



BACKGROUND PAPER | SEPTEMBER 2019

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.

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THE PROBLEM

What is the problem?

Explosive weapons, particularly 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 may not be targeted in war and must 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. When explosive weapons are used in populated areas, over 90 per cent of casualties are reportedly civilians. Not only do explosive weapons kill and injure, but such attacks, especially if repeated or prolonged, also severely affect people through damage to infrastructure and psychological distress. Such attacks can destroy infrastructure vital to the wellbeing and the survival of civilians, such as homes, power plants, water pipes, schools and hospitals – resulting in displacement, disrupted education and the loss of healthcare.

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, facilitate post-conflict recovery and reduce contamination by unexploded ordnance.

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 build-



A returnee makes his way through piles of bricks in a heavily damaged part of Aleppo's Old City, November 2017
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ings, 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 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. ‘[D]ensely 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?

When used in populated areas, certain types of explosive weapons pose a greater risk of harm to civilians than others. Three key factors increase that risk – the accuracy of the weapon’s delivery, the blast and fragmentation radius, and the use of multiple munitions. These 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. Some explosive weapons are so difficult to reliably deliver onto a target that the user cannot know with sufficient certainty where they will land.

What are improvised explosive devices (IEDs)?

IEDs are explosive weapons that tend to be made and used by non-state actors.

IEDs may use military explosives, conventional ammunition, or home-made explosives for their main charge. IEDs, like other explosive weapons, are sometimes used in attacks that deliberately target the civilian population. 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 an air-delivered type of IED, and because of their composition and the way in which they are delivered they can have a wide area effect.

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.

There are a range of specific policies and measures which can be undertaken to address challenges which are distinct to IEDs. In addition to these, concerned states should take every opportunity to condemn attacks using explosive weapons with wide area effects, including IEDs, in populated areas because of the humanitarian harm that follows.

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. This is especially important given the trends of urbanisation and of war being increasingly fought within population centres.

SOLUTIONS

What can be done?

States need to set a strong standard against using explosive weapons with wide area effects in populated areas - stopping the use of these weapons in populated areas would save civilian lives both during attacks and in the longer term. States also need to assist victims of explosive violence towards meeting their needs and the full realisation of their rights.

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

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

A political declaration setting out such concrete actions for States would draw attention to this distinct issue, provide specific policy and operational recommendations that can shift behaviour, and be a tool for driving forward change by encompassing a series of action-oriented commitments on a variety of issues. 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 harm from such weapons. Current patterns of harm 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?

At the moment there is insufficient political will for an outright ban on the use of explosive weapons in populated areas, but curbing use of the worst weapons would have a major humanitarian impact.

Banning the use of weapons in international law requires states to commit to and uphold such a limitation on their actions. Explosive weapons include a broad range of weapons used by military forces in many countries. At present, most 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 nevertheless been banned outright: antipersonnel mines in 1997 and cluster munitions in 2008. The Convention on Cluster Munitions is partly a response to the indiscriminate area effects of cluster munitions. Area bombardment of targets in towns and cities – treating many separate targets as one – is also categorically prohibited under international humanitarian 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, including 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 use of explosive weapons with wide area effects in populated areas would protect civilians from one of the most harmful forms of violence, but it will not solve all of the problems that violence produces. While some technical improvements can improve accuracy and precision, they are not on their own sufficient to ensure a weapon hits its target. Moreover, such technical improvements do not prevent harm to civilians from very powerful explosive weapons (even if accurately delivered), nor from the use of multiple explosive weapons in populated areas.

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 the particularly high risk of harm to civilians that weapons covering a wide area with explosive blast and fragmentation present when used in populated areas.

WHO CAN TAKE ACTION

Who is working on this issue?

International momentum to address the use of explosive weapons in populated areas has built over the past decade. Non-governmental organisations, international organisations, UN agencies and over 100 states have now called for action to prevent harm from explosive weapons. Civil society organisations concerned with this issue work together as the International Network on Explosive Weapons (INEW).

Over the past decade, the need to address the humanitarian impact of 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. Successive UN Secretary-Generals have 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 urged states and parties to armed conflicts to “avoid the use of explosive weapons that have wide area effects in densely populated areas. This “avoidance principle” suggests a presumption of non-use of such weapons due to the high risk of indiscriminate effects and of consequent harm to civilians.” At the end of 2015, in an unprecedented joint warning on the impact of today’s conflicts on civilians, the UN Secretary-General and the President of the ICRC called on parties to armed conflict to stop the use of heavy explosive weapons in populated areas, a call they repeated in 2019.

Support for this position is also evident amongst a diverse and growing number of states. In 2017 a group of 19 African states endorsed the Maputo Communiqué and in late 2018 a group of 23 states from Latin America and the Caribbean supported a Santiago Communiqué. Both of these regional instruments support work towards an international political declaration to avoid the use, in populated areas, of explosive weapons with wide area effects. At the UN General Assembly’s First Committee a group of 50 states supported a joint statement, led by Ireland, that commits to further work on this issue, including through a future political declaration. This builds on the 2016 World Humanitarian Summit where 28 states as well as regional bodies including the European Union and the Organisation of Islamic Cooperation jointly agreed a core commitment to “promote and enhance the protection of civilians and civilian objects...for instance by working to prevent civilian harm resulting from the use of wide-area explosive weapons in populated areas...”

Now, the Government of Austria is hosting the “Vienna Conference on Protecting Civilians in Urban Warfare” from 1 to 2 October 2019 with the aim of fostering a common understanding of harms caused by the use of explosive weapons in populated areas and of providing space for an exchange of views on the proposal to develop a political declaration. The conference represents an important step towards increasing global awareness of this issue and building support for efforts to address it.

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 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:

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

In addition to these general discussions, the **Vienna Conference on the Protection of Civilians in Urban Warfare**, 1-2 October 2019 provides an opportunity to launch a process towards the adoption of a political declaration. This would require further consultations on the development of a declaration text.

EXISTING LAW AND NEW STRONGER STANDARDS

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

IHL outlines civilians' right to protection and regulates attacks in armed conflict, but it does not 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, and at any rate, to minimize harm to civilians. These basic rules on the conduct of hostilities are of customary nature and apply to all parties to international or non-international armed conflicts.

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 an attack-by-attack 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 (explosive weapons) in a

general type of setting (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.

Whilst IHL defines the boundaries for the legal use of all weapons in the conduct of war, an explosive-weapon specific standard could bring greater clarity and enhance the protection of civilians in populated areas. It would also illustrate determination to minimise the harm caused by explosive weapons.

Situations not governed by IHL are subject to international human rights law standards on the use of force and to national law – which will generally preclude the use of explosive weapons for law enforcement purposes. INEW's ultimate objective is enhanced protection of civilians, regardless of the legal regime in place.

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 IHL represent the minimum standards of behaviour even in the most desperate circumstances of armed conflict. In many recent armed conflicts, however, 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 so as to prevent civilian casualties.

Over 100 states have now expressed concern over the humanitarian harms caused by explosive weapons in villages, towns and cities. The next step towards developing a stronger international 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 and non-state actors 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
- × ICRC video on the indirect effects of explosive weapons on civilians in densely populated areas: <https://youtu.be/x25Hv2zB1cY>
- × 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 2018 report can be found here: <https://bit.ly/2m5dyPp> More data can be found via Action on Armed Violence's Explosive Violence Monitor: <https://aoav.org.uk/explosiveviolence/>

