



BACKGROUND PAPER | AUGUST 2014

Explosive weapons in populated areas - key questions and answers

The International Network on Explosive Weapons (INEW) is an NGO partnership calling for immediate action to prevent human suffering from the use of explosive weapons in populated areas. This paper presents common questions and answers regarding the problem and the solutions INEW is calling for.

www.inew.org

THE PROBLEM

What is the problem?

Explosive weapons, particularly heavy explosive weapons that affect a wide area, kill and injure large numbers of civilians when used in villages, towns and cities.

Explosive weapons are usually weapons of war. Although civilians should not be targeted in war and should be protected against the effects of weapons, when explosive weapons are used in cities, towns and villages, it is often civilians that are most severely affected. Such attacks can also destroy vital infrastructure such as houses, schools and hospitals – resulting in displacement, disrupted education and the loss of healthcare. During 2013, some 37,809 people were reported killed and injured by such weapons, of which 82 per cent were civilians. When explosive weapons were used in populated areas, 93 per cent of casualties were reportedly civilians.¹ With a large number of civilians killed or injured directly each year, and many others harmed indirectly, curbing the use of explosive weapons in populated areas would save lives, alleviate the suffering of civilian populations during war, and facilitate post-conflict recovery.

What are explosive weapons?

Explosive weapons are conventional weapons that detonate explosives to affect an area with blast and fragmentation. They come in a wide range of types and sizes.

There are many types of explosive weapons, including grenades, mortar bombs, artillery shells and aircraft bombs, as well as improvised explosive devices (IEDs). As the name suggests, these weapons explode – killing and injuring people, or damaging vehicles and buildings, through the blast and fragmentation that an explosion creates around the point of detonation. Whereas guns fire bullets at a point, explosive weapons tend to affect an area. Different types of explosive weapons may be delivered in different ways (some are thrown,



¹ Action on Armed Violence (2014), An Explosive Situation: Monitoring Explosive Violence in 2013.

The devastating impact of a ballistic missile strike on the centre of al Ard al-Hamra – a working class district of Aleppo, Syria. Photo © Hannah Lucinda Smith, 26 February 2013.

others are fired from the ground or dropped from the air), and they may vary in the scale of effects that they create, but they share the tendency to affect an area with blast and fragmentation.

What do we mean by populated areas?

Populated areas include villages, towns, cities, and other places where civilians are concentrated.

‘Populated areas’ refers to cities, towns, villages, and other places where many civilians are likely to be present. It is not a strict legal term but ‘densely populated areas’ and ‘concentration of civilians’ are established legal notions in relation to the protection of civilians and the regulation of the conduct of hostilities. The term is also used in Human Rights jurisprudence on the use of force. In international humanitarian law (IHL), Additional Protocol I (1977) to the Geneva Conventions prohibits area bombardment of targets in “any city, town, village or other area containing a similar concentration of civilians”, and Protocol III to the Convention on Certain Conventional Weapons defines “concentration of civilians” as “permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.”

Are some explosive weapons worse than others?

Explosive weapons that affect a wide area on the ground create an excessive risk to civilians if used in populated areas.

When used in populated areas certain types of explosive weapons pose a greater risk of harm to civilians than others. Where the weapons affect a wide area it is difficult to control the harm that they will cause if used in areas where civilians are concentrated. For example, a single large aircraft bomb, such as the OFAB 250-270, can have a casualty-producing radius of some 155 metres around the point of detonation, whereas multiple launch rocket systems can spread multiple munitions over an area of 12 hectares or more. Some explosive weapons are simply so difficult to reliably deliver onto a target location that the user does not really know where they will land. Three key factors – the accuracy of the weapon, the quantity of explosives and the use of multiple munitions – can work on their own or in combination to create wide area effects. Using these types of weapons in populated areas puts civilians at grave risk of harm. Even if the attack is aimed at a specific military target it is likely to affect people present in the surrounding area. Not only do explosive weapons kill and injure, but such attacks, especially if repeated or prolonged, also affect people through damage to infrastructure and psychological distress. Over time these effects can become very severe.

What are improvised explosive devices (IEDs)?

IEDs are basically homemade explosive weapons, which tend to be manufactured and used by non-state actors.

IEDs may use military explosives, conventional ammunition, or homemade explosives for their main charge. IEDs can be used in attacks that deliberately target the civilian population. However, even when directed at a military objective, IEDs containing large quantities of explosives can affect a wide area with blast and fragmentation.

So-called ‘barrel bombs’ are one type of IED, and because of their composition and the way in which they are delivered they can have a wide area effect.

There are a range of specific policies and measures which can be undertaken to address challenges which are distinct to IEDs. Concerned states should take every opportunity to condemn IED attacks in populated areas because of the humanitarian harm that invariably follows. Additionally, strengthening state practices will help to stigmatise all explosive weapon use in populated areas. Victim-activated IEDs come under the 1997 Mine Ban Treaty’s definition of an antipersonnel landmine and therefore are banned outright, regardless of whether they are used in a populated area or not.

Is this problem of explosive weapons getting worse?

Historically we have seen a movement away from the bombing of towns and cities – this needs to continue further.

Worldwide, civilian harm from the use of explosive weapons in populated areas fluctuates depending on patterns of conflict and violence. However, since World War II bombing and bombardment of towns and cities has generally become less accepted. Working to further curb the use of explosive weapons in populated areas is an effort to continue this positive trend.

SOLUTIONS

What can be done?

States need to set a strong standard against using explosive weapons with wide area effects in populated areas. They also need to assist victims of explosive violence towards the full realisation of their rights.

INEW calls on states and other actors to set stronger standards to prevent the use in populated areas of those explosive weapons that have wide area effects. Stopping the use of these weapons in populated areas would save civilian lives both during attacks and in the longer term.

Building stronger standards takes time, but states and other actors should act now to:

- × Acknowledge the problem in international discussions;
- × Review national policies on what weapons are appropriate for use in populated areas;
- × Develop a common commitment that will prevent the use of explosive weapons with wide area effects in populated areas.

The burden of proof should be on states to demonstrate that the explosive weapons they intend to use in populated areas will not cause unacceptable harm to civilians.

Efforts to further curb explosive weapon use are motivated by the imperative to reduce civilian victimisation from such weapons. Current patterns of victimisation mean a substantial population is left bereaved or injured, which in turn creates needs for assistance. The

victims of explosive weapons must be part of any response to the problem and states and other actors must work for the full realisation of the rights of victims and survivors of explosive violence.

Why not just ban the use of explosive weapons in populated areas?

Banning the use of explosive weapons in populated areas is not politically possible – but curbing the worst weapons would have a major humanitarian impact.

Banning the use of weapons in international law requires states to voluntarily accept such a limitation on their actions. Explosive weapons include a broad range of weapons used by military forces in many countries and governments would see a wholesale prohibition on their use in towns and cities as too great a limitation on military capacity. Certain types of explosive weapons have been banned outright: antipersonnel mines in 1997 and cluster munitions in 2008. Area bombardment of targets in towns and cities – treating many separate targets as one – is also categorically prohibited under international law. As a result of the unacceptable risk they impose on civilians, explosive weapons with wide area effects should not be used in populated areas. Where possible, steps should also be taken to reduce harm to civilians from the use of other explosive weapons and the use of explosive weapons outside of populated areas.

If we are limiting the use of certain explosive weapons in populated areas, are we encouraging the use of other, more targeted weapons?

Stopping the most dangerous explosive weapons from being used in populated areas will curb the worst effects of conflict, but it will not solve all of the problems that violence produces.

This initiative is an effort to progressively reduce the level of explosive force considered acceptable in areas where civilians are concentrated. INEW does not advocate for the use of alternative weapons, but presents the general pattern of harm associated with explosive weapons and highlights that weapons covering a wide area with explosive blast and fragmentation present a particularly high risk of harm to civilians when used in populated areas. While greater precision of delivery can address some concerns, it does not address harm to civilians from very powerful explosive weapons, or from the use of multiple explosive weapons in populated areas. No single policy approach can solve all of the complex issues relating to armed conflict, but there have been successful efforts to limit the worst excesses.

WHO CAN TAKE ACTION

Who is working on this issue?

Non-governmental organisations, international organisations, UN agencies and a group of states have all called for action to prevent harm from explosive weapons.

In recent years, the need to address the humanitarian impact explosive weapons in populated areas has emerged as a key concern for

the United Nations, the International Committee of the Red Cross, civil society and a growing number of states.

The United Nations Secretary-General has called on parties to armed conflicts to refrain from the use in populated areas of explosive weapons with wide area effects and asked the Security Council to call on parties to do the same. The ICRC has stated that “due to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, the ICRC considers that explosive weapons with a wide impact area should be avoided in densely populated areas.”

Civil society organisations concerned with this issue work together as the International Network on Explosive Weapons (INEW).

In January 2014, the following humanitarian leaders, in an open letter, called on the parties to the Syrian conflict to not use explosive weapons in populated areas:

- × Valerie Amos – Emergency Relief Coordinator
- × Louise Arbour – International Crisis Group
- × Mark Malloch Brown – Former UN Deputy Secretary-General
- × Winnie Byanyima – Oxfam International
- × Margaret Chan – World Health Organisation
- × Ertharin Cousin – World Food Programme
- × Jan Egeland – Norwegian Refugee Council
- × Justin Forsyth – Save the Children
- × Kristalina Georgieva – European Commissioner
- × Antonio Guterres – UNHCR
- × Kevin Jenkins – World Vision International
- × Anthony Lake – UNICEF
- × David Miliband – International Refugee Committee
- × Archbishop Desmond Tutu – Nobel Peace Prize Laureate
- × Leila Zerrougui – Special Representative to the Secretary-General on Children and Armed Conflict

Where can states take action on this issue?

By reviewing national-level legislation and policies and by taking a stance on this issue in international debates, states can work towards stronger standards for civilian protection.

States should take action at both national and international levels. At a national level they should review their policies and practices regarding the use of explosive weapons in populated areas, in particular those with wide area effects, and to develop operating policies and practices that will reduce civilian harm. At an international level there are a number of forums where states can speak out on this issue, including:

- × Security Council open debates on the Protection of Civilians in Armed Conflict;
- × UN debates on Children in Armed Conflict;
- × The High Level Segment and First Committee of the United Nations General Assembly;
- × Debates on country situations where explosive weapons are a humanitarian concern.

In addition to these general discussions there have been informal expert meetings hosted by the UN Office for the Coordination of

Humanitarian Affairs (OCHA) and Chatham House. Further such discussions are expected in 2014 and 2015.

EXISTING LAW AND NEW STRONGER STANDARDS

Does international humanitarian law (IHL) adequately address this problem?

IHL regulates attacks in armed conflict, but it doesn't make clear that using explosive weapons with a wide area effect in villages, towns and cities presents an unacceptable risk to civilians.

In situations of armed conflict, IHL is an important frame of reference for controlling the use of explosive weapons in populated areas. It lays down the fundamental prohibition against direct attacks on civilians, and the obligation to protect civilians from the effects of hostilities. Consequently, attackers must always distinguish between combatants and civilians (and between military objectives and civilian objects) and direct attacks only against the former. IHL prohibits disproportionate attacks and indiscriminate attacks, including area bombardment (treating separate targets as one) in populated areas, and it requires that attackers take precautionary measures to avoid, or at any rate, to minimize harm to civilians. These basic rules on the conduct of hostilities are of customary nature and so apply to all parties to an armed conflict.

On the basis of these rules, certain weapons or certain uses of weapons can be considered unlawful. For example, unguided long-range rockets are sometimes cited as illegal weapons on the basis that they cannot be directed to a specific military objective, as required by the rule on distinction. Most weapons, however, including most explosive weapons, are not considered inherently illegal in the absence of a specific treaty prohibition (such as the 2008 Convention on Cluster Munitions). In this case, the legality of a weapon or of its use tends to be determined on a case-by-case basis, taking into consideration the specific circumstances of every individual attack. This approach does not lend itself to a categorical finding regarding the legality of a broad category of weapons (e.g. explosive weapons) in a general type of setting (e.g. populated areas). As a result, it does not set a clear boundary against the use of explosive weapons with wide area effects in even densely populated areas.

So whilst IHL regulates the use of such weapons, a stronger standard could bring greater clarity and illustrate determination to minimise the harm caused by explosive weapons.

Situations not governed by IHL are subject to the international human rights law standards on the use of force and to national law – which will generally constitute a stricter standard against the use of such weapons than IHL.

Is there scope for standards that are stronger than existing international humanitarian law?

Stronger standards are both possible and necessary in order to increase civilian protection.

The rules of international humanitarian law represent the minimum standards of behaviour even in the most desperate circumstances of armed conflict. However, in many recent armed conflicts warring parties have not been fighting for national survival but to bring security to the population or even specifically to protect them from attacks by others. In such situations there is substantial scope for parties to adopt standards that are stronger than the minimum protections required by IHL.

How would a stronger standard work?

Recognition that explosive weapons with wide area effects pose an unacceptable risk to civilians when used in populated areas would provide a basis for stigmatising such actions.

A stronger standard against the use in populated areas of explosive weapons with wide area effects would reinforce and augment existing legal rules. It would help to build recognition that irrespective of whether such attacks would necessarily be judged illegal, they should be avoided at all costs so as to prevent civilian casualties.

The first step towards such a standard would be for a group of states to express a common recognition that the use of explosive weapons with wide area effects in populated areas must be prevented. Such a declaration could serve as a reference point against which military conduct can be assessed.

With an issue of this scale there is no quick-fix solution. Developing such a standard will require ongoing engagement by states, international organisations and civil society, but building on such reference points the use of wide area explosive weapons in populated areas can come to be seen as an unacceptable pattern of behaviour.

Won't some armed actors/explosive weapon users take such a standard more seriously than others?

Although some actors may ignore stronger standards at first, over time even a small group of states can change the behaviour of the majority.

Some states show greater responsibility and accountability in their use of force than others, and the presence of the existing rules doesn't stop certain actors from committing crimes. Embracing clearer, stronger standards for civilian protection provides an opportunity to strengthen the authority of those that are committed to responsibility and accountability. Where such standards are expressed politically rather than legally it will strengthen civilian protection whilst retaining the flexibility provided by existing law.

Is change possible?

Examples of states adopting stronger standards in certain conflicts coupled with the success of other civil society initiatives to curb violence provide a basis for confidence that change can be achieved.

There are already some examples of multinational operations where practical steps have been taken to reduce the humanitarian impact of explosive weapons. These include restrictions on airstrikes in towns and villages in a series of tactical directives and other orders by the International Security Assistance Force (ISAF) in Afghanistan, as well as an African Union Mission in Somalia (AMISOM) policy restricting the use of indirect fire in populated areas in Somalia. These examples illustrate that in certain conflict contexts militaries are able to put in place stronger standards in an effort to reduce harm to civilians.

An acknowledgement of the problem and political will to address it and prevent civilian harm from the use of explosive weapons in populated areas is possible. Campaigns on landmines, cluster munitions and the Arms Trade Treaty have seen states agree to commitments that originally were thought impossible.

How would a stronger standard be implemented?

States that agreed a stronger standard would need to incorporate it into national policies and work with civil society and international organisations to speak out when others put civilians at risk by breaching that standard.

Any political commitment must be transferred into the operational circumstances that a military operates in. This includes integrating the movement away from the use of explosive weapons with wide area effects in populated areas into military guidelines and rules of engagement. States, civil society, the UN and the ICRC will be able to work together to track progress, build evidence and speak out about the use of explosive weapons in populated areas and the impact on civilians. A political commitment articulating acceptance of a stronger standard will make it easier to speak out against a breach of that standard.

Over time the use of explosive weapons with wide area effects in populated areas can be identified in media reporting and in wider policy responses to conflict of evidence of an unacceptable risk to the civilian population.

FURTHER INFORMATION

- × INEW website www.inew.org
- × INEW video on the impact of explosive weapons in populated areas <http://vimeo.com/78513737>
- × INEW advocacy guide http://www.inew.org/site/wp-content/uploads/2012/09/INEW_advocacy_guide_FINAL.pdf
- × INEW member Action on Armed Violence releases an annual explosive violence report that records global data on the immediate humanitarian impact of explosive weapons. The 2013 report can be found here <http://aoav.org.uk/wp-content/uploads/2014/05/AOAV-Explosive-Events-2013.pdf>.
- × More data can be found via Action on Armed Violence's Explosive Violence Monitoring Project <http://aoav.org.uk/explosive-violence-monitoring-project/>
- × Stolen Futures: The hidden toll of child casualties in Syria by the Oxford Research Group found that over 70% of child casualties from the beginning of the conflict in 2011 up to the end of August 2013 were caused by explosive weapons <http://www.oxfordresearchgroup.org.uk/sites/default/files/Stolen%20Futures.pdf>

