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Assessing US and Dutch advances in building new Civilian Harm Mitigation policies

Key takeaways and recommendations

In November 2022, PAX brought together a range of experts and stakeholders to discuss people-centered approaches to security. Experts from the US Department of Defense (DoD), the Dutch Ministry of Defense (MoD), PAX and the wider group of participants to the 2022 annual PAX Protection of Civilians Conference discussed Civilian Harm Mitigation (CHM) policy development processes currently taking place in the United States and the Netherlands: the US Civilian Harm Mitigation and Response Action Plan, or ‘CHMR-AP’, and the Dutch ‘Roadmap.’

The key insights from that discussion are presented in this paper. Building on those insights, we further present recommendations we believe are key to ensuring that current CHM ambitions are successfully realized.

While this paper looks specifically at advances made in the US and the Netherlands, we encourage policy makers and practitioners from other states and from international institutions to use these findings and recommendations to inform their own CHM processes.

About US and Dutch advances in CHM policy making

Following information about the involvement of the Dutch military in an airstrike on [Hawija](#), Iraq, which resulted in at least 85 civilian casualties, the Dutch MoD committed itself in 2020 to the ‘Roadmap’: a process to identify gaps in how it investigates, reports and responds to civilian casualties caused by its military operations. The process involved a series of workshops including experts from within and outside the Dutch MoD. Coordinated by PAX, a Consortium of civil society organizations participated in and co-facilitated these workshops. This resulted in a [letter](#) to Parliament in April 2021 in which the Minister of Defense announced a series of steps to improve CHM policy and practice.

In early 2022, the US Secretary of Defense directed the DoD to create a ‘Civilian Harm Mitigation and Response Action Plan’ (CHMR-AP), following NGO and [media](#) reporting on limitations in how the US up until then had dealt with civilian casualty incidents. A team of experts set to work to identify steps the DoD could take to improve how it mitigates and responds to harm from its operations, thereby seeking consultations with civil society, which resulted in the publication of an [action plan](#) in August 2022.

What we learned

The findings presented here are the result of discussions conducted under the Chatham House Rule. As such, the findings are not attributed to any of the speakers or participants.

- Both the US and the Netherlands chose to include civil society in the development of their respective CHM action plans, recognizing that **civil society possesses relevant complementary expertise**. In both processes, civil society organizations were, among other things, encouraged to provide their expertise and experience regarding civilian harm data collection; data management and analysis; transparent reporting; and international legal and ethical frameworks.
- **Effective CHM requires committing to a people-centered approach, meaning that militaries are mindful of civilian needs and put understanding the human environment front and center in policy and practice**. The CHMR-AP seeks to elevate the importance of the civilian environment as an element that should be routinely considered in operational planning processes. Both the CHMR-AP and the Dutch Roadmap further recognize the importance of broadening the research framework when investigating civilian harm allegations, potentially leading to better inclusion and consideration of non-military sources of information, a point long advocated by civil society organizations.
- The US and the Netherlands recognize that **CHM policies and practice should not be developed and implemented in isolation**, as successful CHM in practice will depend also on agreements made in (future) military coalitions and partnerships, as well as on the CHM capabilities and knowledge of military partners and allies. The Roadmap includes language on (potential) future coalition agreements regarding “investigation, transparency and compensation schemes”¹; the US action plan has dedicated two sections to CHM in security cooperation programs and multinational operations respectively.²

¹ See Dutch Minister of Defense, *Kamerbrief Stappenplan inzake burgerslachtoffers bij inzet in het kader van artikel 100 van de Grondwet* [[BS2022005933](#)], 7 April 2022.

² See sections 9 and 10 of the Civilian Harm Mitigation and Response Action Plan.

- **CHM ambitions of both nations risk remaining a paper reality when their implementation is not supported by corresponding investments.** To that end, the CHMR-AP can be an example for other nations in its detailed attention to staffing and means requirements.
- **Creating a solid institutional support base is crucial for successful implementation of CHM policies.** Conference participants mentioned that hasty implementation without timely consultation can alienate crucial (internal) stakeholders. A broad support base is needed also for decisions related to where responsibility and accountability for CHM is organized within relevant institutions.
- While participants supported the notion that **reflecting on mistakes and lessons learned in the past regarding civilian harm is a necessary element in ensuring governments and militaries can do better in the future**, the session demonstrated that states continue to have different views on whether that means past civilian harm incidents can and should be reopened for investigation.

What we recommend

Based on our discussions at the 2022 annual PAX Protection of Civilians Conference, we provide the following recommendations to the US Department of Defense and the Dutch Ministry of Defense:

- Proactively structure the continued involvement of civil society when moving from the development to the implementation of CHM policy and practice.
- Adopt a strong people-centered approach to CHM, elevating the importance of understanding the human environment across all military components and in military decision making. For instance, by routinely including non-military data sources in civilian harm investigations; developing reporting mechanisms to enable (affected) civilians and civil society to directly interface with militaries about civilian harm; consistently including analysis of the human environment in operational planning and decision making
- Invest in cooperation with each other and other states and international institutions when implementing CHM policies, for instance by sharing lessons learned and by including multinational staff to the Civilian Protection Center of Excellence proposed by the CHMR-AP.
- As NATO member states, use your commitment to CHM to propel the development of strong NATO CHM standards and practices, guiding individual member states as they seek to remain relevant in this field.
- Develop clear minimum standards regarding civilian harm investigation, transparency, and response, on which participation in future partnership, coalition and alliance operations will depend.
- Prioritize building a strong institutional support base for CHM, in order to secure the resources required to successfully implement new CHM policies.
- Use the advances made and lessons learned through the CHMR-AP and Roadmap processes to allow for reopening of past civilian harm allegations where warranted.

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