

Switzerland's comments to the draft political declaration on strengthening the protection of civilians from humanitarian harm arising from the use of explosive weapons in populated areas

Part A: Preamble

Section 1

Paragraph 1.1: The impact contemporary conflicts are having on the civilian population is a major source of concern. As These conflicts contemporary conflicts have become more protracted, complex and urbanised⁷. The conduct of hostilities in urban areas, including uses of explosive weapons in such settings, have resulted in large numbers of civilian casualties and caused the disruption of essential services, posing complex challenges for the protection of civilians. the proportion of civilian casualties is increasing. The causes involve a range of factors, including the use of explosive weapons in populated areas, and pose complex challenges for the protection of civilians.

Rationale: We believe that one key element is missing in the declaration which is the expression of our concern regarding the impact of armed conflict on the civilian population and therefore have made a wording suggestion at the beginning of the paragraph. We are open for this addition to appear in a different form in the declaration. This proposal could also be consolidated with the last sentence of paragraph 1.7. The other suggestions have the objective to clarify better the casual links between urban warfare and its humanitarian impact.

Paragraph 1.2: Explosive weapons with wide area effects can have a devastating impact on civilians and civilian objects in populated areas. Beyond immediate deaths and injuries, civilian populations can be exposed to severe and long-lasting reverberating effects. ~~These occur in particular w~~When critical civilian infrastructure is damaged or destroyed, such as hospitals, energy networks, and water and sanitation systems, the provision of essential services is affected resulting in significant humanitarian consequences. These services being interconnected, the harm caused to civilians is often far-reaching and long-lasting, extending beyond the weapon's impact area. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering. Urban warfare can also result in psychological and psychosocial harm to civilians.

Rationale: We would explain in more detail what indirect effects are as well as their humanitarian consequences.

Paragraph 1.3: These effects ~~can~~ have a negative impact on progress towards the Sustainable Development Goals and ~~can often~~ result in the displacement of people within and across borders. Following urban armed conflict, explosive remnants of war ~~can~~ regularly impede the return of displaced persons and cause casualties long after hostilities have ended.

Rationale: We would stress that if reverberating effects materialize, progress towards the SDGs is in all likelihood hampered and displacement most probable. We also observe that explosive remnants of war regularly obstruct the return of displaced populations and think this should be well reflected in the paragraph.

Paragraph 1.4: Violations of International Humanitarian Law, including by non-State armed groups, such as the use of improvised explosive devices directed against civilians and civilian objects, as well as ~~Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, the use of improvised explosive devices directed against civilian and civilian objects, and violations of International Humanitarian Law, including by non-State armed groups,~~ all exacerbate these challenges and are of grave concern.

Rationale: We would start the paragraph by mentioning violations of IHL first and suggest to separate these violations from harmful tactics.

Paragraph 1.5: The ~~inherent difficulty in challenges posed by the conduct of hostilities in urban areas, including that of directing and limiting~~ avoiding and in any event minimizing the humanitarian effects of explosive weapons with wide area effects to specific military objectives located in populated areas, underline the importance of robust precautionary measures can increase the likelihood of civilian harm. While many militaries implement good operational policies and practices designed to protect civilians, there is scope for more universal application of such practices and for practical improvements in their national universal implementation of, which will contribute to and compliance with, International Humanitarian Law, ~~and in such good practices.~~ Broadening and strengthening initiatives designed to share military policies and good practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

Rationale: We would suggest to reformulate the first sentence of the paragraph. We in fact believe that there is not an inherent difficulty in directing explosive weapons but rather in limiting their short and long term humanitarian consequences. We would therefore underline this aspect and the importance of putting in place the appropriate precautionary measures as underlined in the rest of the paragraph as well as in paragraph 3.3. The second sentence is reformulated to indicate that the wider application of good practices will contribute to IHL compliance. Lastly, we would ask for more clarity concerning which initiatives should be broadened and strengthened.

Comment concerning paragraph 1.7: We would suggest to move the last sentence of the paragraph to the end of a new first sentence in paragraph 1.1 (see comment under 1.1) as we believe that it does not fit with the rest of paragraph 1.7.

Section 2

Paragraph 2.1: We recall the obligations and commitments under applicable international law, particularly International Humanitarian Law and International Human Rights Law, and reaffirm our ~~obligation commitment to support measures~~ to hold accountable those responsible for violations of international law.

Rationale: As it is currently formulated, the paragraph weakens an existing legal obligation under international law.

Paragraph 2.3: We recall ~~that all States and parties the obligations on all States and parties to~~ an armed conflict must comply with to adhere to International Humanitarian Law, including when conducting hostilities in populated areas, and recall in particular including the ~~requirements obligation~~ to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions against 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: Operative Section

Section 3

Introduction: Committed to strengthening the protection of civilians and civilian objects in armed conflict, ~~improving strengthening~~ compliance with International Humanitarian Law, and addressing the humanitarian harm ~~that can arise arising~~ from the conduct of hostilities in urban areas, including from the use of explosive weapons with wide area effects in populated areas, we will:

Rationale: Part B addresses challenges not solely related to the use of explosive weapons, but broader ones linked to the difficulties of fighting in urban areas. For this reason we would suggest to broaden the scope of its introduction. If the concept of "conduct of hostilities" is not retained, we would prefer to keep the original formulation: “that can arise from the use explosive weapons...”.

Paragraph 3.2: Ensure ~~comprehensive adequate~~ training of our armed forces on International Humanitarian Law, and on the measures and good practices to be applied during the conduct of hostilities in populated areas to protect civilians and civilian objects.

Rationale: The meaning of "comprehensive" training is subjective. We would propose "adequate" as it relates to the adequacy of the task at hand, namely the implementation of IHL.

Paragraph 3.3: Ensure that our armed forces adopt and implement policies and practices with a view to avoiding, and in any event minimizing, civilian harm by taking all feasible precautions in the choice of means and methods of attack, including by restricting, where and as required, the use of explosive weapons with wide area effects in populated areas ~~whose effects extend beyond the immediate area of a military objective~~.

Rationale: We would stress that this commitment is a precautionary measure in line with existing IHL, facilitating its respect and implementation.

Paragraph 3.4: Ensure that our armed forces take into account make every effort direct, indirect and reverberating 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 ~~to consider direct, indirect and reverberating effects on civilians and civilian objects which can reasonably be foreseen~~, and take appropriate mitigation measures to limit the risk of harm to civilians and civilian objects.

Rationale: Reasonably foreseeable direct, indirect and reverberating effects have to be taken into consideration in the planning process. It could also make more sense to move this paragraph before paragraph 3.3.

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.

Paragraph 3.6: Enhance the protection of civilians by identifying, developing and exchanging good practices to reduce ~~the humanitarian impact on aggregate risks to~~ civilians of during military operations in urban warfare.

Rationale: We would suggest to be clearer employing a terminology already used in the document.

Paragraph 3.7: ~~Disseminate Facilitate the dissemination~~ and facilitate the understanding of International Humanitarian Law and promote its respect and implementation by all parties to armed conflict, including by non-State armed groups.

Rationale: We would better reflect the obligation of disseminating IHL and underline the importance of promoting its respect and implementation.

Section 4

Paragraph 4.2: Strive to ~~C~~collect and, where appropriate, share disaggregated data, on the direct and indirect impact on civilians of our military operations involving the use of explosive weapons in urban 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. Also, this commitment can only apply to parties to a conflict, not all signatories to the declaration.

Paragraph 4.2 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 1.6 mentions the importance of investigating harm. This should also be reflected in the operational part of the declaration.

Paragraph 4.2 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 a commitment reflecting part of paragraph 1.6 where the importance of accountability is recognized. 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 4.3: ~~Support Encourage~~ the United Nations, the ICRC and other organisations to collect and analyse ~~capturing~~ data on the impact of military operations in urban areas, including those involving the use of explosive weapons ~~in urban areas, as appropriate, to complement and support the role of States in this area.~~

Rationale: We deem it important to have a comprehensive understanding of the impact of military operations in urban areas overall and not only limited to the use of explosive weapons.

Paragraph 4.5: ~~Provide-Allow~~ and facilitate rapid and unimpeded access for humanitarian relief to all persons in need.

Rationale: We would like to suggest a terminology in line with IHL.

Paragraph 4.6: Support the United Nations, the ICRC, other international organisations and relevant civil society organisations in actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact of the conduct of hostilities ~~use of explosive weapons with wide area effects~~ in populated areas.

Rationale: We believe that humanitarian and development organizations should address the consequences of urban warfare overall, not limiting their assistance to the impact of explosive weapons.

Paragraph 4.8: Meet periodically to 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 existing International Humanitarian Law and strengthen the protection of civilians and civilian objects during the conduct of hostilities, notably with regard to the use of explosive weapons with wide area effects in populated areas.

Rationale: We would suggest to make sure the review process is adequate to the needs. Additionally, 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 more generally, we propose to reflect this fact.