

## Germany's Written Submission to the Consultation Process

### Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas (REV 2)

- Germany would like to thank the Republic of Ireland for its efforts to invigorate the momentum towards a political declaration on strengthening the protection of civilians from the Humanitarian Consequences arising from the use of explosive weapons in populated areas and for convening a new round of in-person consultations.
- The subject of protecting civilians from such harm remains of great importance to Germany and we continue to stand ready to engage constructively in this process.
- Germany welcomes the revised draft political declaration circulated by the Republic of Ireland in preparation of the latest round of consultations. We appreciate Ireland's effort to seek and reflect a convergence of the different perspectives.
- Germany is gravely concerned about the growing number of reported breaches of IHL, including on direct attacks with explosive weapons on civilians and civilian objects, in the context of Russia's aggression against Ukraine and other recent conflicts. Our declaration needs to be a clear and unmistakable sign that Russia's conduct, also with regard to the use of EWIPA, is entirely unacceptable and is forcefully rejected by all those that subscribe to this declaration.
- While on the one hand the declaration that we are negotiating represents a strong commitment of the signatories to the principles of IHL and its (better) application, it should therefore on the other hand send out a **clear message to all parties to armed conflict**, including States that are not willing to sign this declaration as well as non-State armed groups to fully comply with IHL obligations when using explosive weapons in order to minimize civilian harm.

We see this call already reflected in many parts of the declaration. Additional references, for instance in section 2 but also in other sections would strengthen this message in our view. We therefore propose changes in paragraphs 2.1, 2.2, 2.3, 2.4, 4.3 and 4.7. The proposed amendment in para 2.4 is language that was used in the UNGA Res on *Humanitarian consequences of the aggression against Ukraine*.
- Whereas it is Germany's understanding that the international debate on the concept of **reverberating effects** has evolved in recent years, there is still no consensus on the notion and concept of reverberating effects of an attack. It is Germany's view that we would therefore benefit from replacing "reverberating effects" by the term of "indirect effects" throughout the text (particularly in 3.4 and 4.2). To contribute to a better understanding, conceptualization and operationalization of this concept, we furthermore propose to include the exchange on this topic in the follow-up process (see amendments to para 4.6).
- Another aspect of particular importance to Germany is the issue of **victim assistance**. We suggest to further elaborate on this in para 4.4.

## Part A: Preamble

### Section 1

- 1.1 As armed conflicts become more protracted, complex, and urbanised, the risks to civilians have increased. This is a source of major concern and must be addressed. The causes of these risks involve a range of factors, including the use of explosive weapons in populated areas, and pose complex challenges for the protection of civilians.
- 1.2 The use of explosive weapons can have a devastating impact on civilians and civilian objects in populated areas. Blast, debris and fragmentation effects cause deaths and injuries, including lifelong disability. Beyond these direct effects, civilian populations are exposed to severe and long-lasting indirect effects – also referred to as ‘reverberating effects’. Many of these indirect effects stem from damage to or destruction of critical civilian infrastructure. When critical civilian infrastructure, such as energy, food, water and sanitation systems, are damaged or destroyed the provision of basic needs and essential services, such as healthcare and education are, disrupted. These services are often interconnected and, as a result, damage to one component or service can negatively affect services elsewhere, causing harm to civilians that can extend far beyond a weapon’s impact area.
- 1.3. The destruction of housing, schools and cultural heritage sites further aggravates civilian suffering, and the natural environment can also be impacted by the use of explosive weapons, leading to the contamination of air, soil, water, and other resources. The use of explosive weapons in populated areas can also result in psychological and psychosocial harm to civilians.
- 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, unexploded ordnance impede the return of displaced persons and cause casualties long after hostilities have ended.
- 1.5 Many militaries 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.
- 1.6 We recognise the importance of efforts to record and track civilian casualties, and the use of all practicable measures to ensure appropriate data collection, including, where feasible, data disaggregated by sex and age. Where feasible, this data should be shared and made publicly available. Improved data on civilian casualties would help to inform policies designed to avoid, and in any 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.
- 1.7 We stress the imperative of addressing the short and long-term humanitarian consequences resulting from armed conflict involving the use of explosive weapons in populated areas. We welcome the on-going work of the United Nations, the International Committee of the Red Cross

(ICRC) and civil society on the impacts and long-term humanitarian consequences arising from the use of explosive weapons in populated areas.

- 1.7bis 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 gendered impacts of the use of explosive weapons.

## Section 2

- 2.1 We reaffirm our obligations and commitments under applicable international law, including International Humanitarian Law and International Human Rights Law, we condemn the blatant disregard for these binding rules witnessed in incidents in recent conflicts, both by state and non-State actors, and reaffirm including our the obligation to hold accountable those responsible for violations, and our commitment to end impunity.
- 2.2 Existing International Humanitarian Law provides the legal framework to regulate the conduct of armed conflict, and is applicable to the use of explosive weapons 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 and universal 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.
- 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/fighters and civilians as well as between civilian objects and military objectives, and to direct operations only against military objectives; the prohibitions against indiscriminate and disproportionate attacks; and the obligation to take all feasible precautions in attack and against the effects of attacks. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations, and to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.
- 2.4 We strongly condemn any attacks directed against civilians as such and other protected persons and civilian objects, as well as indiscriminate shelling and the indiscriminate use of explosive weapons. We also condemn tactics designed to exploit the proximity of civilians or civilian objects to military objectives in populated areas, as well as the use of improvised explosive devices directed against civilian or 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. We further express concerns about the long-term risks posed by damage to civilian infrastructure and unexploded ordnance to the civilian population.
- 2.5 We welcome the work of United Nations Security Council to strengthen the protection of civilians during armed conflict and to strengthen compliance with International Humanitarian Law, and recall to that end UNSC Resolutions on the protection of civilians in armed conflicts.

## **Part B: Operative Section**

Committed to strengthening the protection of civilians and civilian objects during and after armed conflict, strengthening compliance with applicable International Humanitarian Law, and addressing the humanitarian consequences arising from armed conflict involving the use of explosive weapons in populated areas, we will:

## Section 3

- 3.1 Review, implement, and, where necessary, develop or improve national policy and practice with regard to the protection of civilians during armed conflict in populated areas.
- 3.2 Ensure comprehensive 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.

- 3.3 Ensure that our armed forces adopt and implement a range of policies and practices to avoid civilian harm, including by restricting or refraining from the use of explosive weapons in populated areas, when the effects may be expected to extend beyond a military objective, in accordance with International Humanitarian Law.
- 3.4 Ensure that our armed forces take into account the direct and ~~reverberating~~ indirect 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.
- 3.5 Ensure the marking, clearance, and removal or destruction of explosive remnants of war as soon as possible after the end of active hostilities in accordance with our obligations under applicable international law.
- 3.6 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.

#### Section 4

- 4.1 Strengthen international cooperation and assistance among armed forces, and other relevant stakeholders with respect to exchanges of technical and tactical expertise, and humanitarian impact assessments, in order to develop good practice to enhance the protection of civilians, particularly with regard to the use of explosive weapons in populated areas.
- 4.2 Collect and, where feasible and appropriate, share and make publicly available disaggregated data, on the direct and ~~reverberating~~ indirect effects on civilians of military operations involving the use of explosive weapons in populated areas.
- 4.3 Facilitate the work of the United Nations, the ICRC and relevant civil society organisations collecting data on the impact on civilians of military operations as well as damage caused by non-State actors involving the use of explosive weapons in populated areas, as appropriate.
- 4.4 Provide, facilitate and support assistance to victims - people critically injured, survivors, families of people killed and/or injured - and communities affected by armed conflict in a holistic, integrated, gender- sensitive and non-discriminatory manner, taking account of the rights of persons with disabilities, and supporting post-conflict recovery and durable solutions. Victim assistance includes ensuring basic needs are met, and safe and timely access to the provision of emergency medical care, physical rehabilitation, psychosocial support and socio-economic inclusion, as well as support towards the full realisation of the rights and full participation of victims in societies.
- 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 use of explosive weapons in populated areas, as appropriate.
- 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, including how to better understand the notion of foreseeable indirect effects and to conceptualize and operationalize relevant IHL principles in this notion. 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 exchanges, workshops, and seminars.
- 4.7 Actively promote this Declaration, distribute it to all relevant stakeholders and seek its adoption and effective implementation by the greatest possible number of States and adherence mutatis mutantis [to the commitments in Section 3] by all parties to armed conflict, including by non-State armed groups.

**ENDS**