



A DECLARATION TO PREVENT HARM FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

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. INEW was established in March 2011 by Action on Armed Violence, Handicap International, Human Rights Watch, PAX, Medact, Norwegian People's Aid, Oxfam and Save the Children. See www.inew.org

Tal Dar hospital in Aleppo, Syria.
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BACKGROUND

A pattern of harm

The use of explosive weapons in populated areas has been identified as a significant cause of harm to civilians in conflicts around the world by states, international organisations, civil society and the International Committee of the Red Cross.¹ The use in populated areas of explosive weapons, particularly those with wide-area effects, consistently causes high levels of civilian death and injury, and psychological distress. Damage to essential infrastructure such as schools, hospitals, housing, and water and sanitation systems affects a still larger population. Explosive weapon use is a key driver of displacement.

Heavy casualties from the bombing and bombardment of towns and cities in Côte d'Ivoire, Gaza, Iraq, Libya, Somalia, Sudan, Syria, Ukraine, Yemen and elsewhere in recent years provide clear illustrations of this persistent pattern of harm. The use in populated areas, of explosive weapons that impact a wide area, such as multiple-launch rockets, heavy artillery, and large aircraft bombs, has stood out as particularly harmful in these contexts.

The area effect of explosive weapons means that civilians are exposed to a high risk of harm. Data indicate that approximately 91% of those reported killed and injured when explosive weapons are used in populated areas are civilians.² In some cases this is because civilians have been deliberately targeted – which is illegal. In other cases civilians are harmed because the effects of the weapons are not limited to the military target they are being used against.

Too often, this situation is considered the inevitable result of conflict, yet experience shows that at an operational level, militaries can, and have, curbed or halted the use of certain weapons, and in doing so can strengthen civilian protection.³

Explosive weapons

Explosive weapons are conventional weapons that detonate to affect an area with blast and fragmentation. There are many types of explosive weapons, including grenades, mortar bombs, artillery shells, aircraft bombs and missiles, as well as improvised explosive devices (IEDs).

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. Different types of explosive weapons may be delivered in different ways (some are thrown, others are launched from the ground or dropped from the air, others emplaced and detonated), and they may vary in the scale of effects that they create.

Current international context

Reflecting the urgent nature of this humanitarian problem, the UN Secretary-General and the President of the International Committee of the Red Cross last year issued an unprecedented warning, calling on states to stop the use of heavy explosive weapons in populated areas.⁵

Over the past several years, this issue has been identified as a top priority for states concerned with the protection of civilians in armed conflict. The UN Secretary-General has repeatedly called on states to refrain from using explosive weapons with wide area effects in populated areas, and to engage constructively in efforts towards developing a political declaration.⁶

Against this background, since 2013 a series of expert meetings have taken place to better understand the harm resulting from the use of explosive weapons in populated areas, to identify practices by armed forces that can be undertaken to reduce harm to civilians from the use of explosive weapons, and to start to discuss a political response to address this harm by developing an international political commitment.⁷

Around 70 states have now spoken up in public forums to recognize the harm resulting from the use of explosive weapons in populated areas, including some that have called for international political action to address this harm.⁸

Discussions are starting towards developing a political instrument to address this humanitarian problem, and to set a political and operational direction against the use in populated areas of those explosive weapons that expose civilians to the gravest risks.

Five years of data on harm from explosive weapons shows devastating impact on civilians⁴

- × Between 2011 and 2015, UK-based non-governmental organisation Action on Armed Violence (AOAV) recorded explosive weapon use 110 countries, with 61 countries and territories affected each year on average. Iraq, Syria, Pakistan, Afghanistan and Yemen have seen the highest levels of harm from explosive weapons over the past five years
- × Of 188,325 deaths and injuries recorded in this period, 145,565 (77%) were reported to be civilians
- × Data show year on year increases in casualties. In 2015, 43,795 casualties were recorded, 45% more than in 2011. In 2015, some 33,307 civilian deaths and injuries were recorded, 54% more than in 2011
- × When explosive weapons were used in populated areas, 91% of reported casualties were civilians. In other areas, 33% of casualties were civilians

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The development of an international political declaration must promote actions that will reduce humanitarian harm from the use of explosive weapons in populated areas, and increase the protection of civilians living through conflict.

Whilst not a legally-binding commitment, a political declaration should seek to influence the behaviour of states by promoting a clear international standard of practice. Building that stronger political standard should also facilitate the further stigmatization of harmful practices, with endorsing states and others committed to speak up when wide-area explosive weapons are used in cities, towns and villages.

A political commitment would build on the basis provided by existing international law, including human rights and international humanitarian law (IHL). The rules of IHL represent the minimum standards of behaviour for parties to armed conflict and must be applied even in the most desperate circumstances. It is clear that there is substantial scope for parties to adopt policies and practices that enhance the protection of civilians and that accord with approaches many states already take to assess and reduce likely civilian harm.

An international policy commitment on explosive weapons would need to be translated into national policy, including at the operational level relevant to a country's military. Specifically, this would include operationalizing a commitment against the use in populated areas of explosive weapons with wide area effects into military procedures and rules of engagement. Showing that such a commitment can be translated into workable operational procedures will be important to engaging a wide community of states to join the political declaration.

There are already examples of action that militaries have taken to increase the protection of civilians by adopting policies and practices that constrain the use of explosive weapons in populated areas. In Afghanistan, the International Security Assistance Force (ISAF) issued a series of tactical directives to its commanders that progressively restricted the use of airstrikes in populated areas. The African Union Mission in Somalia (AMISOM) developed and adopted an indirect fire policy limiting the use of mortars and other indirect fire munitions in populated areas. There are other examples that militaries can draw on to consider how to operationalize a commitment to this effect.

A political declaration signed by a group of states must be seen not as a stand-alone document, but as a tool that promotes operational policy and practice better to protect civilians, and as a framework for states to work together to achieve that purpose.

KEY ELEMENTS OF A POLITICAL DECLARATION ON EXPLOSIVE WEAPONS

The following are components that should be priorities in a declaration to prevent harm from the use of explosive weapons in populated areas:

Recognition of the humanitarian harm from the use of explosive weapons

Reducing civilian harm that arises from the use of explosive weapons in populated areas is the central motivation for pursuing a political declaration. As such, a declaration should provide a clear recognition of the humanitarian problem that it works to address.

This should entail a description of the different impacts, including:

- × Civilian deaths and physical injury
- × Physical impairment, psychological trauma (social discrimination and economic deprivation of victims)
- × Destruction of housing, water and sanitation, health, energy, education, transport infrastructure, and interruption of associated services
- × Displacement and denial of return
- × Environmental degradation
- × Denial of humanitarian access
- × Contamination of territory with explosive remnants of war
- × Costs for reconstruction and recovery

Commitments to act to provide greater protection to civilians

A declaration should contain a series of specific and measurable actions that states should undertake that will make a meaningful difference to the lives of civilians experiencing armed conflict situations and that will set a clear political and practical direction for others.

- × **Stopping the use of explosive weapons with wide area effects in populated areas**

A commitment that will stop the use of explosive weapons with wide area effects in populated areas should be central to a declaration and would provide the best practical mechanism for reducing civilian harm.

Whilst there is a pattern of harm associated with explosive weapons in general, the risk to civilians is most severe when the weapons have wide area effects. Wide area effects may result where an individual weapon has a large blast or fragmentation radius, where multiple explosive munitions are launched at an area, where a weapon is not delivered accurately to the target, or a combination of these factors. Use of such weapons puts civilians at an excessive risk and is likely to severely damage buildings and infrastructure.

Under this commitment states should ensure that they understand the area effects of weapons that they have in stockpiles and have operational procedures to ensure that inappropriate weapons are not used in populated areas. Ensuring such operationalization will be crucial to the practical impact of the declaration.

× **Assisting victims of explosive weapons**

Victims of explosive weapons include survivors, families of those killed or injured, and affected communities. A political commitment can provide a framework for promoting efforts to ensure that the victims of armed conflict are supported towards the full realisation of their rights and for the provision of assistance to individuals and affected communities.

By recognising and supporting responses to the needs of victims of explosive weapons, a political commitment can provide a forum within which national and international level efforts can be encouraged, practical experiences shared and understanding of good practice developed.

Such a commitment could build on experience from instruments responding to the needs of victims of specific weapons, reinforcing the non-discriminatory nature of those instruments and building a wider expectation towards inclusion and support in line with the UN Convention on the Rights of People with Disabilities (CRPD) and the Sustainable Development Goals (SDGs).

Specific commitments should include:

- Safe and timely access to mainstream, personal support and disability-specific services, including emergency and long-term medical care, rehabilitation, psychological and psycho-social support, education, work, employment, social protection and social inclusion..
- That basic needs are met in a safe and timely manner, including, shelter, food, water, hygiene and sanitation.
- Access to assistance to compensate for the loss of homes and livelihoods due to explosive weapons.

Given the widespread destruction of public infrastructure that results from the use of explosive weapons in populated areas and its reverberating effects, a declaration should recognise this harm and promote the reconstruction of public infrastructure.

× **Gathering and sharing data**

Civil society has played a significant role in gathering and sharing data on the impact of explosive weapons and in interpreting and analysing trends, as well as reporting on specific contexts. States already have obligations in treaty law to record and retain information on their use of explosive weapons in order to facilitate the clearance of unexploded ordnance that is left behind.⁹ States have also been requested by the UN to gather data on the use and impact of explosive weapons in populated areas.¹⁰ Stronger data gathering on the use and impact of explosive weapons more broadly will strengthen the international community's ability to develop strategies to reduce harm and to respond effectively to the needs of victims. As well as providing a basis for ongoing policy considerations, impact data is

also vital to planning appropriate assistance programmes. Specific commitments should include:

- Gathering data on victims and documenting of the full range of harm caused by explosive weapons, including through recording all casualties. Data on victims should be disaggregated by age, sex and disability (providing clarity on whether a person sustained an impairment as a result of explosive weapon use, or was already living with an impairment), and should be made publicly available in an appropriate form.

× **Humanitarian and protection measures**

Recognising that in some areas harm from the use of explosive weapons in populated areas will continue, there are practical measures that can and should be taken to provide greater protection to civilians, both during and after conflict. A declaration can acknowledge and reinforce existing obligations in other international instruments and provide a framework for promoting humanitarian practice aimed at strengthening the protection of civilians in armed conflict.

Commitments should include:

- Supporting practical protection measures to make communities better able to reduce harm for themselves.
- Promoting unimpeded access to inclusive humanitarian aid
- Supporting the risk education and timely clearance of areas contaminated by explosive remnants of war, in both emergency and post-emergency responses.

× **Building a community of practice towards stronger civilian protection**

A declaration should provide a basis for ongoing action and provide a framework for further discussions among states, international organisations and civil society in order to monitor the impact of explosive weapons in populated areas and further strengthen the protection of civilians in the future.

States should encourage others to join the declaration, speak out against use in populated areas of explosive weapons with wide area effects and promote the commitments made in the declaration.

This can be developed through specific provisions requiring states to:

- Meet regularly to review progress to implement the declaration
- Raise awareness of the declaration and the specific commitments contained in it, including in other international governmental forums
- Encourage other states to sign the declaration and fulfil its commitments
- Commit to international cooperation and assistance to fulfill the commitments contained in the declaration.

RECOMMENDATIONS TO STATES

The International Network on Explosive Weapons (INEW) encourages states to:

- × Recognise humanitarian harm resulting from the use of explosive weapons in populated areas.
- × Indicate support for the development of an international political declaration to reduce harm from the use of explosive weapons, including a commitment against the use in populated areas of explosive weapons with wide-area effects, and other commitments to enhance the protection of civilians.
- × Review and make available national policies and practices related to the use of explosive weapons in populated areas, and make changes that will strengthen the protection of civilians.
- × Support data-gathering on the use and impact of explosive weapons in populated areas, including recording casualties and gathering data on victims.
- × Take action to realize the rights, and respond to the short- and long-term needs, of victims, including survivors, families of those killed or injured, and affected communities.

END NOTES

1. See: <http://www.inew.org/acknowledgements>
2. Action on Armed Violence's five year review of their database averages 91%. See: Patterns of harm: Five years of explosive violence 2011 – 2015 (August 2016), <http://www.inew.org/site/wp-content/uploads/2016/08/Patterns-of-Harm.pdf>
3. See: Action on Armed Violence, Air power in Afghanistan: How NATO changed the rules, 2008-2014 (December 2014), <http://www.inew.org/site/wp-content/uploads/2014/12/AOAV-Air-Power-in-Afghanistan-2.pdf>
4. Action on Armed Violence, Patterns of harm: Five years of explosive violence 2011 – 2015 (August 2016), <http://www.inew.org/site/wp-content/uploads/2016/08/Patterns-of-Harm.pdf>
5. World at a turning point: Heads of UN and Red Cross issue joint warning (30 October 2015), <https://www.icrc.org/en/document/conflict-disaster-crisis-UN-red-cross-issue-warning>
6. Report of the Secretary-General on the protection of civilians during armed conflict, 13 May 2016, S/2016/447, http://www.inew.org/site/wp-content/uploads/2016/05/S-2016-447_SG-Report-on-PoC-13-May-2016.pdf
7. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has co-hosted two expert meetings on this topic: the first with Chatham House in London in September 2013 and the second with Norway in Oslo in June 2014. On 21-22 September 2015 the government of Austria and UN OCHA hosted a meeting for states that have recognised this problem and are interested in working together to address it
8. See: <http://www.inew.org/acknowledgements>
9. These are found in Protocol V of the Conventional on Certain Conventional Weapons. See [http://www.unog.ch/80256EE600585943/\(httpPages\)/C7DDB8C-CD5DD3BB7C12571D8004247FA?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/C7DDB8C-CD5DD3BB7C12571D8004247FA?OpenDocument)
10. See for example, 'Report of the Secretary-General on the protection of civilians in armed conflict', 2010, S/2010/579 and UN General Assembly Resolution A/70/460