



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

### General Comments

- Addressing the humanitarian consequences arising from the use of explosive weapons in populated areas is of crucial importance. Recent armed conflicts, not least Russia's military aggression against Ukraine, have shown once again the necessity of improving the protection of civilians in urban warfare and of better implementing International Humanitarian Law in such circumstances.
- Several rounds of constructive consultations have improved the new draft in a number of ways. In general, the text has become more streamlined, precise and coherent.
- Switzerland welcomes various changes in the draft version Rev 2, including:
  - o The language that clarifies that humanitarian is "arising" instead of "can arise" from the use of explosive weapons in populated areas.
  - o The deletion of the expression "with wide area effects" (see detailed comments under Section 1).
  - o The systematic introduction of the expression "to avoid, and in any event minimize" humanitarian harm.
- The focus of the text should not be limited only to the "indiscriminate" use of explosive weapons in populated areas. While a clear violation of IHL, the obligations go further than just prohibiting indiscriminate or unlawful attacks. For instance, constant care must be taken to spare the civilians and civilian objects in military operations and 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.
- Switzerland would favour a balanced text which enjoys broad support, including from states with relevant military operational experience. Only in this way can the declaration and its follow-up mechanism make a concrete difference on the ground.

### **Specific comments and language proposals**

Beyond the general comments above, Switzerland would like to make the following comments and language suggestions on specific sections and paragraphs of the draft declaration.

#### **Part A: Preamble**

##### Section 1

While Switzerland welcomes that the qualifier "with wide area effects" has been removed in different parts of the text, it believes that it should be retained in a very few cases. Accordingly, Switzerland proposes to indicate somewhere in Section 1 the particular challenges posed by explosive weapons with wide area effects. We are open to proposals made by a number of delegations during the consultations of 6-8 April 2022 or submitted in writing (see for instance ICRC proposal for 1.1). Our proposal for a last sentence in paragraph 1.1 is as follows:

"Explosive weapons with wide area effects used in populated areas pose a particular number of challenges for the protection of civilians and the strict implementation of IHL, notably due to their blast radius, inaccuracy or distribution of multiple munitions over a large area."

Rationale:

With the deletion of “with wide area effects”, the text encompasses all kinds of explosive weapons. Explosive weapons with certain characteristics, such as large blast and fragmentation effects or the distribution of multiple munition over a wide area, pose a number of specific challenges for the protection of civilians or the implementation of IHL, which should be captured in the declaration.

**Paragraph 1.4:** These effects often result in the displacement of people within and across borders, and have a severe impact on progress towards the Sustainable Development Goals. Following the conduct of hostilities, ~~explosive remnants of war unexploded ordnance~~ impede the return of displaced persons and cause casualties long after hostilities have ended.

Rationale:

We would suggest using the expression “explosive remnants of war” instead of “unexploded ordnance”, as it also includes abandoned explosive ordnance that has not been fired and which can pose a significant threat over time.

**Paragraph 1.5:** Many ~~militaries~~ armed forces already implement operational policies and practices designed to avoid, and in any event minimize, civilian harm, which include a detailed understanding of the anticipated 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 to achieve the full and universal 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.

Section 2

**Paragraph 2.2:** Existing International Humanitarian Law provides the legal framework ~~to regulate the~~ regulating conduct of in ~~conduct of~~ armed conflict, and is applicable to the use of explosive weapons in all ~~circumstances 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 avoid, and in any event minimize, civilian harm when conducting hostilities, in particular within populated areas.

Rationale: These are minor suggestions to make the language more in line with IHL.

**Paragraph 2.4:** We condemn tactics designed to unlawfully exploit the proximity of civilians or 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, which further exacerbate the risks to civilians and are of grave concern.

Rationale: IHL sets out a clear set of binding rules that need to be respected by all parties to a conflict in all circumstances. Amongst these rules is the prohibition of the use of human shields, which 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. IHL also requires that Parties to the conflict shall, to the maximum extent feasible avoid locating military objectives within or near densely populated areas. It is violations of these rules and other violations of IHL, like direct attacks against civilians and civilian objects, which should be

condemned. We should be careful not to create new norms and make sure that our condemnations are aligned with the existing prohibitions under IHL. This aspect should be reflected, for instance by speaking of “unlawful” tactics.

Alternatively, we suggest the deletion of the «,» after «civilian objects» and before «and other violations», as this would also allow to better reflect the abovementioned difference.

## **Part B: Operative Section**

### Section 3

#### **Comments regarding Paragraph 3.3:**

IHL requires that constant care must be taken to spare the civilians and civilian objects in military operations and that all feasible precautions, notably in the choice of means and methods of attack, must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

A set of policies and practices must be taken to implement these obligations. Precautionary measures include, depending on the circumstances:

- that the time of the attack is adjusted (e.g. attack on a munitions factory when the civilian workers are at home);
- that other means are used (e.g. snipers instead of artillery);
- that weapon settings are changed (e.g. timed fuses instead of proximity fuses or vice versa);
- that the civilian population is warned of the impending attack in advance; or
- that the direction of attack is adjusted (e.g. by attacking a position in a town from another direction so as not to carry the fight to the centre).

Case-by-case implementation of these precautionary measures will include restricting or refraining from the use of explosive weapons in populated areas.

As a conclusion, we can support paragraph 3.3 as phrased in the draft revision 2. However, we are open to alternative wording, for instance:

- Adding “In accordance with International humanitarian law” at the beginning of the paragraph instead of at the end.
- We can support the paragraph also with wording that aligns itself more closely to language used in other parts of the declaration, that “civilian harm must be avoided and in any event minimized”.
- We can support the paragraph with or without qualifying the extent of the expected effects, such as “when the effects may be expected to extend beyond a military objective” or “when their use may be expected to cause harm to civilians or civilian objects”.

For Switzerland, discussions of how to implement the commitments made in this declaration and the mitigating measures, as well as the exchanges that contribute to a comprehensive understanding of the impact of military operations in populated areas are at the core of the follow-up process.

### Section 4

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

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Rationale: As collecting, sharing and making publicly available data is not possible or expected from States not involved in a conflict, 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 populated areas, including those involving the use of explosive weapons ~~in populated areas~~, as appropriate.

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

**Paragraph 4.4:** To the greatest extent possible Provide, facilitate and support assistance to people critically injured, survivors, families of people killed and/or injured - and communities affected by armed conflict in a holistic, integrated, gendersensitive and non-discriminatory manner, taking account of the rights of persons with disabilities, and supporting post-conflict recovery and durable solutions.

Rationale: Although non-critically injured persons might be included in the term “survivors”, we would suggest to only refer to “people injured” and not to make a distinction to “people critically injured” also in view that IHL demands assistance without such distinction. As this paragraph, such as currently formulated, does not reflect that parties to a conflict and States not involved in a conflict have different obligations, we support comments made during the consultations qualifying the first sentence with a wording like “To the greatest extent possible” or “To make every effort”.

**Paragraph 4.5:** Facilitate the work of the United Nations, the ICRC, other relevant international organisations and civil society organisations aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact arising from the conduct of hostilities in populated areas, including the use the use of explosive weapons ~~in populated areas~~, as appropriate.

Rationale: We believe that humanitarian and development organizations should address the consequences arising from the conduct of hostilities in populated areas overall, not limiting

their assistance to the impact of explosive weapons and therefore suggest to broaden the scope of the paragraph accordingly.

**Paragraph 4.6:** Meet on a regular basis to review the implementation of this Declaration and 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 with regard to armed conflict involving the use of explosive weapons in populated areas. As a starting point, a group of interested States, with the participation of the United Nations, the ICRC, other ~~qualified~~-relevant international organisations and civil society organisations, could develop a compilation of good practice, which could form the basis for structured military-to-military and other intergovernmental exchanges, workshops, and seminars.

Rationale:

With the previous change in the last sentence, the nature of exchanges, workshops and seminars that build upon the broad work of States, international organization and civil society organisations becomes equally broad. Military-to-military exchanges should be the main pillar of such a process, while not excluding other intergovernmental forms of collaboration with relevant ministries.