



Switzerland's comments to the elements of a political declaration to ensure the protection of civilians from humanitarian harm arising from the use of explosive weapons in populated areas

Edits concerning the scope of several paragraphs

We believe that the scope of the following paragraphs is too narrow and should be enlarged to include the broader challenges related to the conduct of hostilities in urban areas:

- **Paragraph 1.5:** "...the impacts and long-term humanitarian consequences arising from the conduct of hostilities use of explosive weapons in populated areas";
- **Introduction of part B:** "Committed to enhancing the protection of civilians and civilian objects in armed conflict, strengthening compliance with International Humanitarian Law, and addressing the humanitarian harm arising from the conduct of hostilities in urban areas use of explosive weapons with wide area effects in populated areas, we will:";
- **Paragraph 3.3:** "Develop, review and, where necessary, improve and implement policy and practice, and, in particular, military rules of engagement, with regard to the conduct of hostilities, including the use of explosive weapons with wide area effect, in populated areas, to ensure full compliance with IHL.";
- **Paragraph 4.5:** "Support the United Nations, the ICRC, other international organisations as well as civil society organisations in addressing the direct and indirect humanitarian impact of the conduct of hostilities use of explosive weapons with wide area effects in populated areas.

Part A, Section 1 - Identifying the problem and challenges

New paragraph **before paragraph 1.1:** "As the world's population living in urban areas increases and military objectives are increasingly located in such areas, armed conflicts are often fought in urban contexts."

Rationale: we would suggest to better describe and highlight the factors underlining why conflicts take place more and more often in urban areas.

Paragraph 1.1 bis or 1.2 bis: "Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, including when used by non-state armed groups, as well as deliberate violations of IHL exacerbate these challenges and cause much of the harm observed in urban contexts."

Rationale: to complete the description of the problem, we would like to suggest to add a paragraph mentioning elements underlined in paragraph 1.8. In urban contexts the use of explosive weapons is not the only source of concern, albeit an important one. Tactics endangering civilians and violations of IHL are also drivers of harm we would mention in the preambular part of the text.

Paragraph 1.2: "Some uses of explosive weapons with wide area effects are having a devastating impact on civilians and civilian objects in populated areas."

Another option for the first sentence of the paragraph: “Explosive weapons with wide area effects ~~can have~~ ~~are having~~ a devastating impact on civilians and civilian objects in populated areas.”

Rationale: the first sentence of the paragraph seems to imply that all uses of explosive weapons in populated areas have the same dire impact on civilians, which is not necessarily the case. This element should be clarified and qualified.

We would also see value in having a more explicit reflection of the indirect effects of the conduct of hostilities in populated areas in this paragraph. In doing this, it must be ensured that we do not give the sense that all uses of explosive weapons give rise to such indirect effects.

Paragraph 1.3: “We also note that the use of explosive ~~ordnance as well as of IEDs weapons~~ ~~can~~ results in contamination ~~by explosive remnants of war~~, impeding the return of displaced persons and causing casualties long after hostilities have ended.”

Rationale: the second sentence of the paragraph should be clarified and qualified as not all uses of explosive ordnance and IEDs result in contamination. We would also suggest to speak of explosive ordnance to be in line with the definitions given in CCW Protocol V and add a reference to IEDs which are not included in the definition of explosive ordnance. Lastly, we would delete the reference to explosive remnants of war as they do not include IEDs.

Paragraph 1.4: “We recognise the importance of casualty recording and the need ~~for to ensure~~ appropriate data collection, including data disaggregated by sex and age, on the impacts of ~~explosive weapons~~ the conduct of hostilities in populated areas.”

Rationale: in the second sentence of the paragraph we would suggest to delete “ensure”, as not every State is in a position to collect data at all times, and to broaden the scope of the paragraph by referring to the conduct of hostilities instead of explosive weapons. The collection of data is in fact relevant for the conduct of hostilities in urban settings in general and not only in relation to the use of explosive weapons as suggested.

Paragraph 1.7: “We ~~express concern about erosion in respect for international humanitarian law and deliberate violations of the law during armed conflict, and~~ recall that international humanitarian law applies to all parties to an armed conflict, including non-state armed groups, and must be respected in all circumstances. We express concern in particular about deliberate violations of IHL during armed conflicts”.

Rationale: we would suggest not to give the impression that IHL is being eroded. Focussing only on violations risks leaving the impression that IHL is not considered relevant or is widely disrespected. Secondly, as currently formulated, the paragraph might better fit in Section 2 as it also recalls the applicability of IHL to all parties to armed conflict.

Paragraph 1.8: “We condemn all violations of IHL by any actor, including the use of human shields, as well as uses of improvised explosive devices, ~~the use of civilians as human shields~~ and other tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas that violate IHL”.

Rationale: we believe that only clear violations of IHL should be condemned. In this regard we would like to stress that the use of IED’s is not *per se* unlawful and that not all tactics designed to exploit the proximity of civilians and civilian objects are necessarily a violation of IHL. As Section 1 should identify problems and challenges rather than condemning selected practices,

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we would suggest to move elements of condemnation to Section 4, in proximity with paragraph 4.1.

Section 2 – legal framework

Paragraph 2.1: “We reiterate that existing IHL provides the framework to regulate the conduct of armed conflicts and applies to the use of explosive weapons with wide area effects in populated areas. We stress the importance of full compliance with international humanitarian law as a means to protect civilians and civilian objects and mitigate civilian harm. We acknowledge the particular challenges posed by the conduct of hostilities in populated areas, including in the use of explosive weapons with wide area effects, and note that good policy and practices designed to protect civilians and civilian objects during the conduct of hostilities help to ensure that attacks are directed at military objectives and their effects limited as required by IHL. ~~We recognise the difficulty in directing explosive weapons with wide area effects against specific military objectives within populated areas, and we note that while good policy and practices designed to protect civilians exist, there is considerable scope for concrete improvements in the implementation of international humanitarian law.~~”

Rationale: The first sentence of paragraph 2.1. should clearly underline that IHL provides a sufficient legal framework to protect civilians and civilian objects when hostilities are conducted in populated areas. Additionally, IHL is not the only relevant and applicable international law (human rights may also be relevant), which should also be reflected in this sentence. Lastly, we suggest to reformulate the third sentence of the paragraph and to move it to Section 1 as it presents one of the challenges of urban warfare.

Paragraph 2.3: “We recall that all States and parties ~~the obligations on all States and parties~~ to an armed conflict must respect and ensure respect of ~~to adhere to~~ IHL in all circumstances, including when conducting hostilities in populated areas, and recall in particular including the obligation requirement to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions of indiscriminate and disproportionate attacks and the obligation to take all feasible precautions ~~in attack~~”.

Rationale: as it is formulated the first sentence could leave the impression that adherence to IHL is only required when conducting hostilities in populated areas. By deleting “in attack” we would recall the precautionary measures to be taken against the effects of attacks.

Part B, Section 3 - Operational commitments: existing legal framework, military policy and practice, sharing good practice on the protection of civilians

Paragraph 3.1 bis: “Disseminate and promote IHL, its respect and implementation, including by organised armed groups.”

Rationale: We would recommend a new paragraph reflecting the obligation of disseminating IHL.

Paragraph 3.2: “Not use ~~Refrain from any use of~~ weapons that are prohibited as inherently indiscriminate under IHL.”

Rationale: since the intention seems to be to restate the law we would suggest using a stronger verb than “refrain”, as the use of such weapons is absolutely prohibited under IHL, and to move the paragraph to Section 2.

Paragraph 3.4: “Ensure that our armed forces, in the conduct of military operations, will, ~~in accordance with IHL,~~ take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects. In fulfilling existing obligations under IHL, we will ensure that our armed forces are adequately trained and adopt policies and practices to avoid civilian harm, notably by cancelling or suspending ~~restricting an attack, including when using the use of~~ explosive weapons with wide area effects in populated areas, when it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause disproportionate effects ~~when indiscriminate effects may be expected.~~”

Rationale: we propose to delete “in accordance with IHL” as it seems to weaken the obligation. Moreover, if the second sentence of the paragraph aims to clarify the precautionary measures as enshrined notably in the Protocol I to the Geneva Conventions, we should be careful not to weaken that obligation, which requires to cancel or suspend attacks when it becomes apparent that they would not target a military objective or would have disproportionate effects.

Paragraph 3.4 bis: “When carrying out collateral damage estimations, take into account as far as feasible, collateral damage resulting from previous attacks; and conduct battle damage assessments, to the degree possible, to identify lessons learned for future operations.”

Rationale: we would like to suggest a new paragraph committing States to adopt good practices which can increase the protection of civilians.

Section 4 - Data collection, Victim Assistance, Cooperation and Review

Paragraph 4.1: “Condemn violations of IHL, such as the deliberate targeting of civilians and civilian objects, the unlawful use of improvised explosive devices and the use of human shields, and call on all parties to put an end to such practices ~~and support measures to hold those responsible for violations of international law accountable~~”.

Rationale: we believe we should only condemn violations of IHL and not limit the paragraph to a few, although important, examples of violations. As already mentioned, the use of IEDs is not *per se* a violation of IHL.

We would suggest moving part of paragraph 1.8 here (see comment above) and potentially merge it with paragraph 4.1 above.

Paragraph 4.1 bis: “In cases of allegations of violations of IHL, seek clarification and ensure the facts are established, including through fact-finding mechanisms such as the International Humanitarian Fact-Finding Commission (IHFFC).”

Rationale: we would suggest to consider including a commitment highlighting the importance of establishing the facts in cases of alleged violations.

Paragraph 4.1 ter: “Use domestic and international measures to hold to account those responsible for serious violations of international humanitarian law and to collect, compile, retain, and preserve relevant information to support efforts to hold those responsible accountable.”

Rationale: we would suggest to transform the last part of paragraph 4.1 on accountability into a separate commitment. This is important because ensuring accountability not only serves to punish those responsible for violations but also contributes to the acknowledgment of past violations and the prevention of further violations. Accountability is therefore a critical precondition to any sustainable transition to peace and stability. We believe it should therefore have a more prominent role in this declaration.

Paragraph 4.2: “~~Collect and share~~Strive to collect and share data, disaggregated by sex and age, on the impact of explosive weapons with wide area effects in populated areas.”

Rationale: as not all States have the resources to engage in the collection of data, a challenging issue to carry out during military operations, we would suggest to qualify the wording of the paragraph.

Paragraph 4.4: “~~Urge all parties to armed conflict to~~Allow and facilitate rapid and unimpeded passage for humanitarian relief to all persons in need~~civilian populations in need~~”.

Rationale: we believe that “urge” is not strong enough. It is an established norm of IHL that States and parties to armed conflicts must allow and facilitate rapid and unimpeded passage of humanitarian relief for all persons in need.

Paragraph 4.7: “Review the implementation of this declaration as appropriate and, where necessary, identify any relevant additional measures that may need to be taken to improve compliance with IHL and to strengthen the protection of civilians and civilian objects during the conduct of hostilities ~~with regard to the use of explosive weapons with wide area effects~~ in populated areas.”

Rationale: we would suggest to be more precise concerning the review and follow-up process and to broaden the scope of the paragraph as many measures contained in the text are not limited to the use of explosive weapons but pertain to the conduct of hostilities in urban areas.