

THE NEED AND POSSIBILITY OF BANNING EXPLOSIVE WEAPONS

International Humanitarian Law and precision
in old and new explosive weapons

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EXECUTIVE SUMMARY

The use of explosive weapons in populated areas exposes civilians to a high risk of death or injury and to the accidental or deliberate destruction of the infrastructure on which they depend. This report addresses the significant challenges this poses to compliance with international humanitarian law (IHL) and human rights in general; argues that explosive weapons, because of their technical and military characteristics, can in no case, however advanced they may be, guarantee discrimination between civilians and combatants; and advocates, accordingly, for their prohibition.

According to IHL, the parties to an armed conflict have the obligation to ensure that their attacks do not affect the civilian population or civilian objects. They even have to make every effort to foresee whether an attack may cause damage to the civilian population which would be excessive in relation to the concrete military advantage anticipated to be gained by such an attack. IHL prohibits both direct attacks against civilians, including those intended to strike military objectives and civilians or civilian objects without distinction, and attacks that may cause incidental civilian harm that is excessive in relation to the specific objective of the attack. The former are referred to as indiscriminate attacks while the latter are known as disproportionate attacks. Through the principle prohibiting weapons from causing superfluous injury or unnecessary suffering, the use of various conventional weapons and weapons of mass destruction, for example, has been prohibited and restricted. This means that in addition to the weapons, means or methods prohibited by the Geneva Conventions and their Additional Protocols, there are other weapons that are illegal or whose use is restricted by international law through other international treaties and which are therefore binding only on the states party to them.

Although IHL has managed to restrict and prohibit the use of various types of weapons, indiscriminate and/or disproportionate attacks in urban areas are widespread, mainly through the use of explosive weapons. These types of attacks tend to occur increasingly in contexts of armed conflict in populated areas, indiscriminately affecting those in the vicinity of the explosions. It is estimated that when explosive weapons are used in urban areas, 9 out of 10 victims are civilians. The effect of certain weapons of this type can also impede the production and distribution of goods and services essential to the well-being of the civilian population. Conflicts in Iraq, Syria, Yemen and, more recently, Ukraine have demonstrated these severe impacts on basic infrastructure and the environment on which people depend, which also generate great suffering and vulnerability, as well as long-term effects on the socio-economic and human development of the region or country in question. It is also well documented how in these conflicts the use of explosive weapons in populated areas is one of the main causes of displacement, both internally and abroad.

We can conclude from all this that when armies choose to use explosive weapons in populated areas they generate unacceptable harm to the civilian population, not only to their physical integrity, but also to the coverage of their basic needs and fundamental rights.

In this sense, the myth of the precision of new weapons, used by governments and armies to justify certain military operations on the grounds that they respect IHL and do not affect the civilian population, must be dismantled. The main objective of these weapons is, rather, to replace human combatants in theaters of operations, thus creating asymmetrical wars with a much lower number of casualties of their own. These new weapons are indeed designed to reduce casualties of soldiers in combat but, for various reasons and biases, this does not mean that they are anywhere near ready to reduce the number of civilian casualties. In fact, with the use of new robotic weapons and the proliferation of low-cost, low-risk armed conflicts for the attacking party, it is quite possible that more civilians will die than in conventional weapons attacks. This is partly because these types of weapons interpose a great physical distance between the military operator, the weapon itself and the effects of its use, which can lead to psychological and moral distancing, along with a diminished awareness of responsibility for the attacks carried out and an even more improbable accountability. With technologies such as precision bombs or armed drones, wars are easier to start and moral and legal barriers are even more diluted. The perceived prospect of risk-free attacks may make military solutions prevail over political ones, lowering the thresholds for initiating military action. On the other hand, new technologies such as artificial intelligence will make it easier to think in more abstract remote wars, which may lead to more military actions and uncontrolled escalation of conflicts, in which the civilian population is always the main victim.

Policies aimed at stopping the use of explosive weapons with wide-area effects in populated areas and the adoption of humanitarian and civilian protection measures are therefore essential, as well as a more robust and comprehensive development and implementation of international regulations. As with anti-personnel mines and cluster bombs, there seems to be only one possible solution to the problem of the use of explosive weapons in populated areas, and that is to ban them, stigmatize them and eliminate them from warfare, whether they are old or new, obsolete or of recent and advanced technology.

Read the full report at:

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