

Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects

14 November 2018

English only

Geneva, 21–23 November 2018

Item 10 of the provisional agenda

Emerging Issues in the context of the objectives and purposes of the Convention

Mitigating the civilian harm from the use of explosive weapons in populated areas

Submitted by Germany

Executive Summary

The situation: Increased complexity of armed conflict

1. Modern armed conflict has grown more and more complex. Today's conflicts are increasingly asymmetrical, fragmented and protracted. They are also becoming increasingly urbanized, with hostilities often being conducted in or near populated areas. Contemporary adversaries are often non-state actors, who exploit proximity to civilians and critical infrastructure for their own ends and do not respect international norms of behavior in conflict – including International Humanitarian Law (IHL). Civilian harm has increased measured by civilian casualties and injuries, displacement and destruction of infrastructure.

2. The protection of civilians during armed conflict is one of the core aims of IHL and, thus, fundamental for any military operation in fulfilling its mission. Minimizing civilian casualties can directly contribute to mission objectives; help maintain the support of the civilian population, especially in the conduct of counterterrorism and counterinsurgency operations; and enhance the legitimacy and sustainability of operations.

The approach: Exchange of Good Practices to reduce civilian harm

3. Military commanders, for whom IHL provides the regulatory framework for their doctrines, policies and planning processes, when conducting operations in populated areas have adapted to these circumstances. Their good practices are designed to improve and enhance compliance with IHL. No new IHL norms are intended. The aim of this paper is to start a debate within the CCW on how good practices, in particular, when explosive weapons are being employed in populated areas, are developed when applying IHL.

Why the CCW?

4. Although not all cases of civilian casualties are necessarily a violation of international humanitarian law (IHL), the protection of civilians is one of the main purposes of IHL. Reducing civilian casualties promotes the objectives and purposes of the CCW,



whose preamble recalls the “general principle of the protection of the civilian population against the effects of hostilities.”¹

5. The CCW as an inclusive forum with the necessary participation of military experts and the mandate “to continue the codification”² of rules applicable to armed conflict especially with a view to conventional weapons. Therefore, it is a relevant and competent forum to further discuss this topic.

Outline of the working paper

6. The working paper is an outcome of the EWIPA Talks 2018 organized by Germany with two workshops (June and September 2018). The two workshops convened with the support of the ICRC and the GICHD provided a space for a dialogue on how to strengthen the respect for IHL and to address, in the context of the Convention and its annexed Protocols, the challenges presented by the use of conventional weapons during armed conflicts and their impact on civilians, particularly in areas where there are concentrations of civilians. It is intended as a starting point for further discussions in the CCW. Further engagement by High Contracting Parties on their experience and practices will deepen our common understanding of the subject.

7. The first section provides some developments in armed conflict that have re-focused the attention on the use of explosive weapons in populated areas and provides insights into the complex operational environment. It sketches the rationale to focus on explosive weapons with wide area effects in the context of the CCW and recalls the engagement of the UN-Secretary General as well as the International Committee of the Red Cross (ICRC) on the issue.

8. The second section explains in general terms the applicable IHL framework, most importantly the prohibition of indiscriminate attacks, the prohibition of disproportionate attacks and the obligation to take feasible precautions.

9. The third section develops a structure along the line of existing military procedure (doctrine, tactics/rules of engagement, procedures such as targeting and weapon choice, documentation and testing, as well as education) to collect good practices and presents a first illustrative collection derived from input of moderators and participants of the EWIPA-Talks.

10. The fourth section finally highlights the need for international cooperation and assistance.

Work in progress: additional topics for inclusion into good practices

11. Due to time constraints and in order not to overburden the discussions held, there are more facets that still need to be addressed in the future: the role of non-state actors, military necessity in different conflict scenarios, risks and chances of new technologies and tactics, feasible precautions, mitigating reverberating effects, the cost of inactivity to better reflect military necessity, as well as the specific pattern of harm to civilian victims, to name just a few.

Next steps in the CCW

12. In order to be able to devote more time and develop more substance for good practices to minimize the civilian harm caused by Explosive Weapons in Populated Areas the Meeting of High Contracting Parties (MHCP) could mandate an informal working group on the matter starting in 2019 and presenting the outcome of their discussions and recommendations under a dedicated item on next year’s MHCP agenda.

¹ CCW Preamble Para 2.

² CCW Preamble Para 8.

I. Concern over developments of urbanization of warfare in recent armed conflicts

13. Armed conflict is changing. Today's conflicts are commonly asymmetrical, fragmented and protracted. They are also becoming increasingly urbanized, with hostilities often being conducted in or near populated areas, with devastating consequences for the civilian population. A number of factors contribute to this: growing urbanization the deliberate or even forced mingling of combatants and military objectives with civilians and civilian objects by non-state actors. In addition recent conflicts have shown that the line between peace and war is becoming more blurred and with this development armed forces may face different actors such as non-state actors, violent extremist groups or proxy forces.

14. Urban warfare in itself has a grave impact on civilians and on entire societies. It is considered to become the 'new normal'. When war is waged using heavy explosive weapons in populated areas, civilian death, injury and destruction caused is very likely high, as evidenced in recent and ongoing military operations.

15. Since 2011, the ICRC has been calling on States and parties to armed conflicts to avoid the use of explosive weapons with a wide impact area in densely populated areas. The ICRC holds the view that this is necessary because of the significant likelihood of indiscriminate effects despite the absence of an express legal prohibition for specific types of weapons. The ICRC has been calling on States to share their relevant military policies and practices, including any specific restrictions on the use of certain explosive weapons owing to their inherent inaccuracies or other area effects. This would help to inform debates about this important humanitarian issue, assist parties to armed conflicts who endeavour in good faith to comply with IHL, and ultimately lead to better protection of civilians in populated areas.

16. Likewise, the UN Secretary-General has repeatedly called on States to avoid the use of explosive weapons with wide-area effects in populated areas and expressed his commitment to supporting the efforts of Member States to develop inter alia and as appropriate limitations, common standards and operational policies in conformity with IHL relating to the use of explosive weapons in populated areas.

17. Explosive weapons with a wide impact area, even when used against lawful targets, i.e. military objectives, located in populated areas, have a significant likelihood of affecting civilians and/or civilian objects. The wide impact area is due to the characteristics of the weapons (which have 'area effects' either through sheer explosive yield, an inherent lack of accuracy or precision, or the deployment of a large number of munitions simultaneously over a large area). Combined with the proximity of military objectives to civilians and/or civilian objects, which will to some extent be inevitable when fighting takes place in populated environments.

18. Populated areas are characterized by a concentration of civilians and civilian objects. While the use of explosive weapons in populated areas could cause direct harm to civilians and civilian objects in the weapon's immediate impact zone, these effects are multiplied when critical civilian infrastructure is damaged or destroyed. Thus, next to the direct effects (deaths, injuries – often leading to permanent disabilities – psychosocial harm and trauma, destruction of housing and critical infrastructure), there is a wide and complex spectrum of indirect or reverberating effects. For example, when critical infrastructure is damaged or destroyed, the provision of services essential for the survival of the civilian population (healthcare, electricity, water and sanitation) will be interrupted or will altogether cease. This will in turn lead to more consequences, including death, the spread of disease and further population displacement, thus perpetuating a vicious circle of civilian casualties and suffering.

19. Effects, which are reasonably foreseeable, must be considered by parties to a conflict when planning and executing an attack. They must also be considered when conducting post-attack assessments, to inform the choice of means and methods of warfare in future military operations. Given the prevalence of urban warfare today, and the high risk it entails for civilians, States as well as non-state actors should review their military policies, procedures, doctrines and practices and take measures to adapt these to the

specificities of urban (and other populated) environments and to the vulnerability of civilians therein. This includes reassessing and adapting the choice of means and methods of combat in populated areas and the development of adequate capabilities.

20. In this vein, examples of well-proven good practices, already implemented in military doctrines, tactics and procedures, were discussed last year and in particular this year, and can be found in a number of publicly available State policies and Rules of Engagement. Illustrative elements of such good practices are outlined below in section III.

II. Normative framework applicable to the use of explosive weapons in populated areas

21. IHL rules regulating the conduct of hostilities apply to the use of explosive weapons in populated areas. These are notably the prohibition of indiscriminate attacks, the prohibition of disproportionate attacks and the obligation to take feasible precautions in attack.

22. The **prohibition of indiscriminate attacks** is stipulated in Article 51(4) of Additional Protocol (AP) I and in customary international law. It prohibits attacks that are of a nature to strike military objectives and civilians or civilian objects without distinction. These are attacks that: (a) are not directed at a specific military objective; (b) employ a method or means of combat which cannot be directed at a specific military objective; or (c) employ a method or means of combat whose effects cannot be limited as required by IHL.

23. The key questions are whether the explosive weapon systems of concern are capable of being directed at a specific military objective, and whether their effects can be limited as required by IHL. Does the use of inherently inaccurate and imprecise weapons, or weapons with a destructive radius significantly larger than the target, comply with the prohibition of indiscriminate attacks, when such weapons are used to attack military objectives located in a densely populated environment? It has been observed that (a) a number of munitions will, in all probability, land and detonate off target, and (b) that the effects of the weapon (either because of its lack of accuracy and precision or because of its high explosive yield) will go well beyond the target, raise serious questions with regard to the compatibility of the use of such weapons in populated areas with Article 51(4) of AP I.

24. Many heavy explosive weapons, such as artillery and multi-barrel rocket launchers (MBRL), are designed (i.e. intended) primarily to deliver fire over a wide area. As such it is difficult to envisage how such weapons could be directed against a specific military objective located in a populated area. Moreover, used against multiple, clearly separate and distinct military objectives located in a concentration of civilians, such weapons would fall foul of the prohibition of area bombardment in Article 51(5)(a) of AP I.

25. The **prohibition of disproportionate attacks** is stipulated in Article 51(5)(b) AP I and in customary international law. It prohibits attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

26. Such incidental harm consists of both direct and indirect effects of the attack, which must be taken into account in the planning and carrying out of attacks and in the proportionality assessment, to the extent that it is reasonably foreseeable. What is reasonably foreseeable is what is foreseeable to a reasonable commander, making use in good faith of the information reasonably available to them, in the circumstances prevailing at the time. In this respect, commanders have a duty to, insofar as feasible, actively collect information that will allow them to anticipate the direct and reverberating effects of their attack on civilians. What is reasonably foreseeable is further informed by past practice, lessons learned and the experience of armed forces. Thus, in a protracted conflict scenario or where attacks are repeatedly being conducted in or against the same populated area, foreseeability of effects may increase between the first and subsequent attacks.

27. Armed forces must ensure that all reasonably foreseeable direct and reverberating effects are taken into account in the proportionality assessment, documented during battle

damage assessments, and fed back into the targeting cycle. Further, they must ensure that information that would render such effects foreseeable (such as the location of critical infrastructure, their condition, and links between them) is, to the maximum extent and accuracy, acquired and properly evaluated, including through the involvement of relevant experts (e.g. engineers) in the planning and targeting process. Especially how and to what extent reverberating effects are taken into consideration by the militaries of High Contracting Parties in the planning and conduct of military operations in populated areas; or to what extent they take into account the reverberating effects of earlier attacks on or within the vicinity of the target could be further discussed.

28. Lastly, IHL stipulates that in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects. In this respect, parties must take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects (Article 57(1) and (2)(a)(ii) AP I).

29. Therefore, insofar as feasible, parties to a conflict must choose the weapon or method of attack that will entail the least possible incidental harm or risk thereof. This requires an assessment of the foreseeable effects of the available weapon systems based on their technical features and the expected circumstances of their use in populated areas, which may differ from those for which the weapon was designed. It further requires manipulating these technical features (including warhead, caliber or fuse, inter alia) as appropriate to minimize incidental civilian harm.

30. What is feasible is what is practicable and practically possible in the circumstances prevailing at the time, including humanitarian and military considerations. Feasibility will thus also depend on operational conditions, including the nature of a target as “deliberate” or “dynamic”, and the level of risk own forces are exposed to. At the same time, no such conditions (including troop safety and the circumstance of military necessity) can justify using a means or method of warfare that would lead to an indiscriminate or disproportionate attack.

31. In some cases, no other measure will be able to limit the wide area effects of a weapon and the likelihood and/or extent of incidental civilian harm it is expected to cause. In this situation the military necessity needs to be especially carefully weighed. If the use of the weapons is likely to violate the prohibition of indiscriminate or disproportionate attacks, the weapons must not be used.

32. Parties to a conflict should look to minimize the use of explosive weapons with a wide impact area in populated areas as far as is feasible. In addition, parties should take sufficient mitigation measures to reduce to an acceptable level the risk these weapons pose to civilians. Section III outlines a number of illustrative good practices that can serve as such mitigation measures.

III. Illustrative Elements of Good Practices in the military domain

33. For the effective implementation of IHL principles in populated areas— distinction, necessity, proportionality, and precautions in attack – adequate capabilities are needed. This demands a holistic approach that encompasses heightened awareness and appropriate reflection in military doctrines, strategic directives, tactical instructions, rules of engagement, education, training and exercises of armed forces as well as thorough testing and documentation of new weapons, means and methods of warfare before fielding.

34. With the view to strengthening the respect for IHL and to addressing, in the context of the Convention and its annexed Protocols, the challenges presented by the use of conventional weapons during armed conflicts and their impact on civilians, particularly in areas where there are concentrations of civilians, the following initial results of informal discussions on Good Practices in the military domain that took place during the “EWIPA Talks” in Geneva this year can be summarized as follows.

1. Awareness and doctrine

35. States are obliged to ensure the establishment of IHL principles in military doctrines of their armed forces as unequivocal duties of all ranks and to attach special attention to the protection of the civilian population. In particular, they need to raise awareness at all levels of command and control of the serious direct and indirect/reverberating effects of explosive weapons in build-up areas on the civil population, vital infrastructure and the environment.

36. Military planning and targeting cycles have to take into account that all detonations of explosive weapons cause lethal and incapacitating blast, heat and high-speed dispersion of fragments within a circle around the point of impact. Such area effects occur irrespective of the precision of impact in relation to the aim point and depend mainly on the yield, the composition of high explosives and fragments, and the setting of fuses. Inherent imprecision of indirect fire delivery systems, various types and production lots of munitions, charges and fuses, as well as environmental conditions influence trajectories of bombs, projectiles or rockets, times of detonation and lethal effects on the ground. They lead to often-significant deviations of the point of impact from the aim point. In addition, inaccuracies of target location and identification, poor communication and targeting procedures, the use of multiple warheads and repeated shelling can produce devastating results, high losses among the civil population and the destruction of their vital infrastructure.

37. Therefore, strategic directives should, wherever possible, minimize carrying out high intensity combat operations in populated areas and seek to achieve the military purpose by alternative strategies and centers of gravity of operations. If unavoidable in engaging legitimate military targets, the use of explosive weapons in populated areas should be limited to thoroughly prepared and precise pin-point operations with strict limitations on the size of munitions, and more generally on the use of munitions with wide area effects, in particular indirect and multiple-launch fire systems as well as air attacks. A closer more scenario-specific look at strategic directives could be part of further work by the High Contracting Parties (HCP).

38. Operations should be based on a careful and continuous battlespace assessment, based on the fusion, analysis and evaluation of all source of intelligence. This includes precise information on the different entities involved, as well as on the surrounding infrastructure. In particular, planning and conduct of urban operations and targeting must take into account the situation of the civilian population and aim to ensure effective protection at all times, including the implementation of feasible precautionary measures. To that end, the establishment of close civil-military cooperation including with regional and cultural experts is crucial. Commanders are required to consult legal experts throughout the planning process up to the final order to execute strikes. In addition, it is recommended that Commanders at the strategic or operational level avail themselves of 'subject-matter experts', such as sociologists, cultural mediators and negotiators, as well as gender-advisors when planning operations.

2. Tactical guidelines and Rules of Engagement (RoE)

39. Mission, options and mode of attack: As required by IHL, military force must only be used to attack lawful military targets. Everything feasible should be done to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection of international law. While carrying out their military mission commanders have to consider at all times the likely effects of planned operations on the civilian population, the potential indiscriminate effects of chosen means of warfare, the proportionality of planned attacks in relation to military necessities and whether the military purpose can be achieved by alternative means or methods to protect civilians. Thorough targeting processes and feasible precautionary measures should be enshrined in tactical instructions and detailed in operation orders and/or rules of engagement (RoE).

40. The following illustrative targeting process involves these phases:

- The commander provides guidance on the mission, objectives and desired effects;

- The intelligence on the target is developed and it is finally assessed as a valid military objective;
- A collateral damage estimate (CDE) is conducted and used to advise the relevant commander on the potential risks to civilians, thus enabling a decision on proportionality;
- Warnings are provided to the civilian population where practicable (i.e. unless the circumstances do not permit);
- Weapons are assessed and selected, based on the targets and expected area effects;
- The force is applied to achieve the desired effects; and
- Collateral damage, battle damage and weapons effectiveness assessments are conducted.

41. Intelligence, surveillance, target identification: Any use of explosive weapons in populated areas should be prepared by thorough multi source intelligence, battlefield reconnaissance, target identification, and sustained surveillance and observation of the target area. On this basis, and in order to respect IHL rules, commanders and staff are to undertake a continued battlespace area evaluation (BAE) to establish a clear situation assessment and distinguish civilians or civilian objects from lawful military targets. Establishing the legal status of the envisaged target is crucial. An attack using explosive weapons must be cancelled or suspended if it becomes apparent that the objective is not a military, i.e. lawful, one or is subject to special protection or that the attack may pose risk to civilians which would be excessive in relation to the concrete and direct military advantage contemplated.

42. CDE and selection of tactical engagement option: Before the employment of explosive weapons, a collateral damage estimate (CDE) should assess the effects of every tactical option of their potential use taking into account the situation of the civilian population. In particular in a pre-planned attack the CDE should guide the choice of the appropriate tactical option for the engagement, including the best suited capability/weapon systems available as well as understanding and seeking to mitigate the area effects of the selected weapon. Where feasible, this would include selecting munitions and fuses and ensure high precision and low yields to curtail area and reverberating effects, and considering alternative tactics. In this, it is important to recognize that the weapon may be deployed in circumstances for which it was not designed making it difficult to fully anticipate the effects of the weapon. In situations that pose a high risk to civilians, higher command authority for the attack may be required; levels of delegated authority should be specified in operation-specific directives. The spectrum of targeting also includes more reactive scenarios under dynamic targeting, combat engagement and defensive fires/fires in support of friendly forces. These should be part of further discussions.

43. Flexibility and reactivity: Continuous surveillance of the target area is a method to enable last minute decisions and ensure that laser illumination or other precise guiding methods function uninterrupted during the whole targeting and delivery process, when using precision guided munitions (PGMs). The delivery should be cancelled if civilians move too close to the target area and the military purpose can be achieved by conducting alternative operations or delaying the attack to a later time.

44. Civil-military cooperation can help ensure that commanders are informed about vital civilian infrastructure, movements and assembly of and possible protection measures for the civilian population. Safety distances for friendly troops could inform appropriate safety distances also for civilians. Commanders should disseminate information on active operations and raise awareness on the effects of the use of different types of armaments. They should issue an appropriate warning to the civilian population of imminent attacks whenever feasible in this regard, commanders should maintain channels for engagement with the International Committee of the Red Cross, other branches of the International Red Cross and Red Crescent Movement, the United Nations and non-governmental organizations that operate in conflict zones. These channels could facilitate the transmission

of humanitarian concerns, as well as of up-to-date information regarding the allocation and identity of protected facilities, vehicles, and personnel.

45. Records and responsibility: At operational and tactical command and control levels, all steps in the situation assessment and the decision process leading to the employment of explosive weapons should be tightly controlled and recorded. Commanders bear the final responsibility for employment decisions.

46. Battle damage assessments (BDA) should inform commanders and staffs, how to improve targeting cycles, and be conducted promptly after attacks. BDA should verify, inter alia, whether the desired effect on a target was achieved and whether the attack resulted in civilian casualties or damage to civilian objects. The findings should be recorded and guide future targeting processes in order to avoid possible collateral damage and to facilitate the review or investigation of incidents involving civilian casualties. This could be done by considering relevant and credible information from all available sources, such as other agencies, partner governments, the United Nations and nongovernmental organizations, and by taking measures to mitigate the likelihood of future incidents of civilian casualties and ensure accountability. Some armed forces have recognized the utility of establishing civilian casualty tracking cells for this purpose. In addition, and in line with the obligation to ensure respect for IHL, military forces should engage foreign partner forces to share and learn good practices for reducing the likelihood of and responding to civilian casualties, including through appropriate training and assistance.

47. Developing, testing and documentation of new capabilities, including weapons, means or methods before fielding

48. Article 36 of Additional Protocol I to the Geneva Conventions requires states to determine whether the employment of a new weapon, means or method of warfare would – in some or all circumstances – be prohibited. Therefore, new weapon systems, means and modes of targeting, munitions, charges and fuses should be tested thoroughly by live firing before their fielding in order to foresee their effects and establish their reliability. These data should be documented in technical instructions and manuals. The accuracy of different modes of targeting, the effects of weapons, munitions and fuses as well as the probable precision of their impact (CEP) under various environmental conditions including build-up areas should be translated into field manuals as well as training instructions and exercise concepts.

3. Education and Training

49. In order to improve compliance of urban operations with IHL, the above rules should be enshrined in strategic, operational and tactical directives as well as education programs for officers and non-commissioned officers, training instructions, field manuals and exercise concepts. They should be taught and trained regularly in unit exercises and combined arms maneuvers. It is recommended to train under conditions which are close to a real built-up environment and in doing so using available simulation technologies. Thereby, legal experts should raise awareness and illustrate cases during training programs at peacetime locations, and additionally, ‘subject-matter experts’, such as engineers, sociologists, cultural mediators and negotiators, as well as gender-advisors could assist operational headquarters during military exercises to give legal and further relevant advice.

4. Examples (not exhaustive)

50. The International Security Assistance Force in Afghanistan (ISAF) instituted policies to avoid or limit the use of explosive weapons in populated areas in order to minimize the impact of military operations on civilians. This included the issuance between May 2007 and November 2011 of tactical directives to ISAF subordinate commanders to use the least destructive force in carrying out their mission, e.g. limiting air strikes and the use of indirect fire to situations of self-defence or imminent threat, and only if no other alternative was available. In all other cases, ISAF units were prohibited to use heavy weapons strikes if they were unable to assess the risks to the civilian population. Regional commanders had to approve strikes after careful evaluation of all information available at the headquarters. The lessons learned in Afghanistan have been reflected in the recently

revised United States military policy relating to the protection of civilians and the European Union's Military Committee concept for "avoiding and minimizing collateral damage in EU-led military operations" of February 2016.

51. The African Union Mission in Somalia (AMISOM) adopted an indirect fire policy that restricted the use of indirect fire systems in populated areas. Its three-step approach follows the principles of avoiding the use of IDF that can cause civilian casualties (except in self-defence), attributing responsibility to the originator of indirect fire and making amends for civilian harm caused unintentionally by AMISOM. The changed policies of ISAF and AMISOM resulted in a significant reduction of civilian casualties caused in Afghanistan and Somalia.

52. The OSCE Code of Conduct of 3 December 1994 (no. 29, 30) requires participating States to reflect their commitments concerning IHL in the training programmes and regulations of their armed forces and security formations, instruct military and para-military personnel accordingly and make them aware that they are individually accountable for their action. Participating States have to ensure that their armed and security forces are commanded, manned, trained and equipped in ways, that are consistent with their obligations under IHL and that their defense policies and doctrines duly reflect IHL rules (no. 34, 35).

IV. International Cooperation and Assistance

53. Discussions among HCP of the CCW on international cooperation and assistance could play an important role in opening additional avenues in order to improve standards and strengthen compliance with IHL when using explosive weapons in populated areas. This could be achieved by:

54. Firstly, through sharing and exchange of good practices and lessons learned, either bilaterally, among partner or coalition forces, with supported forces, or in relevant multilateral fora. Such good practices can be incorporated in military policy, doctrines and other tools and instruments which States should review, update or elaborate, as appropriate, taking into account the specificities of urban warfare and the vulnerability of civilians present in such environments. In this respect, HCP should continue to take stock of the humanitarian consequences of their military operations, and be prepared to engage proactively with the International Committee of the Red Cross or other impartial humanitarian organizations on these consequences.

55. Secondly, through training and capacity-building, to ensure that IHL and the good practices do not remain measures on paper, but are actually implemented in practice. This can include training to understand the type and size of munitions, including blast and fragmentation range or effects. Training and capacity-building can be conducted on a bilateral basis, among partner or coalition forces, or in coordination with international/regional organizations. In fact, when providing such support, States have a duty to ensure that it is not used to carry out violations of IHL. Training and capacity-building can further be carried out through or in coordination with international or regional organizations.

56. Lastly, discussions on country/country and group/region-specific donor-recipient coordination should consider areas where a State would benefit from international cooperation and assistance in order to improve compliance with IHL and to prevent as far as possible the humanitarian harm caused by the use of explosive weapons in populated areas.

57. While enhancing cooperation and assistance can provide new avenues to better address the needs and specific circumstances of States, it must be recalled that responsibility for compliance with IHL and for taking measures to protect civilians against the effects of military operations lies with each individual State. Lack of assistance can therefore not justify IHL violations under any circumstances.

V. Recommendations to CCW HCP Meeting in November 2018

58. Germany recommends the following steps to the High Contracting Parties to address the effects of Explosive Weapons in Populated Areas within the mandate of the Convention of Certain Conventional Weapons:

59. Take note of the informal consultations held following decision 5 of the 5th Review Conference: “to strengthen the respect for International Humanitarian Law (IHL) and to address, in the context of the Convention and its annexed Protocols, the challenges presented by the use of conventional weapons during armed conflicts and their impact on civilians, particularly in areas where there are concentrations of civilians”.

60. Appreciate the approach taken to share best practice on reducing the likelihood of indiscriminate effects in urban settings in order to ensure compliance with IHL principles and rules in the CCW.

61. Decide to establish an open-ended informal working group related to the challenges presented by the use of explosive conventional weapons during armed conflicts and their impact on civilians, particularly in areas where there are concentrations of civilians starting in 2019 with a mandate to consult on possible policy options/responses to the above mentioned challenges and to present the outcome of their discussions and recommendations under a dedicated item on next year’s Meeting of High Contracting Parties.
