



## Switzerland's comments to the draft political declaration on strengthening the protection of civilians from the humanitarian consequences that can arise from the use of explosive weapons with wide area effects in populated areas

### Comments of a general nature:

- In Switzerland's view the new draft text has improved. It provides a solid basis for further discussions and could become an effective tool for improving the protection of civilians and the implementation of existing international humanitarian law;
- When it comes to the way we define the humanitarian impact resulting from the use of explosive weapons, we believe we should be as clear as possible. By sending the signal that we think we only might have a problem, we risk undermining our goal of strengthening the protection of civilians;
- Concerning the scope of the political declaration, we believe we should be careful in not limiting it to only those uses which are believed to be unlawful. IHL foresees positive obligations to do everything feasible with a view to avoiding, and in any event to minimizing, incidental civilian harm. Focusing only on unlawful uses would not in fact help us to fully address the humanitarian challenges arising from the use of explosive weapons. At the same time, we should not send the signal that every single use necessarily poses a humanitarian problem or is unlawful, but rather that while the use of explosive weapons remains legitimate, there are numerous instances where these uses pose a humanitarian problem.

### Title

Draft political declaration on strengthening the protection of civilians from the humanitarian consequences ~~that can~~ arising from the use of explosive weapons with wide area effects in populated areas

Rationale: We believe that the present formulation with the use of the qualifier "can" weakens too much the title, risking to convey a wrong message. We are of the view that this formulation raises a number of questions. It can be taken as meaning that we may be facing a problem rather than being confronted by an acute one, which would undermine the rationale for the declaration itself. It can also be taken as meaning that we are not too sure whether the use of explosive weapons in populated areas, generally speaking, gives rise or not to humanitarian consequences, which is not the message we would like to convey. While uses of explosive weapons with wide area effects in populated areas can be in line with IHL and not every single use necessarily poses a humanitarian problem, there are certainly numerous instances where this is the case.

We would therefore suggest to revert to the previous formulation of the declaration. Other formulations are possible, for example: "...humanitarian consequences arising from uses of explosive weapons with wide area effects in populated areas". The formulation retained in the title should also be used in paragraphs 1.8, 4.5 and in the introduction of Part B.

## Part A: Preamble

### Section 1

**Paragraph 1.1:** As armed conflicts become more protracted, complex, and urbanised, the risks to civilians have increased, becoming a major source of concern. The causes can involve a range of factors, including the use of explosive weapons with wide area effects 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 1.8.

**Paragraph 1.4:** Together, these effects often result in the displacement of people within and across borders. Following urban armed conflict [or armed conflict in urban areas or the conduct of hostilities in urban areas], unexploded ordnance and mines often can also impede the return of displaced persons and cause casualties long after hostilities have ended. These long-term consequences ~~When these effects occur they~~ have a negative impact on progress towards the Sustainable Development Goals. ~~Following urban armed conflict, unexploded ordnance can also impede the return of displaced persons and cause casualties long after hostilities have ended.~~

**Rationale:** We would suggest to place the reference to the SDGs at the end of the paragraph after all the different negative consequences have been described. The impact resulting from the use of explosive weapons in populated areas on the SDGs is not limited to induced displacement but also includes the diverse reverberating effects.

We would also stress that unexploded ordnance too often obstructs the return of displaced populations and think this should be well reflected in the paragraph.

Last point, we suggest to add “mines” to complete the types of explosive devices that threaten the civilian population in urban environments. In fact, we raise this point as it is not quite clear to us whether unexploded ordnance covers or not mines. If not, a different and more encompassing option would be to use the term explosive remnants of war (ERW). Finally, we also ask ourselves if all risks are covered or if we should find a formulation including also other types of explosives such as abandoned explosive ordnance.

**Paragraph 1.5:** Tactics designed to unlawfully exploit the proximity of civilians and civilian objects to military objectives in populated areas [to render them immune from attacks], as well as the use of improvised explosive devices directed against civilian and civilian objects, and other violations of International Humanitarian Law, including by non-State armed groups, all exacerbate the risks to civilians and are of grave concern.

**Rationale:** The paragraph gives the impression that all acts mentioned are violations of IHL. In this sense we highlight that not every tactic exploiting the proximity of military objectives to civilians and civilian objects is unlawful even though they may exacerbate the risks to civilians and are of grave concern. The use of human shields requires an intentional co-location of military objectives and civilians or persons hors de combat with the specific intent of trying to shield military objectives from attacks or to shield, favour or impede military operations, or in other words to render them immune from attacks. This aspect should be reflected, for instance by speaking of unlawful tactics.

**Paragraph 1.6:** The wide area effects of explosive weapons, related among other things to their blast and fragmentation consequences when used in populated areas, pose a number of challenges for the protection of civilians. Many militaries already implement operational policies and practices designed to ~~mitigate-avoid, and in any event minimize,~~ civilian harm, which include a detailed understanding of the effects of explosive weapons on a military target and its surrounding areas and the associated risk to civilians in populated areas. However, there is scope for practical improvements in the full implementation of, and compliance with, obligations under International Humanitarian Law, and the application and sharing of good practices. Broadening and strengthening initiatives designed to share military policies and practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

Rationale: We would suggest to add a sentence at the beginning of the paragraph explaining why the use of explosive weapons with wide area effects can be problematic in populated areas. The previous version of the declaration had language that was not satisfactory because of the way it was drafted, but we feel that we have lost an important aspect by doing away with it altogether. We are flexible concerning the proposal made and open to other formulations.

Regarding our proposal on the second sentence, IHL requires not only to mitigate civilian harm but to take constant care to spare the civilian population, civilians and civilian objects in the conduct of military operations. With respect to attacks, all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. This formulation should also be employed in paragraphs 1.7 and 2.2.

**Paragraph 1.7:** We recognise the importance of efforts to record civilian casualties, and the use of all practicable measures to ensure appropriate data collection, including, where possible, data disaggregated by sex and age. Where feasible possible and appropriate, this data should be shared and made publicly available. The data on civilian casualties can help inform policies designed to ~~mitigate-avoid, and in event minimize,~~ civilian harm, aid efforts to investigate harm to civilians, support efforts to determine or establish accountability and enhance lessons learnt processes in armed forces.

Rationale: As explained with regard to Paragraph 1.6, we would suggest to use language elements closer to IHL, i.e. that with respect to attacks, all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

**Paragraph 1.8:** We welcome the on-going work of the United Nations, the International Committee of the Red Cross (ICRC) and civil society to raise awareness of the impacts and long-term humanitarian consequences ~~that can arise~~ing from the use of explosive weapons with wide area effects in populated areas. We also welcome work to empower and amplify the voices of all those affected, including women and girls, and we encourage further research into the potential gendered impacts of the use of such explosive weapons-with wide area effects. We stress the imperative of addressing the short and long-term humanitarian consequences ~~that can result~~ing from the use of explosive weapons with wide area effects arising from the conduct of hostilities, including in urban warfare.

Rationale: We would suggest to be more precise when referring to the consequences that arise from the use of explosive weapons and to avoid repetitions. The formulation chosen should be consistent with the ones employed in the title, in the introduction of Part B and in Switzerland's comments to the draft political declaration on strengthening the protection of civilians from the humanitarian consequences that can arise from the use of explosive weapons with wide area effects in populated areas

paragraph 4.5. As already indicated, we should be clear about the acuteness of the issue we are confronted with, and not give the sense that we believe that there may be a problem. We would also recommend to move the last sentence of the paragraph to the end of paragraph 1.1 (see comment under 1.1) as we believe that it does not fit with the rest of paragraph 1.8.

## Section 2

**Paragraph 2.2:** Existing International Humanitarian Law provides the framework to regulate the conduct of armed conflict, and is applicable to the use of explosive weapons with wide area effects in all operating environments, and to all parties to an armed conflict, including both State and non-State armed groups. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and to ~~mitigate~~ avoid, and in any event minimize, civilian harm when conducting hostilities, in particular within populated areas.

**Rationale:** As explained with regard to Paragraph 1.6, we would suggest to use language elements closer to IHL, i.e. that with respect to attacks, all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

**Paragraph 2.3:** We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law under all circumstances, including when conducting hostilities in populated areas, and recall in particular the 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. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

**Rationale:** The suggestion for the first sentence is meant to avoid giving the impression that adherence to IHL is only required when conducting hostilities in populated areas. This also reflects the language used in the Geneva Conventions.

**Paragraph 2.3 bis:** “We also recall the obligation to allow and facilitate rapid and unimpeded passage for humanitarian relief to all persons in need.”

**Rationale:** We would like to suggest to move to Section 2 the old paragraph 4.5, which has been deleted in the present draft. Humanitarian access is increasingly under pressure and we therefore see value in keeping this paragraph in the declaration. We would also highlight that access to humanitarian relief and allowing and facilitating its passage is an important aspect to protect victims of armed conflict.

## **Part B: Operative Section**

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

**Rationale:** We would suggest to refer to “humanitarian consequences” as in the title and to broaden the scope of the introduction, and to talk about the conduct of hostilities in populated areas, as Part B addresses challenges not solely related to the use of explosive weapons with Switzerland’s comments to the draft political declaration on strengthening the protection of civilians from the humanitarian consequences that can arise from the use of explosive weapons with wide area effects in populated areas

wide area effects in populated areas, but also broader ones linked to the difficulties of fighting in such settings.

We would also suggest to delete the qualifier “can” as in paragraphs 1.8, 4.5 and in the title and talk about “humanitarian consequences arising from the use of explosive weapons”, or alternatively “...consequences arising from uses of explosive weapons...”.

**Paragraph 3.4:** Ensure that our armed forces take into account the direct 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, and conduct battle damage assessments, to the degree feasible, to identify lessons learned for future operations.

Rationale: We would like to suggest to complete the paragraph by adding a commitment to carry out battle damage assessments, a good practice which can increase the protection of civilians.

**Paragraph 3.6:** Disseminate ~~Facilitate the dissemination and 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 and concentrate on the obligation of disseminating IHL.

#### Section 4

**Paragraph 4.2:** Where feasible and appropriate, C~~ollect and, where possible and appropriate,~~ share and make publicly available disaggregated data, on the direct and reverberating effects on civilians of our military operations in populated areas involving the use of explosive weapons with wide area effects.

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 and not to 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.”

Rationale: We would suggest to consider including a commitment highlighting the importance of establishing the facts in cases of alleged violations. Paragraph 1.7 mentions the importance of investigating harm. We believe 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 the last sentence of paragraph 1.7 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 the work of the United Nations, the ICRC and relevant civil society organisations collecting data on the impact on civilians of military operations in urban areas, including those involving the use of explosive weapons with wide area effects, as appropriate.

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:** Support the work of the United Nations, the ICRC, other ~~qualified-relevant~~ international organisations and ~~relevant~~ civil society organisations as appropriate aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact arising ~~that can arise~~ from 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 and therefore suggest to broaden the scope of the paragraph to the conduct of hostilities in populated areas. Furthermore, as in the title, paragraph 1.8 and the introduction of Part B, we would suggest to delete the qualifier “can” and speak of “...humanitarian impact arising from...”.

**Paragraph 4.6:** Meet on a regular basis 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 International Humanitarian Law and strengthen the protection of civilians and civilian objects during the conduct of hostilities in populated areas, notably with regard to the use of explosive weapons with wide area effects ~~in populated areas~~. As a starting point, a working group of interested States could agree a baseline compilation of good practice, which could form the basis for structured military-to-military exchanges, workshops, and seminars.

Comment and rationale: Although their competences and tasks differ in nature and level from those of States, we would like to ask the drafters to add elements regarding the inclusion of relevant international organisations and civil society stakeholders in the meetings regarding the review of the implementation of the declaration as well as the development of good practices. They have been key drivers in taking this declaration forward, which invites them to take a number of tasks, and it would be legitimate as well as useful that they are also associated to upcoming work in support of States, as appropriate.

We would also suggest to make sure the review process is adequate to the needs.

Finally, we propose to reflect the fact that many measures contained in the text are not limited to the use of explosive weapons but pertain to the conduct of hostilities in populated areas more generally.