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Article 36 is a specialist non-profit organisation, focused on reducing harm from weapons.

IMPLEMENTING THE POLITICAL DECLARATION ON THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS: KEY AREAS AND IMPLEMENTING ACTIONS

KEY MESSAGES

- ✗ The political declaration is a landmark achievement. If fully and effectively implemented, it has the potential to significantly strengthen the protection of civilians from the use of explosive weapons in populated areas.
- ✗ All states should endorse the declaration. Endorsement is a recognition of the harms experienced by others and a commitment to work – in good faith – to prevent and address future harms.
- ✗ The declaration sets an agenda for positive change and the progressive realisation of strengthened protection of civilians from the use of explosive weapons in populated areas.
- ✗ Its full and effective implementation will require endorsing states to take appropriate actions, including the revision of existing or development of new policy and practices, that seek to:
 - Avoid civilian harm by restricting or refraining from the use of explosive weapons in populated areas.
 - Protect civilians from the foreseeable direct and indirect or reverberating effects of military operations.
 - Improve understanding of the impact of explosive weapons use on civilians and inform operational changes and effective responses through the collection and sharing of data.
 - Ensure prompt and effective assistance to the victims of explosive weapons, their families and communities affected by armed conflict.
 - Ensure an effective follow-up process to review and further the implementation and widespread adoption of the declaration.

Responding to the growing international concern at the devastating harm resulting from the use of explosive weapons in populated areas and following the 2019 *Vienna Conference on the Protection of Civilians in Urban Warfare*¹, Ireland launched a process of consultations in November 2019 to develop a political declaration to address this critical issue. Involving the participation of states, the United Nations (UN), the International Committee of the Red Cross (ICRC) and members of the International Network on Explosive Weapons (INEW), consultations took place in February 2020, March 2021 and April and June 2022. The final text of the *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas*² was presented at the June consultation during which several states indicated their intention to endorse the declaration.³ Formal endorsement of the declaration will take place at the adoption conference in Dublin on 18 November 2022.

Endorsement of the political declaration is an act of recognition by the endorser states of the harms experienced by civilians as a result of the use of explosive weapons in populated areas. It is an expression of solidarity with those impacted and a promise to work to prevent and address future harms. While the declaration is not an international treaty giving rise to legal obligations for those states that join it, states that sign and endorse the declaration are committing – and will be expected – to act in good faith and take the necessary steps to implement the commitments they have voluntarily consented to.

Implementation of the declaration will require time: time for discussion and understanding within and between relevant government departments and national armed forces, in consultation with the UN, ICRC and civil society. And time to revise existing, or develop the new, policies, guidance, processes and tools required to give practical effect to the commitments contained in the declaration. In that sense, the declaration should be seen as setting an agenda for positive change and the progressive realisation of strengthened protection of civilians from the use of explosive weapons in populated areas.

This policy briefing is intended to support the efforts of states to understand and identify the actions required to implement their commitments under the declaration. It does so with reference to five key areas reflected in the declaration:

- ✕ Avoiding civilian harm by either restricting or refraining from the use of explosive weapons in populated areas.
- ✕ Protecting civilians from the foreseeable direct and indirect or reverberating effects of military operations.
- ✕ Collecting and sharing data to improve understanding of the impact of explosive weapons use on civilians and civilian objects and to inform operational changes and response.
- ✕ Assisting the victims of explosive weapons, their families and communities affected by armed conflict.

- ✕ The process of follow-up to review and further the implementation and widespread adoption of the declaration.

This policy briefing explains why these different areas matter; what the declaration says in relation to each; and the actions required for their implementation.

BOX 1: STRUCTURE OF THE POLITICAL DECLARATION

The declaration is composed of two parts. Part A is the preamble and consists of two sections. Section 1 describes the nature and challenges of contemporary armed conflicts in urban settings and, specifically, the devastating impact on civilians and civilian objects of the use of explosive weapons in populated areas. Section 2 reaffirms the relevance of international humanitarian law (IHL) to the use of explosive weapons in populated areas and restates a number of key IHL obligations.

Part B is the operative section. It is composed of sections 3 and 4 which contain 14 separate commitments that endorser states undertake to implement. Section 3 contains specific commitments relating to the protection of civilians in urban warfare and the use of explosive weapons in populated areas. Section 4 lists a series of commitments relating to international cooperation and assistance; data collection; humanitarian access and victim assistance; support to the work of the UN, ICRC and other organizations; and commitments relating to follow-up to, and implementation of, the declaration.

1. AVOIDING CIVILIAN HARM BY RESTRICTING OR REFRAINING FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

1.1 WHY THIS MATTERS

Throughout the consultation process, Article 36 and other members of INEW, as well as the UN, ICRC and a broad range of states, called for the future declaration to embody a presumption against the use of explosive weapons with wide area effects in populated areas, such as an express commitment to avoid such use. This would have the greatest impact in preventing and mitigating the pattern of short- and long-term harm to civilians that has been widely documented to result from the use of explosive weapons in populated areas and which led to calls for, and the eventual development of, the political declaration. The final text of the declaration does not contain an express presumption against the use of explosive weapons with wide area effects

in populated areas. However, it does call on states to ensure that their armed forces avoid civilian harm by restricting or refraining from the use of explosive weapons in populated areas.

1.2 WHAT THE DECLARATION SAYS

Paragraph 3.3 of the declaration commits states to:

Ensure that [their] armed forces adopt and implement a range of policies and practices to help avoid civilian harm, including by restricting or refraining as appropriate from the use of explosive weapons in populated areas, when their use may be expected to cause harm to civilians or civilian objects.

1.3 IMPLEMENTING ACTIONS

Implementing the commitment in paragraph 3.3 raises two important questions for militaries:

- ✗ First, how to determine when the use of explosive weapons in populated areas may be expected to cause harm to civilians and civilian objects?
- ✗ Second, if such use may be expected to cause harm, how to determine the appropriate course of action to either *restrict* or *refrain* from the use of explosive weapons?

1.3.1 DETERMINING WHEN EXPLOSIVE WEAPONS USE MAY BE EXPECTED TO CAUSE HARM

An essential first step towards answering both questions is to recognize the fundamental relationship that exists between the extent of area effects of explosive weapons and the risks they pose to civilians and civilian objects when used in “populated areas” (see Box 2 for an explanation of the term “populated areas”).

BOX 2: UNDERSTANDING THE TERM “POPULATED AREAS”

For the purposes of interpreting and applying the commitments in the declaration, the term “populated areas” should be read as synonymous with the term “concentration of civilians” which appears in existing IHL. It is understood to refer to “any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.”⁴ As others have noted, the references to refugees, evacuees and nomads and the use of the term “inhabited” suggests that the presence of civilians and civilian objects – which need not be in great numbers – is a defining characteristic of areas in which the use of certain weapons should be restricted.⁵

Explosive weapons function by projecting blast, heat, and fragmentation (dispersal of pieces of the weapon or surrounding material) around the point of detonation. These primary effects originate directly from the munition itself. They can result in the death and injury of civilians and severe damage to or destruction of civilian objects such as houses and apartment buildings, hospitals, schools, workplaces, and essential infrastructure such as water and power systems. The extent of damage depends upon a range of factors, including the explosive power of the detonation, the location of the detonation relative to the affected structure (distance), the angle of attack, and the characteristics of the affected structure. Explosive weapons also give rise to secondary effects which stem from weapon’s interaction with the immediate environment (including debris from concrete and glass from damaged buildings). Assessing their likelihood requires an understanding of the specific context in which the weapon will be used.

As a general rule, the greater the area effects of the weapon, the greater the risk of harm to civilians and civilian objects. On this basis, determining whether the use of explosive weapons may be expected to harm civilians and civilian objects requires that militaries:

- ✗ Undertake prior assessment of the *technical characteristics of explosive weapons* to ensure that commanders and other military personnel authorising the use of explosive weapons in a given situation have a full understanding of the scale of area effects of specific weapons and the corresponding likelihood of harm to civilians and civilian objects.
- ✗ Undertake prior assessment of the *built environment* to understand how it influences weapon effects and the potential for harm to civilians and damage to civilian objects from direct and indirect or reverberating effects.
- ✗ Assess in real-time the specific *operational context* in which explosive weapons are to be used in order to understand how this will influence weapon effects and the potential for harm to civilians or civilian objects from direct and indirect or reverberating effects.

Although, as noted in Box 2, it is the presence of civilians and civilian objects that is the defining characteristic of areas in which the use of explosive weapons should be restricted, particular attention is warranted to how the built environment – in which a significant proportion of explosive weapons use occurs – influences and aggravates weapons effects. The built environment, as opposed to more open areas, presents significant challenges in predicting and controlling the scale and nature of the area effects of a weapon. For example, tall buildings and narrow streets can concentrate and significantly enhance blast pressure in some places, channeling the blast through “urban canyons”. As a result, blast damage can be more extensive over much wider areas than if the same explosive weapon had been detonated in an open space. Due to the complex interaction of the blast wave with reflecting surfaces, the extent and severity of blast damage to the built environment can be very difficult to accurately predict.⁶ This difficulty is pronounced in situations

involving the use of indirect fire weapons or multiple launch systems where the precise point of impact of the weapon (or each weapon in the salvo) cannot be accurately predicted.⁷ In addition, building and other materials such as glass, cement, steel and other debris add to the fragmentation effect of the weapon, increasing the likelihood of death and injury of civilians and destruction or damage of civilian objects – again in ways that are difficult to accurately predict.

1.3.2 DETERMINING WHAT'S APPROPRIATE: WHETHER TO RESTRICT OR REFRAIN FROM THE USE OF EXPLOSIVE WEAPONS

Understanding the area effects of weapons is essential for determining when their use in populated areas is likely to harm civilians and civilian objects. Pursuant to paragraph 3.3, in situations where such use may be expected to cause harm to civilians and civilian objects, military forces need to determine the appropriate course of action and, specifically, whether they should *restrict* or otherwise *refrain from* the use of explosive weapons.

A GENERAL RULE TO RESTRICT THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

In making such a determination, it should be assumed at the outset that the use of explosive weapons in populated areas is likely to cause harm to civilians or civilian objects for two reasons. First, because of the way that explosive weapons function – by projecting blast, heat and fragmentation from the point of detonation. Second, because cities, towns, villages and other populated areas are characterised by a density or concentration of civilians and civilian objects. The use of a weapon that projects blast, heat and fragmentation within a concentration of civilians and civilian objects inevitably has the potential to cause harm.⁸

As a general rule, therefore, it is appropriate under paragraph 3.3 for militaries to restrict the use of explosive weapons in populated areas because of the actual or presumed presence of civilians and civilian objects. The use of explosive weapons should only be considered in situations where it is *not* expected to cause harm to civilians or civilian objects – again, based on an understanding of the area effects of the weapon and the operational context in which they will be used.

REFRAINING FROM USE WHEN WEAPON EFFECTS EXTEND BEYOND THE MILITARY OBJECTIVE

Determining when to *refrain from* the use of explosive weapons depends, again, on understanding the area effects of the weapon in question and the context of use and using this understanding to determine whether the area effects will extend beyond the military objective. The likelihood that area effects will extend beyond the military objective and, therefore, pose a risk to civilians and civilian objects within the vicinity of the strike marks a critical threshold. It marks the point at which it becomes appropriate under paragraph 3.3 for militaries to refrain from the use of explosive weapons in populated areas.

In a populated area, the greater the distance at which the primary blast and fragmentation effects extend beyond the military objective, and the greater the area covered by explosive weapons (in the case of the use of multiple munitions against a military objective), the greater the likelihood of harm to civilians and civilian objects within the vicinity of the military objective. This is often referred to as “wide area effects”.

Generally speaking, most explosive weapons have the potential to have wide area effects depending on the size of the military objective against which they are being used. There is, however, particular concern over the use in populated areas of explosive weapons, either individually or in combination, that possess the following characteristics:

- ✗ A substantial blast and fragmentation radius resulting from a large explosive content, for example, large aircraft bombs.
- ✗ Inaccuracy of delivery, meaning that the weapon may land anywhere within a wide area and may need to be “walked” onto the target, for example, unguided indirect fire weapons such as artillery and mortars.
- ✗ Use of multiple firings or multiple warheads, which are sometimes designed to spread across an area, such as multi-launch rocket systems.⁹

The particular risk posed by wide area effects is recognized in the preamble to the declaration. Paragraph 1.2 refers to the devastating impact on civilians and civilian objects of the use of explosive weapons in populated areas and notes that the risks “increase depending on a range of factors, including the weapon’s explosive power, its level of accuracy, and the number of munitions used.”

It should be noted that wide area effects are cumulative, with blast and fragmentation effects always present and inaccuracy of delivery and the use of multiple warheads, where applicable, extending those effects across a wider area.

1.3.3 EMBEDDING THE COMMITMENT TO AVOID CIVILIAN HARM IN POLICY AND PRACTICE

The principal vehicle for implementing the commitment in paragraph 3.3 to avoid civilian harm is, as stipulated in paragraph, the adoption of “a range of policies and practices”. Based on the considerations above, such policies and practices should establish processes for ensuring the following actions:

- ✗ Prior assessment of the technical characteristics of explosive weapons to ensure a comprehensive understanding of the scale of area effects and the corresponding likelihood of harm to civilians and civilian objects by commanders and other military personnel authorizing the use of explosive weapons.
- ✗ Prior assessment of the built environment and how this influences the secondary effects of explosive weapons and the potential for harm to civilians and damage to civilian objects.

- ✕ Real-time assessment of the actual operational context in which the weapons will be used and how this will influence the secondary effects of explosive weapons and the potential for harm to civilians and damage to civilian objects.
- ✕ Continuous refinement of understandings of weapons effects based on analysis gleaned from battle damage and other assessments concerning the performance and impact of explosive weapons on civilians and civilian objects.
- ✕ Restricting the use of explosive weapons in populated areas as a general rule, except in clearly defined circumstances when such use is not expected to cause harm to civilians or civilian objects.
- ✕ No use of explosive weapons in populated areas when the weapon's area effects (based on an understanding of the weapon itself as well as the specific context of use) are likely to extend beyond the military objective and may be expected to cause harm to civilians and civilian objects.

2. PROTECTING CIVILIANS FROM THE FORESEEABLE DIRECT AND INDIRECT OR REVERBERATING EFFECTS OF MILITARY OPERATIONS

2.1 WHY THIS MATTERS

Protecting civilians from foreseeable direct and indirect or reverberating effects of military operations is another key commitment. It is central to the declaration's overall objective of strengthening the protection of civilians. It also responds to the long-standing concern of the UN, ICRC and civil society that the use of explosive weapons in populated areas not only gives rise to immediate or direct impacts, such as the death, injury and maiming of civilians, but also has severe cumulative, and long-term consequences for civilians and the civilian population more broadly, including as a result of the damage and destruction of critical infrastructure, which must also be addressed.

2.2 WHAT THE DECLARATION SAYS

Paragraph 3.4 commits states in part to:

Ensure that [their] armed forces, including in their policies and practices, take into account the direct and indirect 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.

2.3 IMPLEMENTING ACTIONS

2.3.1 UNDERSTANDING THE NATURE AND COMPOSITION OF THE "POPULATED AREA" AND THE FORESEEABLE DIRECT AND INDIRECT OR REVERBERATING EFFECTS

A necessary first step in implementing paragraph 3.4 is the need for militaries to have a comprehensive understanding of the nature and composition of the populated area in which military operations are being conducted; and the different direct and indirect or reverberating effects that "can reasonably be foreseen" to arise as a result of military operations in that area and the use of explosive weapons.

This is particularly the case with regard to the built environment. This contains a density of civilians and different types of civilian objects, some of which are essential to the survival of the civilian population. They are typically characterized by commercial and residential buildings alongside schools, hospitals and other civic institutions. Servicing these structures are networks of water, sanitation, power, communications and transport infrastructure critical to the local population. Conducting military operations in built environments requires considerable and often very detailed information which can be difficult to obtain.¹⁰ Moreover, while some critical infrastructure is visible and identifiable to the trained eye from the ground or the air, some such as water, sewer and electricity lines may be underground, their precise location unknown to attacking forces.

When explosive weapons are used in built environments, even in attacks directed at legitimate military objectives, there is an elevated risk of harm to the civilian population and damage to civilian objects. As noted in the declaration's preamble, the blast and fragmentation effects of explosive weapons, and the resulting debris, cause immediate deaths and injuries, including lifelong disabilities (paragraph 1.3).

Beyond these direct effects, damage to or destruction of civilian objects, especially critical civilian infrastructure, can have important indirect or reverberating effects.¹¹ As the declaration notes, when critical civilian infrastructure, such as 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. 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 (paragraph 1.4). The damage and destruction of housing, schools, hospitals, places of worship and cultural heritage sites further aggravates civilian suffering. The environment can also be impacted by the use of explosive weapons, through the contamination of air, soil, water, and other resources (paragraph 1.5). The use of explosive weapons in populated areas can also result in psychological and psychosocial harm to civilians. The direct and indirect or reverberating effects often result in the displacement of people within and across borders, and have a severe impact on progress towards the Sustainable Development Goals. Unexploded ordnance impedes humanitarian access, the return of displaced persons and reconstruction efforts, and causes casualties long after hostilities have ended (paragraph 1.6).

The declaration's elaboration of direct and indirect or reverberating effects reflects a substantial body of research that has documented such effects in recent armed conflicts in Afghanistan, Iraq, Libya, Syria, Yemen and elsewhere.¹² It should be considered representative of the direct and indirect or reverberating effects that "can reasonably be foreseen" to result from military operations in populated areas and which must, pursuant to paragraph 3.4, be taken into account in the planning and execution of military operations in such areas in order to protect civilians – as also reflected in existing military policy and practice (see Box 3).

BOX 3 – MITIGATING INDIRECT OR SECOND AND THIRD ORDER EFFECTS IN EXISTING MILITARY POLICY AND PRACTICE

Existing military policy and practice recognizes the need to consider and mitigate unintended and "second" and "third-order" effects of military operations on the civilian population. For example, NATO's *Handbook on Protection of Civilians* states that the targeting process should include legal and engineering considerations and take into account second and third order effects that can negatively affect the civilian population for a longer time.¹³ It also notes that military forces need to take into account the negative wide area effects of explosive weapons in populated areas, including foreseeable second and third order effects.¹⁴

In August 2022, the US Department of Defense (DOD) released the Civilian Harm Mitigation and Response Action Plan to improve how the DOD and United States (US) armed forces mitigate and respond to civilian harm.¹⁵ Objective 3 of the plan establishes the concept of the "civilian environment" which includes "the civilian population and the personnel, organizations, resources, infrastructure, essential services, and systems on which civilian life depends".¹⁶ It notes that "a robust understanding of the civilian environment ... can improve the commander's ability to distinguish non-adversarial aspects of the operational environment and to provide guidance to the forces under his or her command."¹⁷ Operational plans should include an assessment of the civilian environment as part of the operational environment (including, e.g., an assessment of potential risks to civilians); a clear articulation of objectives with respect to the civilian environment as part of overall mission objectives; anticipate the impact of operations on the civilian environment; and provide for the protection and restoration of the civilian environment to the extent practicable.¹⁸

2.3.2 EMBEDDING THE COMMITMENT TO PROTECT CIVILIANS FROM DIRECT AND INDIRECT OR REVERBERATING EFFECTS INTO POLICY AND PRACTICE

Paragraph 3.4 identifies the development of policy and practice as the principal vehicle for implementing the commitment to protect civilians from direct and indirect or reverberating effects. The overall objective should be to ensure that the presence of civilians and direct and indirect or reverberating effects are factored into operational planning, decision-making and execution. More specifically, in revising existing or developing new policies and practices, military forces should:

- ✗ Review and refine baseline assumptions they make concerning the presence and behaviour of civilians and the presence of civilian objects in populated areas, including following warnings and evacuation orders. They should err on the side of caution and always assume the presence of civilians unless confirmed otherwise.
- ✗ Establish processes to:
 - Positively identify military objectives and to identify and monitor civilian presence, including pattern of life analyses, and the location of civilian objects, including essential infrastructure, in particular, within the vicinity of potential military objectives.
 - Facilitate an understanding of the value and significance of civilian objects, including critical infrastructure, for the civilian population.
 - Ensure that the presence of civilians and civilian objects, including those that have particular value and significance for the civilian population, is incorporated into the targeting process (including through the participation of subject-matter experts such as engineers, urban planners, etc.) in order to avoid or mitigate harm to civilians and civilian objects in the context of both deliberate and dynamic attacks.
 - Ensure that the presence of civilians is accounted for up to the point at which the strike takes place; and when there is doubt, for delaying or aborting the strike.
- ✗ Review and continuously refine their understanding of what constitutes reasonably foreseeable indirect or reverberating effects, taking into account the existing and expanding research base that has significantly improved understanding of the foreseeability, nature and scope of such effects.
- ✗ Refine their understanding and ability to anticipate indirect or reverberating effects resulting from both individual *and* cumulative attacks.
- ✗ Ensure the targeting process includes consultation with subject-matter experts (urban planners, civil engineers, water and sanitation engineers, public health experts, etc.) to inform understandings of the role and significance of civilian

infrastructure and anticipation of possible indirect or reverberating effects.

- ✕ Ensure this analysis feeds into and informs a civilian object's protected status and inclusion on the no-strike list (NSL); and that its inclusion on the NSL and any subsequent changes are communicated to the civilian population.
- ✕ Ensure the availability of weaponeering and other options to mitigate indirect or reverberating effects.

3. COLLECTING AND SHARING DATA TO IMPROVE THE UNDERSTANDING OF IMPACT AND INFORM OPERATIONAL CHANGES AND RESPONSE

3.1 WHY THIS MATTERS

The collection and sharing of data on the impact on civilians and civilian objects of the use of explosive weapons in populated areas is a critical function. This is underlined in paragraph 1.8 of the preamble which recognizes “the importance of efforts to record and track civilian casualties, and the use of all practicable measures to ensure appropriate data collection”. It is important for a number of reasons, some of which are recognized in paragraph 1.8 which further observes that “improved data on civilian harm would help to inform policies designed to avoid, and in any event minimize, civilian harm; aid efforts to investigate harm to civilians; support efforts to determine or establish accountability, and enhance lessons learned processes in armed forces.”

3.2 WHAT THE DECLARATION SAYS

Paragraph 4.2 of the declaration commits states to:

Collect, share, and make publicly available disaggregated data on the direct and indirect effects on civilians and civilian objects of military operations involving the use of explosive weapons in populated areas, where feasible and appropriate.

In addition, paragraph 4.3 commits states to:

Facilitate the work of the [UN, ICRC] and relevant civil society organizations collecting data on the impact of civilians of military operations involving the use of explosive weapons in populated areas, as appropriate.

The above-mentioned paragraph 3.4 also commits states:

Ensure that their armed forces ... conduct damage assessments to the degree feasible, and identify lessons learned.

3.3 IMPLEMENTING ACTIONS

3.3.1 ESTABLISH CAPACITY TO TRACK CIVILIAN HARM

Meeting the commitments contained in paragraphs 3.4 and 4.2 could be readily achieved through the practice of civilian harm tracking.¹⁹ As paragraph 1.8 of the declaration notes, civilian harm tracking is not a new practice and has been implemented by a range of armed forces in different contexts (see Box 4). It is generally understood as an internal process through which an *armed actor* (such as state armed forces or an armed group) systematically gathers data on civilian deaths and injuries, property damage or destruction, and other instances of harm to civilians caused by its operations. It is different from the practice of casualty recording which refers to the process of systematically and continuously documenting every individual killed or injured by armed violence and which may be undertaken by civil society, intergovernmental organizations, or state actors. Casualty recording seeks to provide a complete and transparent record, including detailed information about casualties and the incidents in which individuals were harmed.²⁰

BOX 4 – EXISTING MILITARY POLICY AND PRACTICE ON CIVILIAN HARM TRACKING

As paragraph 1.8 of the declaration notes, civilian harm tracking is not a new practice and has been implemented by a range of armed forces in different contexts. Beginning in 2008, civilian harm tracking was a critical component of the broader efforts of the International Security Assistance Force (ISAF) in Afghanistan to protect civilians from the effects of military operations.²¹ It was also a key component of the indirect fire policy developed by the African Union Mission in Somalia (AMISOM) in 2010.²²

Some military forces/coalitions have, in recent years, required reporting and begun to release limited data on civilian casualties resulting from their operations. For example, since 2019, the US Department of Defense (DOD) issues an annual report on civilian casualties which lists all US military operations, including each specific mission, strike, engagement, raid, or incident, during the year covered by the report were confirmed, or reasonably suspected, to have resulted in civilian casualties.²³ Beginning in April 2020, the US Africa Command (AFRICOM) has issued civilian casualty assessments on a quarterly basis which provide an overview of the status of investigations into allegation of civilian harm.²⁴ AFRICOM was also the first US Combatant Command to establish a public reporting portal for civilian harm allegations.²⁵ The US DOD has established a web page that provides contact details of the different combatant commands for the submission of allegations of harm resulting from US military operations.²⁶

(BOX 4 CONTD)

More recently, objective 7 of the above-mentioned DOD *Civilian Harm Mitigation and Response Action Plan* provides for the establishment of Civilian Harm Assessment Cells (CHACs) by combatant and other operational commands. Their functions include identifying, receiving and compiling information related to civilian harm; initiating, conducting, and coordinating civilian harm assessments; supporting the command in taking response actions; analysing civilian harm incidents, patterns, trends, and contributing factors and making these available to command staff to inform current operations and broader organizational learning; and to document, retain, archive, and disseminate information within the DOD related to civilian harm assessments, investigations, responses, and related analyses.²⁷ Joint targeting doctrine will be updated to provide for the inclusion of information and analyses from CHACs in the joint targeting process during operations.²⁸ The Action Plan will inform the completion of a DOD Instruction (DODI) on *Civilian Harm Mitigation and Response* which will address, *inter alia*, DOD processes and standards for reviewing, assessing, and investigating reports of civilian casualties provided by any source; processes for affected populations and NGOs to make reports and provide information to US forces regarding reports of civilian casualties; and DOD processes to identify and implement lessons learned from studies, reviews, or investigations of incidents of civilian casualties.²⁹

NATO's 2021 *Handbook on Protection of Civilians* refers to tracking incidents of civilian casualties as key to mitigating civilian harm from NATO's own actions and central to "Civilian Casualty Management Actions". In addition, NATO's updated joint targeting doctrine, issued in November 2021, provides for the establishment of a "casualty tracking mechanism" as part of the assessment phase of the joint targeting cycle.³⁰ It further stipulates the use of sex and age disaggregated data to inform future operations and minimize civilian casualties and the integration of a gender perspective in the assessment of human and material damages.

Beyond NATO and the US, initiatives to better track and understand civilian harm have also been undertaken by the armed forces of Ukraine and New Zealand and by the G5 Sahel Joint Force.³¹

CIVILIAN HARM TRACKING AND BATTLE DAMAGE ASSESSMENTS

It should also be noted that civilian harm tracking is a more comprehensive practice than the undertaking of "damage assessments" referred to in paragraph 3.4 of the declaration or "battle damage assessments" (BDAs) as they are more commonly known. BDAs are generally conducted after an attack. Their

principal function is to assess the effect or degree of damage inflicted on the target and to make recommendations for additional strikes. In practice, BDAs are not always undertaken due to the lack of capacity. Nor do they always consider the impact of the attack on civilians and civilian objects. To the extent that they do, military analysts often rely on aerial video assessments of damage and civilian casualties which provide an incomplete picture of civilian harm.³²

3.3.2 EMBEDDING THE COMMITMENTS TO DATA COLLECTION IN POLICY AND PRACTICE

A conscious and concerted effort to understand the impact of military operations on civilians and civilian objects, including from the use of explosive weapons, is vital in order to ensure accountability and redress, learn lessons and continuously work to strengthen the protection of civilians over time. To this end, as part of their efforts to implement the actions contained in paragraphs 3.4 and 4.2, militaries should develop policy and practice which provides for the establishment of:

- ✦ Standing capabilities to track, receive, analyze, and learn from, incidents of harm to civilians and civilian objects that would also provide the basis for regular, public reporting.
- ✦ Processes to ensure that analyses, findings and lessons-learned routinely inform operational changes and broader policy development in support of more effective protection of civilians.

3.3.3 FACILITATING THE WORK OF THE UN, ICRC AND CIVIL SOCIETY

Paragraph 4.3 commits endorser states to "[f]acilitate the work of the [UN, ICRC] and relevant civil society organizations collecting data on the impact of civilians of military operations involving the use of explosive weapons in populated areas, as appropriate." These actors collect such data for a variety of reasons, including in order to better understand the short and long-term impact of explosive weapons use on the civilian population – a crucial step towards better understanding what constitutes reasonably foreseeable indirect effects mentioned in paragraph 3.4. Civil society organizations and the ICRC have played an indispensable role in developing the understanding of the short and long-term impacts of explosive weapons on civilian populations, providing a solid evidence base to support the need for states and militaries to address the use of explosive weapons in populated areas. Data collection is also an essential component of the efforts of these actors to assist the victims of explosive weapons (see below) and to strengthen the protection of civilians from the risks and effects of explosive remnants of war (ERW), including such activities as risk education, and ERW marking and clearance.

3.3.4 EMBEDDING THE COMMITMENT TO FACILITATE THE WORK OF THE UN, ICRC AND CIVIL SOCIETY IN POLICY AND PRACTICE

With these considerations in mind, the commitment to facilitate the work of the UN, ICRC and civil society organizations collecting

data on the impact of explosive weapons should be understood broadly to include a range of possible actions which should be reflected in revised or new policy and practice. These include:

- ✕ Collecting, sharing, and making publicly available to the UN, ICRC and civil society organizations disaggregated data on the direct and indirect effects on civilians and civilian objects of military operations involving the use of explosive weapons in populated areas (as provided for in paragraph 4.2)
- ✕ Commissioning and/or funding research and studies by the UN, ICRC and civil society organizations into the short and long-term impact of the use of explosive weapons in populated areas to further understanding of those impacts, the nature and scope of what is “reasonably foreseeable”, and the steps required to prevent and mitigate them.
- ✕ Supporting ERW risk education, marking and clearance activities by the UN, ICRC and civil society by providing them with data on the use of explosive weapons, including the approximate number of explosive weapons used, the type and nature of explosive weapons used, and the general location of known and probably unexploded ordnance.

4. ASSISTING VICTIMS, THEIR FAMILIES AND COMMUNITIES AFFECTED BY ARMED CONFLICT

4.1 WHY THIS MATTERS

Assisting the victims of explosive weapons, their families and communities affected by armed conflict, is crucial. As previously noted and as recognized in the declaration’s preamble³³, the use of explosive weapons in populated areas has been documented to have a devastating impact on the civilian population, both in the short- and long-term. It results in significant needs for medical, humanitarian, reconstruction and development assistance.³⁴

Explosive weapons cause lethal injuries or permanent impairments and severe psychological trauma. They damage and destroy housing and workplaces, resulting in loss of shelter and livelihoods and population displacement. Water, electricity and other critical infrastructure are damaged or destroyed, reducing access to essential services which undermines public health. Damage to, or destruction of, hospitals and clinics reduces access to essential healthcare by the victims of explosive weapons and the conflict-affected population more broadly. Damaged transport routes affect the availability of food and access by humanitarian organizations to populations in need of life-saving and other assistance. Their access is also hampered by the ongoing use of explosive weapons and the presence of ERW which prevent the presence of humanitarian personnel on safety grounds. ERW, along with the lack of essential services, prevents the return of displaced persons to their homes and communities, leaving them in a state of limbo, dependent upon humanitarian assistance for the long-term.

4.2 WHAT THE DECLARATION SAYS

Paragraph 4.5 of the declaration commits states to:

Provide, facilitate, or support assistance to victims - people injured, survivors, families of people killed or injured - as well as communities affected by armed conflict. Adopt a holistic, integrated, gender-sensitive, and non-discriminatory approach to such assistance, taking into account the rights of persons with disabilities, and supporting post-conflict recovery and durable solutions.

It should be read in conjunction with paragraph 4.4 which commits states to:

Facilitate rapid, safe, and unhindered humanitarian access to those in need in situations of armed conflict in accordance with applicable international law, including International Humanitarian Law.

And also paragraph 4.6 which commits states to:

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 indirect humanitarian impact arising from the use of explosive weapons in populated areas, as appropriate.

4.3 IMPLEMENTING ACTIONS

4.3.1 PROVIDE, FACILITATE AND SUPPORT ASSISTANCE TO VICTIMS AND COMMUNITIES AFFECTED BY ARMED CONFLICT

Paragraph 4.5 essentially refers to two types of assistance: assistance to victims (people injured, survivors, and families of people killed and injured) and assistance to communities affected by armed conflict. While these types of assistance often overlap, they are not necessarily the same.

As explained in Box 5, the former, also known generally as “victim assistance”, refers to particular types of assistance that are required by people as a result of their being injured by an explosive weapon, or because members of their family were killed or injured in this way. Assisting the victims and survivors of explosive weapons is not new. An obligation to assist victims was first included in the 1997 Anti-Personnel Mine Ban Convention, followed in 2003 by Protocol V to the Convention on Certain Conventional Weapons on explosive remnants of war and, in 2008, the Convention on Cluster Munitions. States that endorse the declaration may also be party to one or more of these treaties. In addition, in accordance with IHL, endorser states also have specific obligations in relation to the care of the sick and wounded which would also apply to civilian victims of explosive weapons.

BOX 5 – SCOPE AND NATURE OF VICTIM ASSISTANCE³⁵

Explosive weapons can inflict a range of injuries on an individual, including the loss of limbs, abdominal, chest and spinal injuries, visual and hearing impairment, as well as psychological trauma. Physical injuries require prompt medical attention, including first-aid, emergency evacuation, surgery, blood transfusions, and pain management. Many conflict-affected countries lack trained staff, medicines, blood supplies, equipment and infrastructure to adequately respond to traumatic injuries. Survivors may also require physical rehabilitation and physiotherapy services and the supply, maintenance and training in the use of assistive devices such as prostheses.

The psychological and social impacts of explosive weapons are also significant. Difficulties in maintaining relationships and daily functioning can be considerable and the survivor may face social stigmatisation, rejection and unemployment. Psychological and psychosocial support can make a significant difference to the lives of survivors, and the families of those killed or injured. It may be necessary in the immediate aftermath of the incident and at different times throughout their lifetime. Again, many conflict-affected countries lack the capacity to provide such support.

Survivors and the families of those killed or injured may require assistance to improve their economic status, through education, vocational training, access to micro-credit, income generation and employment opportunities, and the economic development of the community infrastructure. Survivors also need a legal and policy framework that guarantees their rights and ensures opportunities in their society on an equal basis with others.

The collection of data is also necessary for understanding the extent of the challenge facing victims. Without accurate and comprehensive data, such as that generated by an on-going injury surveillance system, it is not possible to fully understand the extent, location and quality of the challenges faced or to develop efficient, effective and timely responses. Accurate sex and age-disaggregated data on explosive weapons casualties, as well as data on the broader prevalence of disability and on injuries, are also essential in order to use limited resources most effectively and to formulate and implement appropriate policies, plans and programmes.

Assistance to conflict-affected communities is broader in scope and refers more directly to life-saving and other humanitarian assistance required by the civilian population as a result of an armed conflict. Such assistance is often provided by the UN, ICRC and other humanitarian organizations. It includes the provision of food, water and sanitation, shelter, healthcare, education and

other essentials, as well as legal and physical protection, including from further violence. Assistance would also encompass reconstruction and longer-term development assistance which is crucial for supporting conflict-affected populations to recover from armed conflict and to rebuild their lives and communities.

A HOLISTIC, INTEGRATED, GENDER SENSITIVE AND NON-DISCRIMINATORY APPROACH

In all circumstances, the provision and facilitation of assistance and support to victims and conflict-affected populations should, as required by paragraph 4.5 of the declaration, adopt a holistic, integrated, gender sensitive and non-discriminatory approach. As others have noted, a holistic approach recognizes that the harm caused by the use of explosive weapons in populated areas tends to affect multiple aspects of victims' lives, and that addressing each of those facets is an essential component of victim assistance. An integrated approach means that assistance provided through development, human rights and humanitarian initiatives also include survivors and indirect victims. Gender sensitivity means recognizing that the same conditions are experienced differently by women and men and responding accordingly. And a non-discriminatory approach means not discriminating against or among those in need of assistance.³⁶ Efforts must be made to ensure the provision of assistance to marginalized and other groups that face particular challenges in accessing assistance, such as older persons and persons with disabilities.

BOX 6 – “AMENDS” VERSUS ASSISTANCE

The practice of “amends” employed by some armed forces should not be confused with assistance as understood in the context of paragraph 4.5. Amends, which has significant implementation challenges, involves recognizing and assisting civilians harmed by military operations through, primarily, a one-off *ex gratia* monetary payment to an individual, family, or community.³⁷ It is not equivalent to, and falls short of, the assistance that is required by the victims of explosive weapons and conflict-affected populations more broadly.

When considering the actions required to implement the commitment to assist the victims of explosive weapons, their families and communities affected by armed conflict, it is helpful to break those actions down into following categories:

- ✗ Immediate actions in support of victims by the armed forces of endorser states.
- ✗ Affected-state actions in support of victims.
- ✗ Affected state actions in support conflict-affected populations.
- ✗ Broader state actions in support of victims and conflict-affected communities.

IMMEDIATE ACTIONS IN SUPPORT OF VICTIMS BY THE ARMED FORCES OF ENDORSER STATES

Injuries inflicted by explosive weapons require prompt and appropriate medical attention, including first-aid, emergency evacuation, and medical care including surgery, blood transfusions, pain management and other health services. The provision of appropriate emergency and continuing medical care, or the lack of it, can impact the immediate and long-term recovery of victims and is one of the main factors affecting mortality rates. The responsibility for such care in the immediate aftermath of an attack will in many cases fall on local first responders and, depending on the security situation, national or international humanitarian organizations.

Parties to conflict also have obligations under IHL to care for the wounded and sick, including civilians, which are relevant to the implementation of paragraph 4.5 of the declaration, in particular in the immediate aftermath of an attack. In line with IHL³⁸, the armed forces of endorser states who are also parties to an armed conflict should implement the following actions in support of the victims of explosive weapons:

- ✗ Whenever circumstances permit, and particularly after an engagement and without delay, take all possible measures to search for, collect, and evacuate the wounded and sick without adverse distinction.
- ✗ Provide, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition with no distinction on any grounds other than medical ones.
- ✗ Take all possible measures to protect the wounded and sick against ill treatment and against pillage of their personal property.

IHL also provides rules to protect access to healthcare³⁹ in situations of armed conflict which bear on the implementation of paragraph 4.5. Pursuant to these rules, the armed forces of endorser states that are engaged in situations of armed conflict must:

- ✗ Respect and protect personnel engaging in medical tasks.
- ✗ Not impede the provision of care by preventing the passage of medical personnel and facilitate access to the wounded and sick, and provide the necessary assistance and protection to medical personnel.
- ✗ Respect and protect medical units, such as hospitals and other facilities that have been set up for medical purposes, in all circumstances. Medical units may not be attacked and access to them may not be limited. Parties to an armed conflict must take measures to protect medical units from attacks, such as ensuring that they are not situated in the vicinity of military objectives.

- ✗ Respect and protect any means of transportation that is assigned exclusively to the conveyance of the wounded and sick, medical personnel and/or medical equipment or supplies.

AFFECTED-STATE ACTIONS IN SUPPORT OF VICTIMS

Beyond these more immediate actions, endorser states that are affected by armed conflict should also take actions in support of victim assistance. This would apply also to neighbouring and other states hosting refugee populations that include victims of explosive weapons who require assistance.

In 2008, High Contracting Parties to Protocol V of the CCW agreed a *Plan of Action on Victim Assistance* which laid out a number of measures for assisting the victims of ERW that would also apply to assisting the victims of explosive weapons in populated areas.⁴⁰ To this end, in implementing the commitment in paragraph 4.5 conflict-affected endorser states should:

- ✗ Assess the needs of victims.
- ✗ Develop, implement and enforce any necessary national laws and policies.
- ✗ Develop, in accordance with national procedures, a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within as well as supporting applicable national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors.
- ✗ Seek to mobilize national and international resources.
- ✗ Ensure that differences in treatment are based only on medical, rehabilitative, psychological or socio-economic needs.
- ✗ Closely consult with and actively involve victims and their representative organizations.
- ✗ Designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to assistance to the victims of explosive weapons.
- ✗ Incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

AFFECTED STATE ACTIONS IN SUPPORT OF CONFLICT-AFFECTED POPULATIONS

As recognized in paragraph 4.5, endorser states are also committed to provide, facilitate and support assistance to the conflict-affected population more broadly, in addition to the victims of explosive weapons. For endorser states that are also parties to conflict, IHL provides that parties to conflict bear the primary responsibility for ensuring the basic needs of conflict-affected populations under their control. However, parties to conflict may

be unable or unwilling to provide such assistance. In such situations, fulfilment of this commitment will require the affected state to facilitate rapid, safe and unhindered humanitarian access by the UN, ICRC and other relevant international and civil society organizations, as also required by paragraph 4.4 of the declaration. This addressed further in section 4.3.2 below.

BROADER STATE ACTIONS IN SUPPORT OF VICTIMS AND CONFLICT-AFFECTED COMMUNITIES

Implementation of the commitment in paragraph 4.5 also has implications for the broader community of endorser states. While these states are not necessarily able to directly assist victims, they are expected, pursuant to paragraph 4.5, to *facilitate* and *support* assistance to victims and conflict-affected communities. This could involve a range of actions, including:

- ✗ Timely financial support to victim assistance organizations as well as humanitarian appeals and development programmes in support of conflict-affected populations. This should, ideally, include support to strengthen the capacity of conflict-affected and refugee-hosting states to respond to traumatic injuries and provide psychological, psychosocial and rehabilitation assistance (see also section 4.3.3 below)
- ✗ For states neighbouring conflict-affected states, facilitating rapid, safe and unhindered cross-border access by the UN, ICRC and other international and civil society organizations providing victim assistance as well as humanitarian assistance more generally (see below).

4.3.2 IMPLEMENTING THE COMMITMENT TO FACILITATE RAPID, SAFE AND UNHINDERED HUMANITARIAN ACCESS

Paragraph 4.4 commits states to facilitate rapid, safe, and unhindered humanitarian access to those in need in situations of armed conflict in accordance with applicable international law, including IHL. IHL requires that parties to conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. In resolution 46/182, adopted in 1991, the General Assembly called upon states whose populations are in need of humanitarian assistance to facilitate the work of intergovernmental and non-governmental organizations in implementing such assistance, for which access to victims is essential. The Security Council has also underlined the need for all parties concerned, including neighbouring states, to cooperate fully with the UN in providing safe, timely and unimpeded access to civilians in armed conflict.⁴¹ It should be noted that while humanitarian access and the provision of assistance by the UN and other actors depends on the consent of the state concerned and other relevant parties to conflict, such consent cannot be arbitrarily withheld.⁴²

ROLE OF THE MILITARY IN FACILITATING ACCESS

Military forces can play a role in facilitating rapid, safe and unhindered humanitarian access by other actors. NATO, for example, recognizes that its forces can facilitate humanitarian access by establishing the necessary safety and security condi-

tions that allow freedom of movement for both the population and humanitarian actors.⁴³ It further recognizes that its forces can also facilitate humanitarian access more directly through:

- ✗ Security measures: the provision of military assets to defend vital infrastructure, food and water distribution points, displaced persons camps, etc; and the establishment and maintenance of safe corridors for movement and evacuation of personnel.
- ✗ Support measures, including indirect assistance, such as logistical support or the provision of military escorts to humanitarian actors; and infrastructure support to the humanitarian access mission. Infrastructure support includes, for example, road and rubble clearance and infrastructure reconstruction and maintenance that enables both the military and humanitarian missions.

Importantly, NATO recognizes that indirect assistance should be provided at the request of the relevant authorities and humanitarian organizations and conducted in accordance with the *Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies*.⁴⁴

ROLE OF STATES IN FACILITATING ACCESS

In understanding the practical steps that states should take to implement the commitment in paragraph 4.4, reference can be made to the *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*.⁴⁵ The guidelines were adopted by the High Contracting Parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement at the 30th International Conference of the Red Cross and Red Crescent in November 2007. They are not specific to armed conflict but provide useful guidance on the practical steps states should take to facilitate rapid, safe and unhindered humanitarian access to populations in need of assistance (see Box 7). States should consider using the guidelines to support the implementation of paragraph 4.4, which may also include the further development and strengthening of national legal, policy and institutional frameworks related to international humanitarian assistance.

BOX 7 – GUIDANCE FOR THE FACILITATION OF RAPID, SAFE AND UNHINDERED HUMANITARIAN ACCESS ⁴⁶

HUMANITARIAN PERSONNEL

Affected states should:

- Waive or expedite granting of visas and work permits, ideally without cost, renewable within their territory, to humanitarian personnel.
- Facilitate freedom of access to and freedom of movement for humanitarian personnel in and from conflict-affected areas.

Originating and transit states should waive or promptly issue, ideally without cost, exit or transit visas, as appropriate, for humanitarian personnel.

RELIEF GOODS AND EQUIPMENT

Originating, transit and conflict-affected states should:

- Exempt relief goods and equipment exported or imported by, or on behalf of, humanitarian organizations, from all customs duties, taxes, tariffs or governmental fees.
- Exempt them from all export, transit, and import restrictions.
- Simplify and minimize documentation requirements for export, transit and import.
- Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “preclearance” process where feasible.
- Arrange for inspection and release outside business hours and/or at a place other than a customs office to minimize delay.
- Reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by humanitarian organizations.

Affected states should:

- Grant temporary recognition to foreign registration and plates with regard to vehicles imported by humanitarian organizations.
- Waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations.
- Grant (or where, appropriate, encourage other domestic actors to grant) humanitarian organizations priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with humanitarian operations.

TRANSPORT

Originating, transit and affected states should grant, without undue delay:

- Permission for the speedy passage of land, marine and air vehicles operated by a humanitarian organization or on its behalf, for the purpose of transporting humanitarian relief

and, ideally, waive applicable fees.

- Permission for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected state as required for the delivery of assistance.
- Promptly issue any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

DOMESTIC LEGAL STATUS

- **Affected states** should grant relevant entities of humanitarian organizations, upon entry or as soon as possible thereafter:

- At least temporary authorization to legally operate on their territory so as to enjoy the rights, inter alia, to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings, for the purpose of providing disaster relief and initial recovery assistance.
- The right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.
- The ability to legally hire and terminate the contracts of local personnel.

TAXATION

Affected states should provide exemptions to humanitarian organizations from value-added and other taxes or duties directly associated with humanitarian relief operations.

SECURITY

Affected states should take appropriate measures to address the safety and security of humanitarian personnel and of the premises, facilities, means of transport, equipment and goods used in connection with their operations.

EXTENDED HOURS

Affected states should endeavour to ensure, when necessary, that State operated offices and services essential to the timely delivery of humanitarian assistance outside of normal business hours.

COSTS

Affected states should consider, whenever possible, providing certain services at reduced or no cost to humanitarian organizations, which may include:

- In-country transport, including by national airlines.
- Use of buildings and land for office and warehouse space.
- Use of cargo handling equipment and logistic support.

RESTRICT OR REFRAIN FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

In many situations of armed conflict, active hostilities, including the use of explosive weapons in populated areas, does little to facilitate rapid, safe and unhindered humanitarian access but rather delays, renders unsafe and hinders such access. Active hostilities will prevent the deployment of humanitarian personnel for reasons of safety and impede humanitarian operations. Damage to, and destruction of, essential infrastructure and key transport routes will also impede the efforts of humanitarian actors to reach and assist civilians in need. As hostilities and the use of explosive weapons becomes more protracted, the harm to the civilian population extends and accumulates while the ability of humanitarian organizations to respond to those harms remains constrained which compounds existing, and leads to further, harms. This cycle of extending harm reinforces the need for armed forces to restrict or refrain from the use of explosive weapons in populated areas, as required by paragraph 3.3 of the declaration.

REACHING CIVILIANS DURING ACTIVE CONFLICT

The cycle of harm also reinforces the need for states to consider the different approaches that exist for reaching civilians during active hostilities. A number of approaches exist, including the temporary cessation of hostilities, humanitarian pauses, humanitarian corridors, de-confliction arrangements and days of tranquillity. As discussed in Box 8, each of these terms has a specific meaning and it is essential to choose the approach that is best suited to the particular circumstances.⁴⁷ It is also essential to understand that the different approaches cannot be imposed, militarily or otherwise, on parties to conflict. They depend on the consent of all relevant parties if they are to be relied upon to serve as safe, effective and sustainable means of gaining access to the victims of explosive weapons and conflict-affected populations more broadly.⁴⁸

BOX 8 - APPROACHES TO REACHING POPULATIONS IN NEED DURING ACTIVE HOSTILITIES⁴⁹

A **temporary cessation of hostilities** is a suspension of fighting agreed upon by all relevant parties for a specific period. It may be undertaken for various reasons, including for humanitarian purposes. In such cases, the agreement identifies the geographic area of operations and the period during which specific humanitarian activities will be carried out.

A **humanitarian pause** is a temporary cessation of hostilities for exclusively humanitarian purposes. It requires the agreement of all relevant parties and is usually for a defined period of time and a specific geographic area in which the humanitarian activities are to be implemented.

Humanitarian corridors refer to specific routes and logistical methods agreed upon by all relevant parties to allow the safe passage of humanitarian goods and/or people from one point to another in an area of active fighting. Prerequisites for the establishment and operation of a humanitarian corridor include acceptance and consent by all relevant parties for impartial relief actions to be carried out, agreement by all relevant parties to respect the conditions of the corridor, clear instructions within the chain of command of each party regarding the conditions of the corridor (such as purpose, route or specified time frame for its use) and arrangements to facilitate the passage of humanitarian personnel and supplies. The "corridor" is typically a geographic route, often with a specified time frame. Humanitarian corridors have frequently proved difficult to maintain. During active fighting, in which territory may change hands or the location of conflict may shift, humanitarian corridors should be viewed as dynamic mechanisms that must be renegotiated as needed.

De-confliction arrangements involve the exchange of information between humanitarian actors and parties to conflict to coordinate the time and location of relief activities so as to ensure that military operations do not jeopardize the lives of humanitarian personnel, impede the passage of relief supplies or the implementation of humanitarian activities or endanger beneficiaries.

Days of tranquillity enable access to health-care services during conflict, for example to participate in national immunization campaigns or other exclusively humanitarian activities. Days of tranquillity require the agreement of all relevant parties to grant access to and not interfere with the work of medical and related personnel on the designated days.

4.3.3 IMPLEMENTING THE COMMITMENT TO FACILITATE THE WORK OF THE UN, ICRC AND CIVIL SOCIETY

Paragraph 4.6 commits endorser states to “[f]acilitate the work of the [UN, ICRC], other relevant international organisations and civil society organisations aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact arising from the use of explosive weapons in populated areas, as appropriate.”

This is an important recognition of the role of the UN, ICRC and other international and civil society organizations in protecting and assisting conflict-affected populations. Several of the implementing actions discussed in relation to paragraphs 4.3 (data collection), 4.4 and 4.5 of the declaration would contribute to facilitating the work of these actors. In particular:

- ✗ Providing the UN, ICRC and relevant civil society organizations with data on the number, type and nature of explosive weapons used and the general location of known and probably unexploded ordnance.
- ✗ Ensuring the protection of medical facilities and healthcare workers.
- ✗ Facilitating rapid, safe and unimpeded humanitarian access.
- ✗ Provision of timely and flexible funding to humanitarian and development actors (see Box 9).

BOX 9 – ENSURE TIMELY AND FLEXIBLE FUNDING TO HUMANITARIAN AND DEVELOPMENT ACTORS

The lack of timely and flexible funding to humanitarian and development actors is a major impediment to the provision of assistance and protection to conflict-affected populations, including the victims of explosive weapons. In 2021, the number of people in need of humanitarian assistance increased, with an estimated 306 million people assessed to be in need, 90.4 million more than in 2019 before the Covid-19 pandemic.⁵⁰ Of these, 39% or 119.9 million people were living in countries facing a combination of high-intensity conflict, high levels of socio-economic fragility and high levels of vulnerability to the impacts of climate change.

Despite humanitarian need increasing rapidly in the past two years, growth in total international humanitarian assistance has stalled. Between 2012 and 2017, international humanitarian assistance grew annually by more than 10% but has grown by just 2.6% in the four years since then. In 2021, a total of US\$38.4 billion was requested through UN-coordinated appeals. These appeals received only 56% of identified requirements, up from 51% in 2020. This is the second-highest shortfall ever in the volume of funding provided to UN appeals.⁵¹

5. FOLLOW-UP PROCESS TO REVIEW AND ADVANCE IMPLEMENTATION AND ENDORSEMENT OF THE DECLARATION

5.1 WHY THIS MATTERS

A follow-up process to review and advance the implementation and broad endorsement of the declaration is vital to its future success in protecting civilians from the use of explosive weapons. The process includes a formal element, involving regular meetings of endorser and other interested states and key actors, such as the UN, ICRC and civil society aimed, primarily, at reviewing implementation. It also has an informal element, involving, for example, *ad hoc* meetings of endorser states and/or their armed forces; implementation workshops organized by states, the UN, ICRC and civil society to develop common understandings and share and exchange good practices in implementation or to promote endorsement of the declaration. What is important is that a follow-up process exists and that it is part of a collective and collaborative effort between all relevant stakeholders, including, but not limited to, states and their armed forces, the UN, ICRC and international and civil society organizations, and representatives from affected communities, including victims.

5.2 WHAT THE DECLARATION SAYS

Paragraph 4.7 of the declaration commits states to:

Meet on a regular basis to review in a collaborative spirit the implementation of this Declaration and identify any relevant additional measures that may need to be taken. These meetings could include the exchange and compilation of good policies and practices and an exchange of views on emerging concepts and terminology. The [UN], the ICRC, other relevant international organisations and civil society organisations may participate in these meetings. We encourage further work, including structured intergovernmental and military-to-military exchanges, which may help to inform meetings on this Declaration.

In addition, paragraph 4.8 commits states to:

Actively promote this Declaration, distribute it to all relevant stakeholders, pursue its adoption and effective implementation by the greatest possible number of States, and seek adherence to its commitments by all parties to armed conflict, including non-State armed groups.

5.3 IMPLEMENTING ACTIONS

5.3.1 MEET REGULARLY AND UNDERTAKE FURTHER WORK TO INFORM MEETINGS

Paragraph 4.7 essentially contains two commitments. First, to meet regularly to review implementation of the declaration and identify additional measures to support its implementation (hereinafter review meetings – the formal track); and, second, to undertake further work to help to inform the review meetings (the informal track).

ESTABLISH THE PERIODICITY OF REVIEW MEETINGS

The first of these commitments applies to the endorser states collectively and necessarily requires that they establish what it means to “meet on a regular basis”. Drawing on the practice of other conflict-related declarations, such as the 2008 *Geneva Declaration on Armed Violence and Development* and the 2015 *Safe Schools Declaration*, meeting regularly is generally considered to mean at least once every two years.⁵² The same periodicity of meetings should be applied to the declaration on explosive weapons. This could be achieved by one or more states announcing their intention to host or co-host a first meeting of endorser states, along with participation by the UN, ICRC and civil society organizations, in 2024.

PURPOSE AND SCOPE OF THE REVIEW MEETINGS

Review meetings provide a means to focus on progress in implementation. They help to avoid the perception that the declaration is only a statement of principles, rather than a commitment to action. They create the expectation that endorser states should be making progress in implementing the declaration.⁵³ Paragraph 4.7 stipulates that the purpose of the meetings is to:

- ✗ Review the implementation of the declaration.
- ✗ Identify relevant additional measures that may need to be taken to support implementation.
- ✗ Provide a platform for the exchange and compilation of good policies and practices.
- ✗ Provide a platform for the exchange of views on emerging concepts and terminology.

States can use review meetings to reaffirm their commitment to the terms of the declaration, to provide updates on their progress in implementation, and specific steps taken and lessons-learned, and encourage further endorsement of the declaration.

PARTICIPATION

Participation at the review meetings should, pursuant to paragraph 4.7, be open to all endorser states as well as the UN, ICRC and other relevant international and civil society organizations.

The participation of the UN, ICRC and civil society is key. It recognizes and builds upon the fundamental role these organizations played in raising awareness of the issue, of its different aspects – such as the particular problems associated with explosive weapons with wide area effects and the problem of reverberating effects – and of the actions that states and armed forces can take to prevent and mitigate civilian harm. As part of the follow-up process, the UN, ICRC and civil society organizations can continue to play an important role, for example, sharing data and updates on the use of explosive weapons globally and in specific contexts; information on the uptake and extent of implementation of the declaration, including good policies and practices, and on efforts to encourage other states to join.

Although paragraph 4.7 does not mention participation in review meetings by non-endorser states, this should be provided for. This would be in line with the commitment in paragraph 4.8 to actively promote the declaration and pursue its adoption and effective implementation by the greatest possible number of states. The review meetings provide important points of focus for non-endorsing to announce their endorsement of the declaration. Their participation would also allow them to better understand the steps taken by endorser states to implement the declaration, including how particular challenges and obstacles, that they may also face, were successfully overcome.

WORK OUTSIDE OF THE REVIEW MEETINGS

The commitment in paragraph 4.7 also encourages further work to help inform the review meetings, including structured intergovernmental and military-to-military exchanges. Again, it would be important to include UN, ICRC and civil society actors in such meetings, given their expertise and understanding of the nature and scope of civilian harm and how this can be addressed. Such actors have played an important role in facilitating intergovernmental and military-to-military exchanges which have proved useful in helping to inform state understandings of the problem and response options.⁵⁴

Consideration could be given to establishing a group of states that would assume a leadership role in driving forward work under the political declaration. Such a group would value the experience of, and collaborate with, the UN, ICRC and civil society in implementing the declaration and promoting its universalisation. It would convene regular coordination meetings to collectively plan and coordinate activities which would include:

- ✗ The regular review meetings foreseen under the declaration.
- ✗ Informal and *ad hoc* meetings to share developments and plans and to allow states to provide national updates on implementation, including challenges, obstacles and solutions.
- ✗ Outreach to non-endorser states to promote implementation and universalization of the declaration.
- ✗ Identifying and supporting the development of tools and resources for implementation that would usefully incorporate

experiences and lessons-learned by different states in implementing the declaration.

- ✗ Further embedding the issue of explosive weapons in populated areas in the international policy landscape.

Regional workshops also offer a useful means of supporting implementation. Regional conferences on the use of explosive weapons in populated areas were held in Maputo, Mozambique, in November 2017 for the African region⁵⁵ and Santiago, Chile, in December 2018 for Latin American and Caribbean states.⁵⁶ The workshops played an important role in sensitising states in those regions to the problem of explosive weapons and helping to reach a collective understanding of ways forward in addressing the problem. Regional meetings focused on the declaration would provide an opportunity to raise awareness, promote its endorsement in the region, and build relationships for implementation at the regional level. The workshops could be tailored thematically and concentrate on the aspects of the declaration most relevant to the states of the region.

Individual states could also convene national workshops, including trainings on the declaration for relevant government officials and members of the armed forces. This could include scenario-based discussion and training activities which can be a helpful tool for advancing conversations on implementation. Scenario-based workshops can be especially useful for building understanding amongst militaries and others about the level of constraint required by the declaration and how that relates to their current practice and legal and policy frameworks. Ensuring a home or focal point for declaration work, individuals willing to take ownership and leadership, and cooperation and agreement between ministries of foreign affairs and defence and within the armed forces on the purpose and value of the declaration are also important factors for progress on implementation.⁵⁷

5.3.2 PROMOTING ADOPTION OF THE DECLARATION

Paragraph 4.8 commits states to actively promote the declaration, distribute it to all relevant stakeholders, and pursue its adoption by the greatest possible number of States. In addition to the above-mentioned role of both the review conferences as a focus for future endorsements and of the state-leadership-group, numerous opportunities exist for endorsing states to promote and call for endorsement of the declaration by other states. These include in the context of:

- ✗ Statements at the annual Security Council debates on the protection of civilians in armed conflict.
- ✗ Statements to the First Committee of the General Assembly.
- ✗ Public statements on specific conflict situations.
- ✗ Other, relevant, thematic issues and discussions, such as children and armed conflict; the protection of healthcare in armed conflict; protection of education during armed conflict/ the *Safe Schools Declaration*.

- ✗ Relevant bilateral meetings with non-endorser states.
- ✗ Relevant regional meetings involving non-endorser states.
- ✗ In the context of military-military cooperation, partnerships and security assistance programmes involving the armed forces of non-endorser states. Endorsement of the declaration could be made a necessary condition for the conclusion of military partnerships or security cooperation programmes between endorser and non-endorser states (see below).

Civil society has also traditionally played an active role in advocating for states to join such political declarations and other initiatives by conducting universalisation campaigns, often collaborating closely with states and international organisations in convening activities and events and coordinating outreach.

5.3.3 ADHERENCE TO THE COMMITMENTS BY ALL PARTIES TO CONFLICT, INCLUDING NON-STATE ARMED GROUPS

Paragraph 4.8 also commits endorser states to seek adherence to the declaration's commitments by all parties to armed conflict, including non-state armed groups. This is a particularly important provision as it effectively extends the reach of the declaration's commitments to the armed forces of non-endorser states and non-state armed groups that are also parties to armed conflict.

This provision is particularly relevant to endorser states that have established military partnerships or security cooperation programmes with the armed forces of non-endorser states and/or non-state armed groups. It is widely recognized that such partnerships and programmes offer significant opportunities to influence the behaviour of, and support implementation of IHL and the protection of civilians by partner forces.⁵⁸ The UN Secretary-General has called on states that have concluded such arrangements with third states and armed groups to use them to ensure regular dialogue on matters of humanitarian concern; to ensure continuous assessment of partner conduct and the implementation of measures that help to better protect civilians, as well as training and instruction on the application of the law and good practices for civilian harm mitigation.⁵⁹ The declaration's commitments, in particular those limiting the use of explosive weapons in populated areas, protecting civilians from direct and indirect or reverberating effects, and providing for assistance to victims and conflict-affected populations, should be included within such partnership and cooperation agreements.

The importance of addressing the use of explosive weapons by non-state armed groups has been a recurring theme, both prior to and during the process of consultations to develop the declaration. It has been noted that training and the development of codes of conduct, unilateral declarations and special agreements, as envisaged under IHL, through which armed groups expressly commit to comply with their IHL obligations or undertake commitments that go beyond what the law requires, can play a key role in strengthening the protection of civilians.⁶⁰ These should be encouraged by endorser states and other actors whenever possible.⁶¹ They should include provisions reflecting the commitments in the declaration. It has been noted that such tools send a

clear signal to the groups' members, can lead to the establishment of appropriate internal disciplinary measures and also provide an important basis for follow-up interventions by third parties, such as endorser states, the UN, ICRC and civil society organizations.⁶² It should also be noted that enhancing the protection of civilians by non-state armed groups through dialogue and the development of such tools requires sustained engagement by these various actors which should not be hindered or undermined by states, including those within whose territory such groups operate or are located.

6. CONCLUDING REMARKS

The need to strengthen the protection of civilians from the use of explosive weapons in populated areas is an issue of grave concern that has been on the international policy agenda for more than a decade. The UN Secretary-General first expressed his "increasing concern" at the humanitarian consequences of the use of explosive weapons in populated areas in 2009.⁶³ Four years later, he called for the first time for the development of a "political commitment" by states to address the problem⁶⁴ – a call that was subsequently repeated and echoed by the ICRC, INEW and an increasing number of states. Nine years on, that call has been answered with the conclusion of the political declaration – the first formal recognition at the international level of the severe, short- and long-term harm resulting from the use of explosive weapons in populated areas.

The political declaration is a tool that has significant potential to strengthen the protection of civilians. But just as it has taken more than a decade of discussion, consultation and the collaboration to reach this point, it is necessary also to take the long view with respect to the declaration's endorsement and implementation – and the full realization of its potential. It will take time for the declaration's impact to be felt in certain areas. But the urgency of the problem demands that states begin, in collaboration and with the support of other stakeholders, to implement the declaration without delay.

All states should endorse the declaration, in particular, but not only, those states whose armed forces possess and/or use explosive weapons. After all, the declaration speaks to all states. Its endorsement is an act of recognition of the harms experienced by civilians as a result of the use of explosive weapons in populated areas. It is an expression of solidarity with those affected. And it is a promise to work to prevent and address future harms – including from the actions of others. The states that endorse the declaration in the coming months will have an important role to play, in collaboration with the UN, ICRC and civil society, in bringing other states on board in the period ahead.

As concerns implementation, endorser states will need to internalise the declaration, understand what the commitments mean in practical terms, and then set about their implementation through the development of policy and practice and other means.

This policy brief has offered guidance on this. Moreover, important knowledge, expertise and experience exists within the UN, ICRC and civil society to support states in this process. States should avail themselves of that support.

Implementation is a process and endorser states will move through that process at different speeds. But the direction of travel is clear. The political declaration sets an agenda for positive change, for the progressive realisation of strengthened protection of civilians from the use of explosive weapons in populated areas. And it sets an expectation that states will act in good faith and implement their commitments. Endorser states must move expeditiously to begin that process so that a broad expectation and culture of implementation develops from the outset.

ENDNOTES

1. See: <https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/conventional-arms/explosive-weapons-in-populated-areas/protecting-civilians-in-urban-warfare/protecting-civilians-in-urban-warfare/>
2. See: <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf>
3. See: <https://www.inew.org/wp-content/uploads/2022/06/INEW-Statement--Daily-Summary-1.pdf>
4. See Article 1(2), *Protocol on Prohibitions and Restrictions on the Use of Incendiary Weapons* (1980). See further, Human Rights Watch/Harvard Law School International Human Rights Clinic, *Safeguarding Civilians: A Humanitarian Interpretation of the Political Declaration on the Use of Explosive Weapons in Populated Areas* (October 2022) 8-9.
5. *Ibid.*, at 8.
6. Article 36, *Damage to the Built Environment from the Use of Explosive Weapons*, Briefing Paper (September 2013). At: <https://article36.org/wp-content/uploads/2013/09/DAMAGE.pdf> Footnotes omitted. See also Geneva International Centre for Humanitarian Demining, *Explosive Weapon Effects – Final Report* (2017) 105-106.
7. US policy on the use of mortars notes that "the natural dispersion of indirect fires with unguided projectiles can result in many hits on buildings" and that care is required in planning mortar fires during urban operations to minimize collateral damage. Department of the Army/US Marine Corps, *Tactical Employment of Mortars*, ATP 3-21.90/MCTP 3-01D (October 2019) 4-28.
8. See further PAX and Article 36, *Areas of Harm – Understanding Explosive Weapons with Wide Area Effects* (October 2016) 24-25. At: <https://article36.org/wp-content/uploads/2020/12/PAX-A36-Areas-of-Harm.pdf>
9. See further, *ibid.*
10. "Providing intelligence support to operations in the complex urban environment can be quite challenging. It may at first seem overwhelming. The amount of detail required for operations in urban environments, along with the large amounts of varied information required to provide intelligence support to these operations, can be daunting." US Army, *Intelligence Support to Urban Operations*, TC 2-91.4 (December 2015)
11. It is clear from the preamble that the terms "indirect" and "reverberating" are synonymous, even if the operational section of the declaration refers only to "indirect effects". Paragraph 1.3 states that: "Beyond these direct effects, civilian populations ... are exposed to severe and long-lasting indirect effects – often referred to as reverberating effects."
12. See, for example, C. Wille and A. Malaret Baldo, *Reference Framework: Menu of Indicators to Measure the Reverberating Effects on Civilians of the Use of Explosive Weapons in Populated Areas*, UNIDIR (2021); Humanity and Inclusion, *Death Sentence to Civilians: The Long-Term Impact of Explosive Weapons in Populated Areas in Yemen* (2020); and Mark Zeitoun and Michael Talhami, "The Impact of Explosive Weapons on Urban Services: Direct and Reverberating Effects Across Space and Time", 98 *Int'l Review of the Red Cross* (2016) 68. Additional research and resources available on the INEW website: <http://www.inew.org/resources/>

13. NATO, *Protection of Civilians ACO Handbook* (March 2021) 25. See also, for example, Chairman of the Joint Chiefs of Staff Instruction, *Target Development Standards*, JCSCI 3370.01B (6 May 2016) D-B-6.
14. NATO, *ibid.*, at 29.
15. US Department of Defense, *Civilian Harm Mitigation and Response Action Plan* (2022): <https://media.defense.gov/2022/Aug/25/2003064740/-1/-1/1/CIVILIAN-HARM-MITIGATION-AND-RESPONSE-ACTION-PLAN.PDF>
16. *Ibid.*, at 9.
17. *Ibid.*
18. *Ibid.*
19. The present section draws up on Simon Bagshaw, *Committing to Civilian Casualty Tracking in the Future Political Declaration on the Use of Explosive Weapons in Populated Areas*, Article 36 Policy Brief (April 2022): <https://article36.org/wp-content/uploads/2022/04/Article-36-Casualty-Tracking-and-the-Political-Declaration-on-EWIPA.pdf>
20. CIVIC and Every Casualty, *Examining Civilian Harm Tracking and Casualty Recording in Afghanistan* (May 2019), at: https://civiliansinconflict.org/wp-content/uploads/2017/09/CCCERP_4_page_FINAL_May_19.pdf
21. See Centre for Civilians in Conflict, *Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan* (2014). Available at: https://civiliansinconflict.org/wp-content/uploads/2017/09/ISAF_Civilian_Harm_Tracking.pdf
22. See further, OCHA, *Reducing the Humanitarian Impact of the Use of Explosive Weapons in Populated Areas: Compilation of Military Policy and Practice* (2017) 27 at: <https://www.unocha.org/sites/unocha/files/OCHA%20Compilation%20of%20Military%20Policy%20and%20Practice%202017.pdf>
23. See, for example: <https://media.defense.gov/2021/Jun/02/2002732834/-1/-1/0/ANNUAL-REPORT-ON-CIVILIAN-CASUALTIES-IN-CONNECTION-WITH-UNITED-STATES-MILITARY-OPERATIONS-IN-2020.PDF>
24. See: <https://www.africom.mil/civilian-casualty-report>
25. See: <https://www.africom.mil/civilian-casualty-reporting>
26. See: <https://policy.defense.gov/OUSSDP-Offices/Reporting-Civilian-Casualties/>
27. US DOD, note 15 above, at 20-21.
28. *Ibid.*, at 22.
29. Office of the Under-Secretary of Defense, *Development of a DoD Instruction on Minimizing and Responding to Civilian Harm in Military Operations* (31 January 2020), at: <https://media.defense.gov/2020/Feb/20/2002252367/-1/-1/1/DEVELOPMENT-OF-A-DoD-INSTRUCTION-ON-MINIMIZING-AND-RESPONDING-TO-CIVILIAN-HARM-IN-MILITARY-OPERATIONS.PDF>
30. NATO, *Allied Joint Doctrine for Joint Targeting, Edition B, version 1* (November 2021) at 1-19.
31. See Bagshaw, note 19 above.
32. See further *Protection of civilians in armed conflict. Report of the Secretary-General*. UN doc. S/2019/373 (7 May 2019), paras.53-56.
33. See paragraphs 1.3-1.6.
34. See further, Humanity and Inclusion, *Victim Assistance in the Context of the Use of Explosive Weapons in Populated Areas* (2016)
35. Based on the Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Fifth Edition (2014), Chapter 8, 'Assisting the Victims' and *A Guide to Cluster Munitions*, Third Edition (2016), Chapter 9, 'Assisting the Victims'. See also Elizabeth Minor, 'Victim Assistance' in *International Agreements on Civilian Protection and Weapons Policy: Understanding the Value to Past, Present and Future Instruments*, Article 36 Discussion Paper (October 2019); Humanity and Inclusion, *ibid.*; and Implementation Support Unit of the Convention on Cluster Munitions, *Guidance on an Integrated Approach to Victim Assistance* (2016).
36. Human Rights Watch/Harvard International Human Rights Clinic, note 4 above, at 19.
37. See Sahr Muhamedally, "Making Amends" in Harvard Law School Human Rights Program and Action on Armed Violence, *Acknowledge, Amend, Assist: Addressing Civilian Harm Caused by Armed Conflict and Armed Violence* (April 2015) 11.
38. See Rules 109-111, ICRC, Customary IHL Database: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule109
39. See, ICRC, *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, Advisory Service on International Humanitarian Law (2012).
40. *Second Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Report on Victim Assistance*, CCW/P.I./V/CONF/2008/2 (2008)
41. See Security Council resolution 1296 (2000).
42. Rule 55, "Access for Humanitarian Relief to Civilians in Need", ICRC, Customary IHL Database: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55
43. NATO, note 13 above, 41-43.
44. Available at: <https://www.unocha.org/sites/unocha/files/01.%20MCDA%20Guidelines%20March%2003%20Rev1%20Jan06.pdf>
45. IFRC/ICRC, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (30IC/07/R4 annex), at: <https://www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/31st-international-conference/idrl-guidelines-en.pdf>
46. Based on IFRC/ICRC, *ibid.*
47. *Protection of civilian in armed conflict. Report of the Secretary-General*. S/2012/376 (2012), para.59.
48. *Ibid.*, para.63
49. See *ibid.*, at paras.60-62.
50. Development Initiatives, *Global Humanitarian Assistance Report 2022* (2022) 10-16.
51. *Ibid.*
52. See Human Rights Watch/Harvard International Human Rights Clinic, note 4 above, at 21.
53. Elizabeth Minor, *The Safe Schools Declaration: Reflections on Effective Post-Agreement Work*, Article 36 Policy Briefing (July 2021).
54. See, for example, OCHA and Chatham House, *Expert Meeting on the Reducing the Humanitarian Impact of the Use of Explosive Weapons in Populated Areas*, London, 23-24 September 2013 – Summary Report; OCHA and Ministry of Foreign Affairs of Norway, *Informal Expert Meeting on Strengthening the Protection of Civilians from the Use of Explosive Weapons in Populated Areas* Oslo, Norway, 17-18 June 2014 Summary Report by OCHA (2014); ICRC, *Expert Meeting: Explosive Weapons in Populated Areas: Humanitarian, Legal, Technical and Military Aspects*, Chavannes de Bogis, Switzerland 24-25 February 2015 (2015); Article 36 and CIVIC, *Report on a Workshop Examining Military Policies and Practices on the Use of Explosive Weapons in Populated Areas* 2-3 May 2018 (2018).
55. See: <https://www.inew.org/maputo-regional-conference-on-the-protection-of-civilians-from-the-use-of-explosive-weapons-in-populated-areas/>
56. See: <https://www.inew.org/wp-content/uploads/2018/12/Santiago-Communique-EWIPA.pdf>
57. Minor, note 53 above.
58. See, for example, Cordula Droege and David Tuck, "Fighting Together: Obligations and Opportunities in Partnered Warfare", *ICRC Humanitarian Law and Policy* (28 March 2017), at: <https://blogs.icrc.org/law-and-policy/2017/03/28/fighting-together-obligations-opportunities-partnered-warfare/>
59. *Protection of civilians in armed conflict. Report of the Secretary-General*. S/2018/462 (2018), Annex.
60. See, for example, Michelle Mack, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflict*, ICRC (February 2008), at: https://www.icrc.org/sites/default/files/topic/file_plus_list/0923-increasing_respect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf
61. Report of the Secretary-General, note 59 above, at para.62
62. *Ibid.* para.63.
63. *Protection of civilians in armed conflict. Report of the Secretary-General*. S/2009/277 (2009), para.36.
64. *Protection of civilians in armed conflict. Report of the Secretary-General*. S/2013/689 (2013), para.69.

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