

**The first international follow-up conference to the adoption of the
Political Declaration on Strengthening the Protection of Civilians from the
Humanitarian Consequences Arising from the Use of Explosive Weapons in
Populated Areas**

**April 23, 2024
Oslo, Norway**

U.S. Statement for Session 2: Understanding direct and indirect effects

The United States would like to thank Norway for the opportunity to provide a written statement for this session.

At the outset, it is important to note that understanding the direct and indirect effects of armed conflict has many dimensions, from operational planning and targeting by military commanders to humanitarian assistance and clearance of unexploded ordnance. The Declaration does not purport to change our understanding of international humanitarian law in this respect or establish a special legal principle of “reverberating effects.”

Section 5.12.1.3 of the DoD Law of War addresses what kinds of expected loss of civilian life, injury to civilians, and damage to civilian objects incidental to an attack on a military objective need to be considered in assessing whether the attack would be excessive and prohibited under the principle of proportionality. It provides:

5.12.1.3 Foreseeable Harms Versus Remote Harms. The expected loss of civilian life, injury to civilians, and damage to civilian objects is generally understood to mean such immediate or direct harms foreseeably resulting from the attack. Remote harms that could result from the attack do not need to be considered in applying this prohibition. The exclusion of remote harms is based on the difficulty in accurately predicting the myriad of remote harms from the attack (including the possibility of unrelated or intervening actions that might prevent or exacerbate such harms) as well as the primary responsibility of the party controlling the civilian population to take measures to ensure that population’s protection.⁴³⁶

For example, if the destruction of a power plant would be expected to cause the loss of civilian life or injury to civilians very soon after the attack due to the loss of power at a connected hospital, then such harm should be considered in assessing whether an attack is expected to cause excessive harm. On the other hand, the attacker would not be required to consider the economic harm that the death of an enemy combatant would cause to his or her family, or the loss of jobs due to the destruction of a tank factory.⁴³⁷ Similarly, in determining the expected loss of civilian life, injury to civilians, and damage to civilian objects, the attacker would not be required to consider the possibility that a munition might not detonate as intended and might injure civilians much later after the attack. This is due to the difficulty in assessing such risks and the responsibility of the party controlling the

territory and the civilian population to take steps with regard to the protection of the civilian population from unexploded ordnance.⁴³⁸

The Declaration does not modify IHL but it does usefully advance our understanding of best practice in this regard by committing endorsing States to ensure that their armed forces take into account the direct and indirect effects on civilians and civilian objects **which can reasonably be foreseen**.

This language from the Declaration is useful guidance because militaries should be trying to address those harmful effects on civilians and civilian objects that can reasonably be foreseen, both “direct” and “indirect.” And, consistent with the Declaration, which does not limit the commitment in paragraph 4.3 to attacks carried out by that party, parties should be considering these effects, both with regard to attacks they conduct, and when fulfilling their obligation under international humanitarian law to take precautions for the protection of civilians against the effects of attacks by the adversary.

From the U.S. perspective, it would be fruitful for States to share their experiences and efforts to improve their ability to assess the effects of operations on civilians and civilian objects and to incorporate those assessments into military operations.

The U.S military has a robust of practice in this regard. For example, this practice is reflected in Department of Defense doctrine for its forces related to effective targeting, estimating collateral damage, and assessing collateral damage.

Although the United States understands these practices to satisfy relevant legal obligations as well as the policy commitments in the Declaration, the U.S. Department of Defense is nonetheless engaged in a significant effort to improve its capabilities to mitigate and respond to civilian harm. One major line of effort in the DoD Civilian Harm Mitigation and Response Action Plan is Objective 4: *Improve knowledge of the civilian environment and civilian harm mitigation capabilities and processes throughout the joint targeting process so that DoD is more effectively prepared to mitigate and respond to civilian harm in any future crisis or conflict.*

Under this objective, DoD is undertaking a range of activities to enhance battlefield awareness. This includes the creation of Civilian Environment Teams at operational commands. These teams will take different forms depending on the needs of the command, and can contain a variety of potential skill sets, such as: intelligence professionals; experts in human terrain, civilian infrastructure, and urban systems; and civil engineers. These teams will assist commanders in understanding the effects of friendly and adversary actions on the civilian environment.

It is anticipated that these teams will leverage existing analytical production related to the civilian environment, conduct analyses, and create products that provide comprehensive perspectives on the civilian environment, including potential second- and third-order effects in the operational environment during planning and the joint targeting process.

With better information about the potential effects on civilians, our commanders will be better able to make decisions that mitigate risks to civilians during military operations. This effort, and paragraph 3.4 of the Declaration illustrate an important aspect of efforts to strengthen the

protection of civilians during armed conflict. Improving civilian protection is not always a question of disarmament or adding restrictions to military operations; rather, improving civilian protection can be an issue of capability development, in this case, improving militaries' ability to assess and take into account potential effects on civilians and civilian objects during military operations.

We have shared more information about U.S. practice in another written submission. We also welcome the opportunity to learn from other States' experiences, lessons learned, and good practices in mitigating and responding to civilian harm.