poverty, strengthen human rights and citizen participation, safeguard a sustainable planet, promote peace, and ensure dignity for all people.

Please direct specific questions to:

- Katherine Kramer, Senior Manager for Protection of Civilians at InterAction kkramer@interaction.org
- Archibald Henry, Policy Coordinator for Protection of Civilians at InterAction ashenry@interaction.org

Annex: Relevant resources and additional materials

AOAV, “[The impact of explosive weapons on children in Syria](#),” October 2020.

Article 36, “[Fleeing the Bombs: Approaching explosive weapons in the policy framework of displacement](#).” November 2017.

Center for Civilians in Conflict and InterAction, “[Protection of Civilians in Mosul: Identifying Lessons for Contingency Planning](#),” October 2017.

Center for Civilians in Conflict, “[The Sum of All Parts: Reducing Civilian Harm in Multinational Coalition Operations](#),” January 2019.

Center for Civilians in Conflict, “[Making Amends: A Guide to US Law and Policy on Post-Harm Amends](#),” January 2021

Global Coalition to Protect Education from Attack, “[Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict](#),” GCPEA 2014.

International Committee of the Red Cross, “[International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to the Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions](#),” June 2020.

InterAction and Stanford Health Policy, “[Building the Evidence Base: Addressing the Reverberating Effects of Military Operations on Civilian Life](#),” 2 November 2020.

InterAction Protection of Civilians Working Group, "[Minimizing Civilian Harm in Military Operations: InterAction Submission to the High-Level Panel on Internal Displacement](#)," May 2020.

InterAction, "[Recommendations for the High-Level Panel on Internal Displacement: Additional Submission](#)," March 2021.

InterAction, "[Civil Society Guidance for a Model Policy: DoD Policy on Civilian Harm](#)," March 2020.

NGO Recommendations for DoD Policy on Civilian Harm, "[Protection of Civilian Objects including Critical Infrastructure in U.S. Military Operations](#)," November 2019.

NGO Recommendations for DoD Policy on Civilian Harm, "[U.S. Partnered Operations and the Protection of Civilians](#)," December 2019.

NGO Recommendations for DoD Policy on Civilian Harm, "[Displacement and the Protection of Civilians in U.S. Military and Partnered Operations](#)," December 2019.

NGO Recommendations for DoD Policy on Civilian Harm, "[DoD Engagement with Humanitarian and Human Rights Organizations on Civilian Harm in U.S. Military Operations](#)," July 2019.

Pax for Peace, "[Protect civilians from the use of explosive weapons](#)," October 2020.