

REPORT ON A MILITARY WORKSHOP ON THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

Article36

30 NOVEMBER - 1 DECEMBER 2023

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

Article 36 and Airwars convened a workshop from 30 November to 1 December 2023 to explore military perspectives on the implementation of the *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas*. The Declaration was adopted by a group of 83 states in November 2022.¹

This report summarises reflections and recommendations from that workshop. The discussion was conducted under the Chatham House rule and this synthesis report is not intended to suggest agreement or consensus on the conclusions that it draws. It is a report on behalf of Article 36 and Airwars – but it is informed by the contributions of workshop participants. We appreciated the openness and diversity of thinking that they brought to discussions that reflected frankly on both the opportunities and the challenges for implementing the Political Declaration.

The report is structured as follows:

1. Workshop background

This section provides an outline of the workshop format and background on the Political Declaration on Explosive Weapons in Populated Areas.

2. Promoting action at a national level

This section recognises the challenge of building engagement with an international political instrument within complex national institutions. It emphasises the need for senior leadership to promote constructive engagement.

3. Building the operational conversation

This section reflects on how the Political Declaration might encourage thinking around operational considerations. It reflects discussions in the workshop around weapon choices, contextual analysis, time pressure and ongoing monitoring of harms.

4. Conclusions and recommendations

Summarising key themes for further consideration.

Annexes

- A. Agenda
- B. Scenario exercises
- C. List of participants and acknowledgements

1. WORKSHOP BACKGROUND

Workshop participants included active and retired members of national armed forces and defence ministry officials from 8 western states, as well as participants from NATO, the International Committee of the Red Cross (ICRC) and civil society organisations (see Annex C for a full overview). Future military workshops will focus on other regions as effective development of the Declaration requires recognition that different administrative and operational perspectives and challenges will present themselves in different regions.

As well as general thematic discussion, the workshop involved a practical exercise focused on two scenarios. These scenarios provided tools for dialogue around the planning of military missions, the diversity of weapon types and capabilities, understandings of the civilian context and infrastructure, assessments of possible harm from different courses of action, command relationships, tensions between mission demands and practicalities, possible mitigating measures and how mission effects could be monitored over time. Scenario-based exercises are always imperfect renditions of operational reality; they demand that participants suspend scepticism and ‘play along’ with scenarios that can never match the complexity of a real operation. We appreciated how the scenario facilitators and participants approached this exercise in a way that enabled shared understanding across stakeholder groups.

The workshop’s multi-stakeholder participation demonstrated the value of cross-sectoral dialogue to enable critical and constructive thinking about how civilian harm might be mitigated. Whilst participants sometimes diverged on questions of which procedures, policies or practical approaches might be most appropriate in specific situations, there was clear recognition that stronger civilian protection was a shared goal. There was also agreement that weapons choices have an important bearing on the potential for civilian harm and that there should always be consideration of other, non-kinetic, forms of engagement.

BACKGROUND ON THE POLITICAL DECLARATION ON EXPLOSIVE WEAPONS IN POPULATED AREAS

The workshop began with a review of the development and content of the Political Declaration. It was noted that the use of explosive weapons in populated areas is a leading cause of harm to civilians in contemporary armed conflicts. When armed conflicts take place in populated areas, the risks to civilians increase significantly. Every year, tens of thousands of civilians are killed and injured by explosive weapons while housing and essential civilian infrastructure such as hospitals, schools, and power and water systems are damaged or destroyed with long-term implications for the safety and well-being of civilians. Even in situations when parties to conflict maintain that they are using explosive weapons in compliance with international humanitarian law (IHL), the resulting civilian harm can be widespread, cumulative and reverberating in time and space.

In response to this pattern of harm, and after preparatory consultations over a number of years, a group of 83 states met in Dublin in November 2022 and endorsed the Political Declaration on Explosive Weapons. It is the first formal international recognition that the use of explosive weapons in populated areas has severe humanitarian consequences that must be addressed. The adoption of such a declaration had been urged by the United Nations, the ICRC and civil society organisations through the International Network on Explosive Weapons (INEW) as a political step that could further promote action to reduce harm.

2. PROMOTING ACTION AT A NATIONAL LEVEL

Key among the Declaration’s commitments are those in paragraphs 3.3 and 3.4. These commitments place specific requirements on the planning and conduct of military operations by endorsing states.

Paragraph 3.3 commits states to:

Ensure that our armed forces adopt and implement 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.

Paragraph 3.4 commits states to:

Ensure that our 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, and conduct damage assessments, to the degree feasible, and identify lessons learned.

These commitments, and many others throughout the declaration, require states to bring armed forces into a constructive engagement with an international declaration that has been adopted at the political level. States are not monolithic, and ministries of foreign affairs, ministries of defence and armed forces may have different orientations and interpretations to commitments such as these. In turn, there will be differences between states, and across the wider community of civil society and other stakeholders.

Developing the Declaration productively will require an acknowledgement of different initial orientations and a determination to turn those differences into opportunities for learning, towards a goal of stronger civilian protection. This workshop was an attempt to start to explore a landscape of conversations in that mode.

BUILDING THE CONVERSATION AT A NATIONAL LEVEL

Against that backdrop, consideration needs to be given to the dissemination, promotion and engagement with the Declaration at the national level, in particular among relevant government ministries, departments and armed forces personnel who should be at the forefront of its practical implementation. In discussions during the workshop, it was recognised that there was limited awareness of the Declaration within a number of ministries of defence and armed forces, and it was not always clear if specific measures were being taken towards its dissemination and implementation.

Two possible reasons were offered for this. First, the view among some endorser states is that their existing policies and practices are sufficient for implementing their commitments under the Declaration. Second, participants from several countries pointed to a disconnect between ministries/departments of foreign affairs (which were responsible for endorsing the Declaration) and ministries/departments of defence (responsible for the practical implementation of the Declaration).

In addressing these challenges, it is important that the Declaration is not disseminated or promoted as apolitical intrusion into the specialist space of military practices. If this approach is taken, the Declaration is likely to be side-lined or ignored as too vague or disconnected from the reality of modern warfare. If, on the other hand, it is presented as a *fait accompli* - being immediately satisfied with existing policies or practices - it similarly suggests a lack of substantive engagement and a failure to recognise gaps in national approaches to civilian harm mitigation from explosive weapons across many endorser states.

In this context, the process of building national level engagement will require direction and leadership if the recommendations are to have a constructive effect. Some workshop participants emphasised that the goal should therefore not only be to ensure awareness of the Declaration at all levels and among all military personnel, but rather to ensure commitment to the Declaration at the leadership and other command levels to drive engagement. This will, in turn, support buy-in at the tactical level, for instance through adapted rules of engagement (ROE), operational orders and other policy and guidance which have been informed by leadership engagement with the Declaration. Such direction and leadership will likely need to be fostered at the international level and through the facilitation of dialogue where ideas, practices and approaches can be shared over time.

LEADERSHIP IS CRUCIAL

Beyond its importance when it comes to the dissemination of the Declaration, the role of leadership was also highlighted in the workshop as crucial for the Declaration's future implementation and for civilian harm mitigation approaches more broadly. In these areas, it is required at the political or strategic level, such as from ministries/departments of defence, and among military commanders. To the first, clear commitment to the Declaration and its provisions at this level ensures that efforts to mitigate

civilian harm from the use of explosive weapons are considered a strategic priority. Leadership at this level is also critical to ensure the establishment of the necessary teams, working groups, and processes required to give practical effect to the Declaration's commitments and to strengthen the protection of civilians more broadly.

Several participants highlighted that as efforts at this level often involve personnel who are politically-appointed, they are subject to the electoral cycle and may regularly change. As such, it is important to use periods of strong and supportive political leadership as opportunities to entrench support for the Declaration and its implementation. This includes through revisions to existing doctrine, policies, and practices that will potentially exist beyond the lifetime of a given government and may not be easily rescinded or revised by new governments with different priorities.

When it comes to leadership from commanders, this is vital as commanders are responsible for translating the political/strategic-level commitment to the Declaration into clear, succinct directives for operational staff to implement. Participants acknowledged that in order to operationalise the Declaration, a commitment to protect civilians from the use of explosive weapons in populated areas should be expressed and recognised as part of the 'commander's intent' - and should be identified as a mission objective and should therefore also form an indicator of mission success. Such drivers would help to ensure the *prioritisation* of the protection of civilians, including from the use of explosive weapons, in decisions around the allocation of limited resources (for example, limited intelligence, surveillance, target acquisition, and reconnaissance [ISTAR] resources might be directed to more comprehensive mapping of civilian pattern of life with a view to mitigating civilian harm and identifying potential reverberating effects in future attacks.)

3. BUILDING THE OPERATIONAL CONVERSATION

An important starting point for a productive operational conversation is recognition that many armed forces of the signatory states are deeply and practically concerned with civilian protection and already have policies and practices that consider the choice and use of weapons in that context.

It was noted in the workshop that a number of militaries have policies and practices that apply to much of their military engagement, including the use of explosive weapons, such as collateral damage estimation methodologies, limitations on the use of certain explosive weapons and modes of fire in ROE, as well as different weaponising options that can be used to mitigate the impact on civilians (such as adjustments to the angle or time of attack, different fusing options, as well as the possibility of providing advanced warnings of planned strikes.)

It was also noted that such technical/weapon-oriented policies are situated within chains of command and frameworks of human evaluation, communication and decision-making. Reference was

made to the use of 'red card holders' (who had the authority to prevent a strike if they deemed the risk of civilian harm to be too high), the use of subject matter experts in the planning of military operations to advise on such issues as disruption to essential services and its impact on civilians, and the potential for an acceptance that 'respectful challenge' in certain contexts might check that civilian protection was being sufficiently prioritised.

Further recognition was given to the importance of civilian harm tracking, both in the context of coalition operations and as a national capacity (although this is not yet widely implemented by most armed forces.) It was noted that there were encouraging developments in policies relating to civilian harm mitigation and response more generally, including the *Civilian Harm Mitigation and Response Action Plan* (CHMR-AP) issued by the United States (US) Department of Defense.

However, it was also observed that while these existing policies and practices might be a helpful starting point in understanding how the commitments under the Declaration might be integrated, no state yet had a holistic set of policies or tactical guidelines that fully reflected all commitments under the new Declaration. For example, while the CHMR-AP contains overlapping commitments for example on data collection, it does not contain specific guidance around explosive weapons use. The lack of realistic training that replicates civilian harm at scale and a lack of suitable urban warfare specific doctrine were also highlighted as persistent challenges across militaries. When it comes to urban warfare, doctrine is needed to address the specific risks to civilians from this highly intense form of combat, where decentralised commanders are often having to make significant decisions relating to the protection of civilians. This in turn requires positive civilian-protection thinking and capacities to be distributed more widely. Civilian protection in the urban context relies heavily on accurate intelligence and analysis, understanding the civilian environment including pattern of life, the structure and composition of buildings and infrastructure and how these will influence weapon effects. It can also provide a challenging context for battle damage assessment and civilian harm tracking, both of which need to be strengthened if the protection of civilians is to benefit from active operational learning. Large-scale combat operations (LSCOs) will likely magnify and compound the existing challenges and weaknesses in the protection of civilians in urban warfare.

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

The two scenario exercises were predicated on the use of explosive weapons, and a risk of civilian harm, and were intended to prompt discussion on the Declaration's Paragraph 3.3. As we have noted, Paragraph 3.3 commits endorser states and their armed forces to help avoid civilian harm by restricting or refraining from the use of explosive weapons in populated areas when such use may cause harm to civilians or civilian objects.

The commitment is open to interpretation and points towards national level policies and doctrines as the framework through

which it should be implemented. Restrictions on the use of explosive weapons can range from blanket operational constraints on the use of certain types of weapons in certain contexts, to guidance on operational choices about how weapons should be used, their technical configurations (e.g. fuzing options) or processes of use (e.g. levels of required command authority).

Participants noted the expectation that before military action was decided upon, the possibility of using other instruments of power would have been considered, such as diplomacy or economic sanctions. Where the decision had been taken to engage in military action, refraining from the use of certain weapons, and in some instances postponing military attacks altogether, were seen as existing and integral options in decision-making at the strategic and operational levels - in which there may be concerns around compliance with IHL, but also where the pressure of operations allowed it.

It was notable that when presented with such scenarios, military participants in the workshop were inventive in exploring alternative courses of action to achieve the scenarios' military objectives, including cognitive and cyber action, instead of kinetic operations. They also raised concerns where the information that they were working with seemed insufficient to adequately assess possible civilian harm or to enable confidence in the actions they were being pushed to take and highlighted where respectfully challenging instructions from a higher command level might be appropriate and could lead to a decision not to engage militarily.

THE IMPORTANCE OF UNDERSTANDING WEAPON EFFECTS

The choice of weapons, based on a comprehensive technical understanding of their potential effects, was seen as fundamental to the efforts of militaries to better protect civilians from explosive weapons use and to ensuring the effective implementation of the Declaration. There was a general recognition that scale of blast and fragmentation effects, coupled with accuracy of delivery, are significant factors for the assessment of possible civilian harm.

Some participants stressed the value of precision-guided munitions (PGMs) which have, for some armed forces with the necessary resources, become a weapon of choice for use in populated areas. Others noted that PGMs are only one tool for mitigating civilian harm and even then, only a partial one: not all militaries possess or have the financial resources to procure PGMs, and even where PGMs are used, civilian harm has and can still occur at scale. Participants noted that precision does not limit those area effects that result from a high explosive yield, which can see effects extend beyond an intended target and pose a risk to civilians and civilian objects in the vicinity.

Reference was also made to the 'precision paradox' where widespread destruction can result from multiple, though precise, strikes, such as the levelling of entire neighbourhoods, one building at a time. PGMs are also subject to the same limitations as other explosive munitions in terms of the risk of causing secondary explosions that may result, for example, from strikes

on sites that are used to manufacture or store explosives or weapons. The collateral damage methodology used by the US and other NATO states is not able to account for the risk of such secondary explosions which can lead to significant harm in populated areas, though such risks may sometimes be assessed through separate analysis presented alongside the collateral damage estimate. . Additionally, if the use of PGMs is not followed-up by battle damage assessments and other processes for monitoring civilian harm, their impact in mitigating harm (or not) is not properly understood, especially with regards to the potential indirect and reverberating harm to civilian populations.

THE IMPORTANCE OF INFORMATION

The scenario exercises offered limited weapon options to participants. The discussions around weapon choices brought out clearly a recognition that understanding different weapons, the scale of their effects and the nature and accuracy of their delivery are significant factors in assessing and mitigating possible civilian harms.

Beyond this, the availability of sufficient information on civilians in the area and pattern of life analyses were considered particularly important for decision-making. Where information on the civilian population was not already available or sufficient, requests for additional information could be made up the chain of command and might be obtained through different means, in particular ISTAR observation. Timeliness of such information was emphasised, including up to the moment of the strike, where “transient scans” might identify civilians that may be about to enter the target area.

It was noted that work building on the Declaration had potential to provide an additional incentive to prioritise limited resources in support of efforts to better identify potential harm to civilians from the use of explosive weapons. Overall, where information on the civilian population in the area of a planned strike was considered inadequate, participants largely agreed that the attack should not proceed. While participants emphasised that they would always speak up in cases of possible IHL breaches or contraventions of ROE, the degree to which they felt comfortable airing concerns on the use of explosive weapons in populated areas where the use might be IHL compliant but still cause harm to civilians depended on the commander’s guidance. How the commander had shaped and framed the mission would determine the level of comfort in questioning the mission objective and its execution – which emphasises the point we have made earlier about the importance of civilian protection as an explicit leadership priority.

THE FUNCTION OF TIME

A significant variable influencing the use, or not, of explosive weapons in populated areas is time. The more time available for planning an operation and specific strikes, the more time there is to understand and work to mitigate weapon effects, including by better understanding the area in which the strike will take place – being able to analyse municipal plans that include details on civilian infrastructure such as the location of power plants and other electrical infrastructure, or the location of subterranean

water and sewage pipes. This may even extend to referring specific questions to in-house scientific experts/institutions to predict possible secondary effects.

However, these options, to the extent that they exist, are not often utilised in intense, kinetic operations in which time is constrained, including in situations of dynamic targeting. As major military powers increasingly focus their attention on the possibility of near-peer LSCOs, this should be a core area of focus for further research among signatory states. Overall, it was noted that the more constrained time is, the more limited the options tend to become for mitigating harm and considering alternative courses of action. It may also become more difficult to refrain from the use of specific explosive weapon types that are available, or from explosive weapons use altogether. This is especially the case in situations of self-defence or in the context of time-sensitive and dynamic, as opposed to deliberate or planned, targeting. Time would also be a key factor in other areas that would have a bearing on the effective implementation of the Declaration. This would include information gathering on civilians in the area of future attacks and so establishing a comprehensive and accurate understanding of civilian “pattern of life”; and in assessing the impact of strikes on civilian infrastructure and other long-term effects. In general, pressure of time tends to represent the prioritisation of other operational demands and is likely to work against the stronger protection of civilians. However, the Declaration can encourage us to think differently about the tension between these factors.

PRIORITISING CIVILIAN PROTECTION IN THE ‘TRILEMMA’ OF DEMANDS

Workshop participants noted that the Declaration could encourage thinking about how armed forces seek to strike a balance between the ‘trilemma’ of force protection, achieving military objectives and protection of civilians: three factors often seen to be in some tension with each other. Typically, where there is no threat to one’s own troops, and the military objective was likely to be achieved, there is greater time and resource availability to undertake activities that would enhance the protection of civilians. However, when troops are at risk, or the achievement of the military objective is an urgent and challenging priority, the space for mitigation reduces in favour of force protection and the use of weapons that may pose an elevated risk to civilians.

The Declaration can be helpful in challenging this assumption of the three components of the trilemma as separate objectives that necessarily work against each other and to consider them instead as being inter-connected and mutually dependent. One participant emphasised that civilian harm mitigation “...leads to a trustful relationship between the population, international organisations and NGOs on the one hand and the Armed Forces on the other. This contributes to situational awareness and understanding that results in force protection and enhanced possibilities of achieving mission objectives.” It was further observed that civilian harm mitigation – from explosive weapons and beyond – not only supports the achievement of military objectives but can be an important strategic objective in its own right. This potential might be particularly important in cases

where the trust and support of local populations may not be considered an immediate operational objective, for example in warfare conducted remotely. Future discussions around the Declaration can encourage thinking about the protection of civilians as reinforcing other operational goals (as well as being a moral imperative), and so can encourage continued prioritisation of civilian protection even as other factors become pressing.

A MORE CONSISTENT APPROACH TO CIVILIAN HARM TRACKING

In endorsing the Declaration, states acknowledged, ‘...the importance of efforts to record and track civilian casualties, and the use of all practicable measures to ensure appropriate data collection. This includes, where feasible, data disaggregated by sex and age’. They further committed to undertake damage assessments after attacks in populated areas (paragraph 3.4) and 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 (paragraph 4.2).

As it stands, civilian harm tracking by the states who participated in the workshop, to the extent that it is carried out, may be undertaken in the context of Battle Damage Assessments (BDA) which may be conducted after an attack. Participants noted that the principal function of a BDA is to assess the effect or degree of damage inflicted on the target and to make recommendations for further strikes. It was further noted that BDAs do not always consider the impact of the attack on civilians and civilian objects and when they do, they are too limited in their approach. The aerial monitoring that often forms the basis of BDAs cannot show what is beneath rubble and inside collapsed buildings, or necessarily distinguish between dead and injured combatants and civilians. Victims and witnesses of attacks are not always interviewed, limiting the capacity to construct a comprehensive picture of events from which lessons could be drawn. Participants also acknowledged the limitations of BDAs in being able to track the long-term and indirect effects of explosive weapons use. When it comes to the reverberating effects of harm to civilians, BDAs are particularly limited as they do not continue to monitor the impact of a given attack or consider its long-term effects. A fuller understanding of civilian harm requires information gathering over time.

Some participants acknowledged that reorienting these assessments to focus more intentionally on identifying and tracking civilian harm would be a logical integration of civilian protection considerations into an existing practice. Some suggested that the Declaration’s commitments relating to assessments and data collection were especially important. A more deliberate focus on civilian harm tracking would also mean reframing the task beyond being undertaken for the purposes of legal review and investigating potential violations of IHL or support public information efforts to control information and the narrative on civilian harm from the actions of one’s own forces. It was further noted that civilian harm tracking faces logistical and resource challenges, especially in high-tempo or LSCOs, and other volatile information environments.

A further perspective was also advanced: that tracking civilian harm, both direct harm such as fatalities, injuries, and infrastructure destruction, and indirect harm such as loss of access to marketplaces, schools and livelihoods, has inherent value to operational decision making: that decisions about whether or not to use explosive weapons in populated areas should be informed by data collected in real time during conflicts about the effects of weapons on civilians, and fed back into the decision-making loop.

4. CONCLUSION AND RECOMMENDATIONS

The workshop served as an important opportunity to begin to build a shared understanding among a diverse group of participants of the practical actions that are required of states and their armed forces to strengthen the protection of civilians in line with the Political Declaration. Some of the key recommendations and good practices coming out of the workshop are:

- ✘ Relevant ministries and departments as well as the armed forces should disseminate and promote engagement with the implementation of the Declaration at the national level. Such efforts should acknowledge the different orientations to the Declaration that may exist between ministries, departments and the armed forces, and should aim to facilitate shared approaches and commitments.
- ✘ A process of policy review, revision and development is an essential element of the implementation process. It is vital that states do not assume that the measures contained in the Declaration are already undertaken as part of efforts to implement international humanitarian law or that existing military policy and practice are necessarily adequate in this regard.
- ✘ Leadership is needed to promote and implement the Declaration. Promotion and dissemination efforts should include leaders at the strategic/political level, commanders at the operational level, and prioritised down to junior leader levels given the de-centralised nature of much urban warfare. This can help to ensure awareness of and commitment to the Declaration so that the principles and priorities of the Declaration can be incorporated down to the tactical level, through rules of engagement, operational directives etc.
- ✘ Commanders at all levels have a key role to play in ensuring that civilian harm mitigation in general (and from the use of explosive weapons in populated areas in particular) is clearly expressed as part of the commander’s intent and is therefore understood to be a mission objective and indicator of mission success. This should include reiterating the concepts of force protection, achieving military objectives and protection of civilians as inter-connected, mutually dependent and integral to success.

- x The Declaration's central commitment – to help avoid civilian harm by restricting or refraining from the use of explosive weapons – points towards national level policies and doctrines as the framework through which it should be implemented. These should include processes and criteria for determining when to restrict or refrain from use, as well as the different types of restrictions that may be employed (e.g. operational constraints on the use of certain types of weapons, technical configurations or processes of use).
- x Weapon selection, including a proper understanding of the technical effects of different weapons and how those effects will be influenced by the built environment, is critical to mitigating civilian harm from explosive weapons. Precision guided munitions do not automatically equate to reduced civilian harm, though they may be presented this way. The type and explosive power of the precision weapon that is used, how often it is used within an area, and how information is gathered in targeting processes remains essential in evaluating likely impact on civilians.
- x States should critically review their approaches to and capacity for undertaking civilian harm tracking in line with established good practice. This should include critical reflection on the role of third-party support or coordination to enhance tracking procedures (for example engaging with humanitarian organisations, casualty recorders, or first responders). Whilst it may be possible to improve civilian harm analysis within existing battle damage assessment processes, it is important to be aware of the limits of such mechanisms. Improved understanding of civilian harm requires ongoing information gathering and consideration of reverberating effects.

ANNEXES

A. AGENDA

THURSDAY 30 NOVEMBER

- 13.00 **Welcome and introductions:
Scope and objectives of the workshop.**
Richard Moyes, Article 36 & Emily Tripp, Airwars
(moderators)

13.10 **SESSION 1: SETTING THE SCENE**

This session will review the operational section of the Political Declaration and actions required by governments and armed forces. It will also examine existing military policies, practices, and tools relating to the use of explosive weapons. The session will also invite perspectives from a military representative on the process of reviewing and making changes to operationalise the Declaration, before opening up for further discussions on this theme.

- x The Political Declaration on EWIPA: Commitments on military policy and practice
Laura Boillot, Article 36
- x Known policies relevant to the use of explosive weapons in populated areas
Abby Zeith, ICRC
- x Considerations over national military policies to implement the Declaration
Lt. Col. Peter de Bock, Netherlands

Discussion

15.15 **SESSION 2: OPERATIONAL SCENARIOS I**

This session will include the presentation of the scenario exercises to facilitate discussion. The exercises will be conducted in two smaller groups and is intended to function as a tool for dialogue around issues of understanding weapon characteristics and contexts of use; mitigation measures to avoid civilian harm; implementing relevant policies, procedures and guidance; and decision-making at different operational levels.

- 15.30 Scenario exercise I
Facilitators: Jim Burke, former Irish Defence Forces (group 1); Stephen Kilpatrick, ICRC (group 2)
- 17.00 Plenary debrief

FRIDAY 1 DECEMBER

09.00 SESSION 3: OPERATIONAL SCENARIOS II

09.15 Scenario exercise II
Facilitators: Abby Zeith, ICRC (group 1); Jim Burke, former Irish Defence Forces (group 2)

10.45 Plenary debrief

11.45 SESSION 4: GOOD PRACTICES AND POLICY RECOMMENDATIONS

This session will recap, reflect and exchange views on the operational scenarios and the workshop as a whole, including on measures to implement the Declaration and mitigate civilian harm from the use of explosive weapons in populated areas and any related policy recommendations.

- x Kick off remarks from identified participant(s)
- x Concluding remarks: Richard Moyes, Article 36 & Emily Tripp, Airwars

B. SCENARIO EXERCISES²**1. GENERAL BACKGROUND**

The country of Westeros and its neighbour, Essos, have an ongoing territorial dispute. Essos lays claim to a large area of resource-rich land called Provincia on the Westeros side of their shared border which it claims was historically part of Essos.

Despite occasional skirmishes along the border, there had been no intense or protracted period of armed violence between the two countries for more than a decade. However, tensions between the two states increased in the last 12 months following national elections in Essos which saw the Nationalist People's Party (NPP) take power. One of the NPP's first actions in government was to launch a series of attacks against the border region and towns in Westeros as the prelude to a possible invasion and occupation of Provincia. Westeros has defended itself by launching retaliatory strikes against Essos positions in the border region.

The fighting between the two sides has been characterised predominantly by the use of rockets and artillery. Hundreds of civilians have been killed and injured in the hostilities and extensive damage to housing and essential infrastructure has been reported. Although the fighting is contained to areas close to the border, civilian populations across both countries have been impacted due to the damage to power networks as well as roads, railway lines and bridges. Thousands of civilians have also been displaced from the border areas on both sides.

Last year, Westeros signed the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, a move that was welcomed internationally, by states, the UN and civil society. Westeros has issued an operational directive to its armed forces to implement the Declaration.

The scenario exercises are situated within this context. The two scenarios are intended to allow participants to consider the practical application of the Political Declaration.

The scenarios address in turn:

- x Considerations around the selection and use of explosive weapons in populated areas, at different phases, and to mitigate civilian harm.
- x Identifying, defining and estimating the impact of damage or destruction of infrastructure to the civilian population, mitigating measures, and monitoring this over time.

2. SUGGESTED REFERENCE POINTS IN THE DECLARATION FOR BOTH SCENARIOS

- x Ensure that our 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 (Paragraph 3.3)
- x Ensure that our 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, and conduct damage assessments, to the degree feasible, and identify lessons learned. (3.4)
- x Ensure the marking, clearance, and removal or destruction of explosive remnants of war as soon as feasible after the end of active hostilities in accordance with our obligations under applicable international law, and support the provision of risk education. (3.5)
- x 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. (4.2)
- x 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. (4.4)
- x 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. (4.5)

- x 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. (4.6)

SCENARIO 1 – A MILITARY OBJECTIVE ON A BRIDGE CLOSE TO A RESIDENTIAL AREA

The Essos Defence Forces (EDF) have been carrying out violent incursions into Westeros to arrest people suspected of being linked to a non-state armed group. Tensions around this area have heightened and two civilian men from Westeros were killed by EDF forces.

The EDF have been crossing a bridge in Essos, 2km from the border, in order to enter Westeros. There is an increased military presence on the bridge given its strategic position to entering Westeros, and there are currently 50 defence force personnel stationed at a checkpoint, with more defence forces personnel reported to be on their way. The checkpoint is regularly staffed by 8 soldiers and others are accommodated in buildings that are approximately 50m from the checkpoint. There is a changeover roughly every 2 hours. The soldiers are armed with personal weapons, heavy machine guns and both shoulder-launched and ground-mounted air defence weapons (ZSU 23-4). Civilians are still using the bridge during the day, but it is being closed for civilian and commercial use at night. Often at night a group of 10 – 12 children gather close to the checkpoint chatting to the soldiers and receiving surplus food.

The bridge is situated on the outskirts of a large town called Qarth in Essos. The checkpoint is stationed at one end of the bridge which is 500m away from a suburban residential area that has a population of 25,000 people. A power substation is also close by which provides electricity to the majority of residents and businesses nearby. It has been largely unaffected by the conflict thus far, and is running at near full capacity.

The Government of Westeros is frustrated at the situation, which is escalating due to the frequency of incursions and recent civilian deaths. After attempts at dialogue with the Government of Essos, Westeros is considering a military operation to attack and destroy the EDF's position at the bridge.

As the Government Forces Commander (North), you are responsible for the operation. Westeros does not want to deploy ground forces into Essos to carry out the attack but has settled on the use of ground or air-launched weapons from within its territory. The choices of weapons that are immediately available, include:

- 6 x 105mm artillery guns
- 2 x attack helicopters (AH) armed with 30mm cannon with a maximum range of 1200m; and each with 4 x TOW missiles

with a maximum range of 2000m, and a time of flight to maximum range of 12 seconds.

- Small stocks of precision guided munitions are also available but are not to be used against low value targets unless absolutely necessary.

In developing a military response to the situation:

- x What considerations are to be kept in mind during the planning and execution of the attack and in its aftermath?
- x What resources/information do you require to make such an assessment?
- x What actions can be taken to prevent or mitigate these impacts?
- x What steps can you take, in the time available, to assess the likely impact of the attack on the civilian population, both within the vicinity of the attack and elsewhere in Qarth?
- x How will you determine and monitor the extent of harm to civilians resulting from the attack?
- x How will you use this information to inform further strikes against the same objective, if deemed necessary?

SCENARIO 2 – A TIME SENSITIVE ATTACK ON AN ESSOS COMMAND AND CONTROL POST

Intelligence suggests that an Essos command and control (C2) post is located in a private residence on the outskirts of the town of Winterfell, approximately 5km from the border with Westeros. It is believed to be responsible for coordinating and directing a series of rocket attacks that have been launched from the territory of Essos into Westeros.

The residence is heavily fortified with checkpoints at either end of the street. It is surrounded by high walls with observation posts on each of the four corners of the property. On either side and to the rear of the property are private residences which may be occupied by civilians though this has not been confirmed. The C2 post is believed to be some depth underground, in the basement of the house.

Approximately 50m across the street from the residence is an electrical power plant which provides electricity to more than 20,000 people in Winterfell. It also supplies power to Winterfell's main hospital (and the only hospital in Winterfell with an emergency department), as well as two water pumping stations which service a population of 50,000 people.

Intelligence suggests that the C2 post is planning to launch and coordinate a series of rocket attacks against unknown targets in Westeros in the next 48-72 hours. The Joint Force Land Component Commander (JFLCC) (2*) has directed Brigade Commander North (1*) to prepare a Concept of Operations (CONOP) for an operation to attack and destroy the C2 post in the next 24-36 hours in order to prevent these attacks.

The choices of weapons that are immediately available to the JFLCC to assign to Brigade Commander North to execute this operation include:

- 6 X 105mm artillery guns
- 6 x 155mm artillery guns with access to a limited number of PGM depending on the priority of the target

- 500 pound unguided air dropped bombs
- 2000 pound GBU 31 JDAM
- 2 x attack Helicopters with canon and TOW.

The JFLCC has also directed that during planning and execution of this operation subordinate commanders must ensure adherence to the EWIPA Political Declaration and pay particular attention to paragraphs 3.3 and 3.4.

You are the Brigade Commander North responsible for planning the operation. You are also in command of those force elements that will be assigned to execute the attack. In developing a military response to the situation:

- x What considerations are to be kept in mind during the planning and execution of the attack and in its aftermath?
- x What steps can you take, in the time available, to assess the likely impact of the attack on the civilian population, both within the vicinity of the attack and elsewhere in Winterfell?
- x What information do you require to make such an assessment and what resources do you need to obtain that information?
- x What actions can be taken to prevent or mitigate these impacts?
- x How will you determine and monitor the extent of harm to civilians resulting from the attack? Will you conduct a BDA and what resources will you need for this?
- x How will you use this information to inform further strikes against the same objective, if deemed necessary?

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ENDNOTES

1. <https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/#political-declaration-on-ewipa>
2. For additional guidance on using the scenarios, please contact Article 36: info@article36.org