

IN DEPTH

## Political action to end the use of explosive weapons in populated areas

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The use of explosive weapons in populated areas is a major humanitarian crisis. It must be confronted through international action, including the development by states of a commitment to end this practice. It must also be prevented through stopping arms transfers to actors using explosive weapons in populated areas. The killing of civilians, destruction of cities, and refugee crises are not inevitabilities. States have the political, legal, and moral responsibility to refrain from actions that result in such severe humanitarian suffering.

### **Bombing towns, trading arms**

In Iraq, Syria, Ukraine, Yemen, and other situations where bombing and shelling is occurring in populated areas, civilians are being killed and injured in their homes, on their streets, in their hospitals and schools. The disruption and destruction to water, sanitation, and electricity supplies are untenable, as is the psychological harm of living under bombardment. People are forced to flee their villages, towns, and cities, into unknown futures in distant places, facing threats of violence and exploitation along the way and once in their new locations.

Many of the bombs and other explosive weapons killing civilians in armed conflicts around the world, which should be controlled by international law and moral conscience, are instead sold for profit to those who use them for political gain. The Arms Trade Treaty (ATT), which entered into force in December 2014, should prevent such arms transfers. Yet many of its states parties and signatories continue to engage

in arms transfers that result in human suffering, violations of international humanitarian law (IHL) and international human rights law, and undermine socioeconomic development and international peace and security<sup>1</sup>.

The use of explosive weapons in populated areas and arms transfers to states that engage in such behaviour highlight critical gaps between law and practice. They also highlight limitations of existing law that need to be addressed through the development of new standards, commitments, and treaties.

### **Preventing harm through a political commitment**

The use of explosive weapons in populated areas must end if further humanitarian catastrophes and refugee flows are to be prevented. Many governments, international organisations, and civil society groups have recognised this. In September 2015, the government of Austria convened a meeting in Vienna to explore how to prevent harm from the use of explosive weapons in populated areas. This meeting extended from concern expressed by over 40 governments in UN Security Council debates on the protection of civilians and children and armed conflict, at which the UN Secretary-General has urged international action on this issue<sup>2</sup>. It also followed expert meetings hosted by Norway, Chatham House, the UN Office for the Coordination of Humanitarian Affairs, and independently the International Committee of the Red Cross (ICRC).

***“ The use of explosive weapons in populated areas must end if further humanitarian catastrophes and refugee flows are to be prevented” ”***

The general agreement at the Vienna meeting was that preventing humanitarian harm should be the basis for a political instrument to stop the use of explosive weapons in populated areas. Among other things, this is also a recognition that existing international law is insufficient to address the problem.

Action on Armed Violence, a member of the civil society coalition the International Network on Explosive Weapons (INEW) <sup>3</sup>, has found that when explosive weapons are used in populated areas, 90% of the resulting casualties are civilians <sup>4</sup>. This would seem to indicate violations of IHL—but the rules of IHL, which do not have specific guidelines for consistent application, do not on their own draw a clear boundary against the use of explosive weapons in populated areas <sup>5</sup>.

“Based on the effects of explosive weapons in populated areas being witnessed today,” the ICRC has argued, “there are serious questions regarding how the parties using such weapons are interpreting and applying IHL. Divergent practice of militaries, and contrasting views among experts and in the case law of international criminal tribunals regarding what is or is not legally acceptable, may point to ambiguities in IHL and the need for States to clarify their interpretation of the relevant IHL rules or to develop clearer standards to effectively protect civilians.” <sup>6</sup>

### **Government engagement**

The initiative to develop clearer standards and commitments received support from a number of states during the UN General Assembly First Committee on Disarmament and International Security in October 2015. Austria, Costa Rica, Guatemala, Ireland, Mexico, The Netherlands, and Norway all raised this humanitarian concern during their contributions to First Committee, with Norway also doing so at Prime Ministerial level during the high-level opening of the General Assembly’s 70th session <sup>7</sup>.

Most of these countries urged international action to prevent humanitarian harm from the use of explosive weapons in populated areas. The representative of Costa Rica said her government “fully supports” the development of “stricter standards and commitments to prohibit and restrict their use.” Costa Rica, New Zealand, and Norway endorsed the UN Secretary-General’s recommendation that parties to conflict should refrain from the use in populated areas of explosive weapons with wide-area effect <sup>8</sup>.

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In addition to these states, other countries have raised concern about the use of explosive weapons in populated areas during UN Security Council open debates on the protection of civilians in armed conflict or children and armed conflict <sup>9</sup>. Others have raised concerns and also indicated support for the UN Secretary-General's recommendation noted above <sup>10</sup>. Some states have called for action without referencing the UN Secretary-General's recommendation. Belgium urged all parties to armed conflicts to “renounce” the use of explosive weapons in populated areas, Malaysia to “restrict” their use, and Republic of Korea to “avoid” their use. Benin encouraged the pursuit of “criminalisation” of their use.

Some countries have linked the use of explosive weapons in populated areas and the international arms trade. Tunisia, recognising the effects on civilians of the “indiscriminate use of weapons and explosives in densely populated areas and the illegal arms trade,” called for both to be banned. The Human Security Network <sup>11</sup> has called on all parties to conflict to refrain from the use of explosive weapons in populated areas, also stressing the need for improved casualty recording and for implementation of the ATT.

**A commitment to act**

An international process to develop a political commitment to end the use of explosive weapons in populated areas is underway. All states concerned with the appalling human suffering of people living with bombing and shelling should join the effort and seek the strongest possible outcome. This must include a call to end the use in populated areas of explosive weapons.

**“ “The harm from the use of explosive weapons in populated areas is unacceptable. States have a responsibility to take action now to prevent human suffering” ”**

This process will necessitate reviews of national policy and practice to facilitate changes that will strengthen the protection of civilians. States should also support stronger data-gathering on the use and impact of explosive weapons, including age-, sex-, and disability-disaggregated recording of casualties. They should recognise the rights of survivors, families of those killed or injured, and affected communities, and ensure a response to their short- and long-term needs <sup>12</sup>.

At a broader level, states need to prevent those that use explosive weapons in populated areas from acquiring weapons. Even if a state commits itself to not using explosive weapons in populated areas, arms transfers they approve may end up being used to bomb civilians. Regardless of whether or not states are party to the ATT, they must not transfer weapons to countries that are bombing or shelling in villages, towns, cities, or other populated areas.

As INEW argues, too often the dropping of bombs or firing of rockets or mortars into populated areas is considered inevitable in armed conflict. But experience shows that states and other armed actors can stop the use of certain weapons and by doing so prevent devastating civilian harm. The current pattern of harm from the use of explosive weapons in populated areas is unacceptable. States and others have a responsibility to take action now to prevent human suffering <sup>13</sup>.

1. For examples, please see Ray Acheson, *Trading arms, bombing towns: the lethal connection between the international arms trade and the use of explosive weapons in populated areas* Reaching Critical Will, october 2015

2. For extracts from government statements on this issue, please see here (<http://www.inew.org/acknowledgements>).
3. See [www.inew.org](http://www.inew.org)
4. Robert Perkins, “Four years of harm: Explosive Weapons Monitor 2011–2014,” Action on Armed Violence, 14 September 2015.
5. Ray Acheson, “States move to stop the bombing and bombardment in towns and cities”, Reaching Critical Will, 24 September 2015.
6. International Committee of the Red Cross, “International humanitarian law and the challenges of contemporary armed conflicts”, Report prepared for the 32nd International Conference of the Red Cross and Red Crescent, October 2015.
7. For full reporting on statements at First Committee, please see the First Committee Monitor published weekly by Reaching Critical Will. Articles on explosive weapons were written by Thomas Nash of Article 36.
8. See for example the latest UN Secretary-General report on the protection of civilians in armed conflict, S/2015/453, 18 June 2015.
9. Such countries include Afghanistan, Argentina, Azerbaijan, Bangladesh, Benin, Canada, Denmark, Finland, Gabon, Holy See, Iceland, Indonesia, Japan, Jordan, Liechtenstein, Lithuania, Luxembourg, Mexico, Nigeria, Palestine, Qatar, Slovakia, Spain, Sweden, Togo, Tunisia, Turkey, and the United States.
10. Such countries include Australia, Botswana, Chile, Germany, and Montenegro.
11. Austria, Chile, Costa Rica, Greece, Ireland, Jordan, Mali, Norway, Panama, Slovenia, Switzerland, and Thailand (and South Africa as an observer) are members of the Human Security Network.
12. For details of INEW’s recommendations, please see A Commitment to Act: Protecting civilians from the use of explosive weapons in populated areas, International Network on Explosive Weapons, September 2015.

13. *Ibid.*

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