

SWEDISH COMMENTS ON THE EWIPA DRAFT DECLARATION, Rev 1

Sweden wishes to thank Ireland for the revised draft political declaration and to reiterate our appreciation for the way in which the EWIPA consultations are being conducted.

To begin, Sweden shares the concerns when it comes to civilian harm and suffering due to warfare, including in urban areas.

We are supportive of a non-legally binding political declaration that aims to strengthen implementation and accountability of existing International Humanitarian Law without creating new IHL obligations.

Some specific points:

Section I

1.6 We believe that it is important to clarify that many states are already implementing IHL. It would be unfortunate if the declaration gives the impression that states signing up to the declaration are not fully implementing their obligations under IHL. We would therefore suggest adding “in certain cases” to the second sentence.

Text proposal:

“Many militaries already implement operational policies and practices designed to mitigate 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, **in certain cases** 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.”

Section II

2.1 We suggest keeping the reference to “international law” in order to clarify what kind of violations we are referring to.

Text proposal:

“We recall our obligations and commitments under applicable international law, including International Humanitarian Law and International Human Rights Law, and reaffirm our obligation to hold accountable those responsible for violations **of international law** and our commitment to end impunity.”

2.3 Sweden proposes that “including” be added before “in populated areas” in the first sentence. The reason for this being to avoid giving the impression that there are different rules for warfare in different kinds of environments. IHL applies to all conduct of hostilities in all settings.

Text proposal:

“We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law when conducting hostilities, **including** 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.”

Section III

Paragraph 3.3 is a key paragraph. This paragraph must be clear in relation to existing IHL, i.e. that the commitment to a precautionary measure is in line with existing IHL, facilitating its respect and implementation. We find the current wording problematic since it can be interpreted that states need to restrict the use of certain weapons in certain environments and take added precautions that go beyond existing IHL. We therefore suggest adding “in accordance with IHL” in the first sentence before to “avoid” and to add “when and as required”.

Text proposal:

“Ensure that our armed forces adopt and implement a range of policies and practices **in accordance with IHL** to avoid civilian harm, including by restricting, **when and as required**, the use of explosive weapons with wide area effects in populated areas, when the effects may be expected to extend beyond a military objective.”

Section IV

Paragraph 4.6 indicates that states will meet periodically to review the implementation of the declaration. This appears to be somewhat far-reaching for a non-legally binding political declaration and could create some uncertainty as to the status of the declaration. Furthermore, the second part of the paragraph appears to be too detailed and descriptive. Our suggestion would be the following, in order to underline the voluntarily nature of a follow-up mechanism:

“**Encourages states to** meet on a regular basis to ~~review the implementation of this Declaration~~ **discuss** 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 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.~~”