



# 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. The steering committee is comprised of Action on Armed Violence, Article 36, CIVIC, Humanity and Inclusion (HI), Human Rights Watch, PAX, Norwegian People's Aid, Oxfam, Save the Children and SEHLAC. See [www.inew.org](http://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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

## 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

In recent years there has been a distinct positive movement towards a multilateral policy response that can frame this issue as an urgent humanitarian concern, and start to drive practical national policies, and international expectations of behaviour, that strengthen the protection of civilians in armed conflict.

Towards the end of 2015 the President of the ICRC and the UN Secretary-General issued an unprecedented “joint warning” which urged states to “stop the use of heavy explosive weapons in populated areas.”<sup>4</sup> Now, four years later, over 109 states have expressed concern over the harms explosive weapons cause to civilians<sup>5</sup>, and a substantial group of states have committed to taking action on this issue. In 2017 a group of 19 African states endorsed the Maputo Communiqué<sup>6</sup> and in late 2018 a group of 23 states from Latin America and the Caribbean supported a Santiago Communiqué.<sup>7</sup> Both of these regional statements 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 issued a joint statement, led by Ireland, that commits to further work on this issue, including through development of a future political declaration.<sup>8</sup>

In the intervening years the UN and ICRC have maintained their calls to avoid the use of explosive weapons with wide area effects in populated areas, and in his New Disarmament Agenda<sup>9</sup> the UN Secretary-General again outlined the harm caused by the use of explosive weapons – particularly those with wide area effects – in populated areas and reiterated his support for the development of an international political declaration. As well as calls to avoid use of wide area weapons, the UN Secretary-General has specifically highlighted revised military policies and procedures as a potential avenue to better protect civilians from explosive weapons.<sup>10</sup> The ICRC also calls on states “to avoid the use of explosive weapons that have wide area effects in densely populated areas.” They note that this “avoidance principle” suggests a presumption of non-use of such weapons due to the high risk of indiscriminate effects and consequent harm to civilians.<sup>11</sup>

Discussions are now 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. Against this background, 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.

On 18 September 2019, UN Secretary-General, António Guterres and ICRC President, Peter Maurer, issued a further joint appeal, urging that the civilian devastation and suffering from explosive weapons in cities must stop. They called on all parties to conflict to adopt policies and practices to avoid the use of explosive weapons with a wide impact area in populated areas and expressed support for efforts to develop a political declaration relating to the use of explosive weapons in populated areas. Such actions, they argue, “will go a long way to mitigate the impact of war on cities and to reduce suffering.”<sup>12</sup>

# A DECLARATION TO PREVENT HARM FROM EXPLOSIVE WEAPONS

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.<sup>13</sup> States have also been requested by the UN to gather data on the use and impact of explosive weapons in populated areas.<sup>14</sup> 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/political-response/>
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/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), <https://bit.ly/2IZXY7J>
4. World at a turning point: Heads of UN and Red Cross issue joint warning (30 October 2015), <https://bit.ly/20YOH0>
5. See: <http://www.inew.org/political-response/>
6. <https://bit.ly/2Uz0gKO>
7. <https://bit.ly/2Gv1G31>
8. The full joint statement is available here: <https://bit.ly/2OusrmP>
9. Securing our Common Future: An Agenda for Disarmament, 2018, <https://bit.ly/2Lnvaxd>
10. Report of the Secretary-General on the protection of civilians during armed conflict, 14 May 2018, S/2018/462, <https://undocs.org/s/2018/462>
11. ICRC statement to UN Security Council open debate on protection of civilians in armed conflict, 23 May 2018, <https://www.icrc.org/en/document/icrc-statement-un-security-council-open-debate-protection-civilians-armed-conflict>
12. Explosive weapons in cities: Civilian devastation and suffering must stop: Heads of UN and Red cross issue joint appeal (September 2019), <https://bit.ly/2kqRP48>
13. 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)
14. 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 and again in 2019 in the joint appeal of the UNSG and the ICRC President, <https://bit.ly/2kqRP48>

