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Swiss Confederation

# Global IHL Initiative

## Achieving Meaningful Protection for Hospitals in Armed Conflict

(Workstream 5)

### First State Consultation

Geneva, 28 May 2025

#### Statement by Switzerland

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As Switzerland's Armed Forces are not operating in zones of armed conflict, we do not have a vast practical experience in this matter. Hence our priority lies in education and training. Switzerland has implemented the rules and regulations found in international law into national laws and into various military documentations of all military levels. Besides the simple dissemination of IHL, the Swiss Armed Forces put a special focus on the integration of IHL in the military planning and in the conduct of military operations. In short: Learning by practical doing. Officers receive a deeper training and insight into IHL, whereas soldiers receive IHL training and personal pocket cards matched to their units and functions. The military medics are specially trained in the rules of armed conflict in the field of medical service. Recently [2021] Switzerland introduced a new e-learning tool to teach the basic principles of IHL within a so called "serious game". In a dynamic process, soldiers have to decide under time pressure how to act in concrete situations within military operations, while always complying with the rules of IHL or IHRL.

IHL rules are too often blatantly ignored. But as we have noticed during our time at the Security Council, we also witnessed another dangerous trend towards the relativization of IHL, which includes the misuse of IHL to justify violations of its own rules. This often

happens through an overly permissive or outdated interpretation of IHL rules and concepts, many of which lie at the heart of the protection of hospitals, which are the most protected objects in IHL.

The permissive interpretation of IHL affect the most fundamental rules and principles governing the conduct of hostilities, including those that are relevant to the protection of the medical mission:

Specific protection of medical establishments and units is the general rule under IHL. This specific protection to which hospitals are entitled shall not cease unless they are used by a party to the conflict to commit, outside their humanitarian functions, an "act harmful to the enemy".

#### *1) The principle of distinction*

According to the Manual of the Law of Armed Conflict of the Swiss Armed Forces states (para. 246): The protection afforded to hospitals zones can only end when they are used outside their humanitarian tasks for actions that harm the adversary. However, that protection only ends when a warning with a reasonable period of notice has gone unheeded."

We note here the requirement of addressing a warning before the hospital would lose its protection from attack. In addition, the loss of protection within the distinction assessment will also depend on the interpretation of what constitutes a military objective, a concept that is sometimes interpreted in an overly broad manner to justify violations.

The notion of military objective must be interpreted narrowly, in accordance with the presumption of civilian status. In case of doubt as to whether medical units of establishments are used to commit an "act harmful to the enemy", they should be presumed not to be so used.

Similarly, in the case of the protection of hospitals, we must apply a narrow interpretation of what constitutes an act harmful to the enemy.

#### *2) The principle of proportionality*

Once the principle of distinction has been assessed, we must assess the principle of proportionality.

Within the scope of the proportionality assessment, it is essential to consider both the direct and the indirect impact of attacks. As the Manual of the Law of Armed Conflict of the Swiss Armed Forces states (para. 264): "The term collateral damage covers not only the direct effects of an attack on a military objective, but also its direct and indirect consequences as well as mutually reinforcing effects (reverberating effects)."

In terms of military advantage: Whether the destruction of the object represents a definite military advantage must be judged according to the temporal, spatial and tactical circumstances. The military advantage can be a weakening or obstruction of the adversary as well as the strengthening or protection of one's own forces. Political, psychological, economic, financial, social or moral advantages must not be included in the assessment. (para. 261 du Manuel).

The Manual goes on (para. 269): "The effective military advantage and the actual collateral damage can of course not be predicted. It is impossible to anticipate the full impact and consequential damages of an attack (para. 264). Therefore, the criterion of reasonable foreseeability is applied to the causal connection. The decisive factor is what could be reasonably expected from the outset. A commander is required to take into account all the information accessible and processable by him or her and to include past experiences (lessons from past actions) in his or her considerations."

In the case of artillery attacks on hospitals, massive losses among medical staff and patients are to be expected. In addition, it can also be expected that attacks on hospitals would make them out of operations for a certain time that may become very long in protracted conflict situations, with devastating effects on health care.

### *3) The principle of precaution in attack*

Under the principle of precaution, parties must take constant care to spare the civilian population, civilians and civilian objects. 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.

These are measures that can be taken given all circumstances (both military and humanitarian considerations) (para. 267 du Manuel), which may also include to choose another military objective that offer a comparable military advantage (para. 176 du Manuel).

As regards the concrete application of the principle of precaution in the case of attacks against medical units, it would hence be interesting for the present initiative to highlight the best practices adopted by parties to minimize harm to patients, medical personnel and equipment.

We also note, in terms of passive precautions, that our military Manuel provides that “No military objectives (i.e. no firing positions, command and control facilities, troop accommodations, etc.) may be set up in hospitals and safety zones or in their immediate vicinity” (para. 244 du Manuel).

To conclude, it is essential that we champion the good faith interpretation of IHL rules, in line with the very spirit of IHL. IHL is not a permissive body of law, but a protective one. Over the years the Security Council has reiterated such rules in various resolutions, and in particular - as regards the present topic - in UNSCR 2286. It is high time that States ensures the effective implementation of this resolution, which also includes measure to ensure accountability.