



PROTECTING CIVILIANS FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

May 2020

The International Network on Explosive Weapons (INEW)¹ calls for immediate action to prevent human suffering from the use of explosive weapons in populated areas (EWIPA).

INEW calls on states to:

- X Acknowledge** that the use of explosive weapons in populated areas frequently causes severe harm to individuals and communities and furthers suffering by damaging vital infrastructure.
- X Endorse** the UN Secretary-General's and ICRC's recommendation that states should avoid the use of explosive weapons with wide area effects in populated areas.²
- X Express support** for the development of an international political declaration to strengthen the protection of civilians from the use of explosive weapons in populated areas, by avoiding the use of explosive weapons with wide area effects in populated areas, and containing strong humanitarian provisions to assist victims and affected communities.

Humanitarian harm from the use of explosive weapons in populated areas

Civilian harm from the use of explosive weapons in populated areas has been highlighted as a top humanitarian priority³ following the increase in recent years of conflicts taking place in urban settings resulting in high levels of civilian casualties. Data shows that when explosive weapons are used in populated areas, approximately 91% of those reported killed and injured are civilians.⁴ In 2019, over 19,400 civilians were recorded killed or injured by explosive weapons. Sri Lanka, India, Philippines, Turkey, Gaza, Egypt, Colombia and Myanmar had the highest numbers of civilian deaths and injuries, and whilst the number of civilian casualties decreased since 2018, there was an increase in casualties in Afghanistan, Libya and Somalia, and incidents of explosive violence took place in 58 countries.⁵

Long-term harm and suffering

Beyond those killed and injured, an even greater number of civilians are affected as a result of damage to essential infrastructure and services. The bombing and bombardment of towns and cities destroys homes leaving people without shelter. Hospital buildings are damaged hampering the provision and quality of medical care to civilian populations in desperate need of it, making it additionally difficult to manage treatable injuries and diseases at a time when the civilian population is in desperate need of medical care.⁶ Damage to sanitation systems create additional problems around maintaining basic levels of hygiene, which can cause further onset of illness and diseases. In Yemen, the conflict has facilitated the onset of a severe cholera epidemic.⁷ The destruction of commercial buildings and transport infrastructure impedes access to, and availability of, vital provisions including food.⁸ Humanitarian access can be hampered, or stopped entirely, as humanitarian and relief organisations struggle to access particularly violent areas.⁹ Damage to electricity, energy, power further compound such problems, and in some instances prevents the civilian population from fleeing the area.¹⁰ The use of explosive weapons in populated areas represents one of the main causes of forced displacement. Countless civilians are driven from their homes and displaced, and suffer from psychological distress and trauma.¹¹

Explosive weapons with wide area effects

Most types of explosive weapons – which include, among others, aircraft bombs, artillery shells, rockets, grenades, missiles as well as improvised explosive devices – are designed for use in open battlefields, and not towns and cities where there is a concentrations of civilians. Whilst there is a pattern of harm associated with explosive weapons in populated areas 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 (for example heavy aircraft bombs), where multiple explosive munitions are launched at an area (for example multi-barrel rocket systems), where a weapon is not delivered accurately to the target (such as indirect fire mortars), or a combination of these factors. Use of such weapons puts civilians at a heightened risk of harm and is likely to result in the destruction of, or damage to buildings and infrastructure.

Explosive weapons and international law

International humanitarian law (IHL) sets out legal standards of behaviour for parties to armed conflict which must be applied even in the most desperate circumstances. Under IHL, direct attacks on civilians and civilian objects are prohibited, indiscriminate and disproportionate attacks are

prohibited, and parties to an armed conflict are required to take feasible precautions in attack in order to avoid or minimize civilian harm.

There are, however, limitations to the extent that IHL can provide sufficient protection to civilians from the use of explosive weapons in populated areas. IHL guides states towards preventing direct death and injury to civilians in specific attacks, but it does not address the long-term, and indirect effects that the use of explosive weapons in populations has on the civilian population, including from the impact to buildings, infrastructure and services, which is both foreseeable and a cause of widespread harm to civilians. It is also focused on rules over individual attacks. As such, it is incumbent on states to assess the risk of harm to civilians on a case-by-case basis, rather than providing an explicit standard of behaviour, and subject to varying interpretation by states. IHL rules on the conduct of hostilities do not reflect detailed agreement on how the risk of harm from blast and fragmentation effects can be effectively addressed and reduced.¹²

Military policy and practice

Clearer guidance to states on this matter, could be developed in the form of national-level operational policies and procedures, which would not only help to reduce humanitarian harm and civilian suffering, but would also help to avoid non-compliance of IHL. The area effects of certain explosive weapons are already recognised in some military policy and practice as having a direct link to the risk presented to civilians.¹³ However, this recognition is often dispersed across various policy and operational frameworks and differs amongst states. Such a recognition could be consolidated and addressed through the development of an international political declaration containing clear commitments to reduce harm from the use of explosive weapons in populated areas. This would include enacting a commitment against the use in populated areas of explosive weapons with wide area effects through national level operational policy, including military procedures and rules of engagement. There are already good examples of policy and practice that have been effectively developed and implemented to curtail the use of explosive weapons in populated areas in order to provide greater protection to civilians.¹⁴

Developing stronger standards for protection: an international political declaration on explosive weapons

The UN Secretary-General has welcomed the efforts of states and organisations to engage constructively in efforts to develop a political declaration to address the civilian harm caused by EWIPA.¹⁵ Led by the government of Ireland through a process in Geneva, discussions to develop an international political declaration have begun, aimed at strengthening the protection of civilians arising from the use of explosive weapons in populated areas.¹⁶ Already 109 states have spoken out on the issue to recognize the high levels of civilian harm.¹⁷

The current draft political declaration recognizes and describes the humanitarian impacts, builds on the basis provided by international humanitarian law, and contains policy and operational commitments to reduce the impact of explosive weapons on civilians.¹⁸ Building on the calls of the UN Secretary-General and the ICRC, central to the declaration should be a commitment to avoid the use of explosive weapons with wide area effects in populated areas. INEW has also recommended stronger humanitarian provisions and language on data collection and victim assistance among other things, which would provide the best practical mechanism for reducing civilian harm.¹⁹

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. A political declaration signed by a group of states would provide a tool that promotes operational policy and practice to better protect civilians, and a framework for states to work together to achieve that purpose.

A clear collective commitment is urgently needed on this vital humanitarian issue.

END NOTES

1. The International Network on Explosive Weapons (INEW) is a global network of civil society organisations that calls for immediate action to prevent human suffering from the use of explosive weapons in populated areas. It was founded in 2009 and is governed by a Steering Committee whose members are Action on Armed Violence, Article 36, Center for Civilians in Conflict, Handicap International, Human Rights Watch, Norwegian People's Aid, Oxfam, PAX, Save the Children, SEHLAC, and the Women's International League for Peace and Freedom.
2. The UN Secretary General has repeatedly called on all state and non-state parties since 2009 to "avoid the use of explosive weapons with wide-area effects in populated areas", including most recently in the 'Report of the Secretary-General on the protection of civilians in armed conflict' (S/2020/366). Since 2011, 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", see <http://bit.ly/2uLSsJm>
3. See for example, 'Explosive weapons in cities: Civilian devastation and suffering must stop', 18 September 2019, The Secretary-General of the United Nations Antonio Guterres, and the President of the ICRC, Peter Maurer, issue a joint appeal, <http://bit.ly/2I1VBkL>
4. Action on Armed Violence, 'Patterns of Harm: Five years of explosive violence 2011 - 2015', June 2016 <http://www.inew.org/wp-content/uploads/2016/08/Patterns-of-Harm.pdf>
5. Action on Armed Violence, 'Explosive violence in 2019', 7 January 2020, <https://aoav.org.uk/2020/explosive-violence-in-2019/>
6. See for example ICRC, 'Explosive weapons in populated areas: The consequences for civilians', June 2015 <https://bit.ly/1BfciDM>, and Harvard Law School and PAX, 'Operating under fire: The effects of explosive weapons on healthcare in the East of Ukraine', May 2017, <https://bit.ly/2vuYXOT>
7. ICRC, 'Yemen: Health system at breaking point as cholera epidemic spreads at unprecedented rate', June 2017, <http://bit.ly/2uLZWfx>
8. Landmine Action, 'Explosive violence: The problem of explosive weapons', August 2009, <https://bit.ly/2GXobf2>, and Handicap International, 'The use of explosive weapons in populated areas - it's time to act', 2016, <https://bit.ly/2IU85Fz>
9. See Insecurity Insight, 'Aid in Danger' <http://www.insecurityinsight.org/aidindanger/explosives/>
10. See for example ICRC, 'Explosive weapons in populated areas: The consequences for civilians', June 2015 <https://bit.ly/1BfciDM> and Landmine Action, 'Explosive violence: The problem of explosive weapons', August 2009, <https://bit.ly/2GXobf2>
11. Article 36, 'The impact of explosive weapons on mental health and psycho-social wellbeing', September 2013, <http://bit.ly/1ATCBSO>
12. Maya Brehm, UNIDIR, "Protecting Civilians from the Effects of Explosive Weapons: An Analysis of International Legal and Policy Standards" (2012)
13. Article 36 and PAX, 'Areas of harm: Understanding explosive weapons with wide area effects', October 2016, <http://bit.ly/2dGaVLx>
14. OCHA, 'Compilation of Military Policy and Practice: Reducing the humanitarian impact of the use of explosive weapons in populated areas', October 2017, <http://bit.ly/2ANCyhf> and Sahr Muhammedally, 'Minimizing Civilian Harm in Populated Areas: Examination of ISAF and AMISOM Policies and Practices', in International Review of the Red Cross, March 2017 <https://bit.ly/2vyGfIS>
15. Report of the Secretary-General on the protection of civilians in armed conflict' (S/2020/366).
16. Protection Civilians in urban warfare: Towards a political declaration to address the humanitarian harm arising from the use of explosive weapons in populated areas, Ireland's Department of Foreign Affairs and Trade, <https://www.dfa.ie/our-role-policies/international-priorities/peace-and-security/ewipa-consultations/>
17. See: <http://www.inew.org/political-response/>
18. Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas", 17 March 2020, <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Draft-Political-Declaration-17032020.pdf>
19. INEW comments on draft political declaration, April 2020, <http://www.inew.org/inew-publishes-commentary-on-draft-political-declaration/>