

Reducing the Impact of Attacks against Healthcare by Curbing the Use of Explosive Weapons in Populated Areas: Developments at the Global Level*



Simon Bagshaw, Senior Policy Advisor, United Nations Office for the Coordination of Humanitarian Affairs, Geneva, Switzerland



Correspondence may be directed to: Simon Bagshaw

E-mail: bagshaw@un.org



Abstract

Attacks against healthcare in situations of armed conflict have emerged as an issue of increasing concern with explosive weapons – such as aircraft bombs, mortars and improvised explosive devices – accounting for more deaths, injuries and damage than any other type of weapon in attacks on healthcare facilities. While this is perhaps unsurprising, it offers some insight into a possible course of action for dealing with the problem of attacks against healthcare – by curbing the use of explosive weapons in populated areas. There has been growing recognition in recent years of the humanitarian problems caused by the use of such weapons in populated areas. Steps are now being taken at the global level to curb this use which could, in time, make an important contribution to reducing the incidence and devastating impact of attacks against healthcare.

^{*}This paper was originally written in 2014.

Introduction

Attacks against and other forms of interference with healthcare in situations of armed conflict and violence have emerged as an issue of increasing concern. The International Committee of the Red Cross (ICRC 2011) characterized it as one of the biggest, most complex and under-recognized humanitarian issues today. Conflict disrupts healthcare in many different ways and when it is most needed. Hostilities prevent personnel, the wounded and sick from reaching healthcare facilities. Healthcare facilities and vehicles are sometimes directly targeted or damaged; military or security personnel forcibly enter such facilities looking for enemies; and gaining control of a hospital is sometimes an objective of non-State armed groups. The wounded and sick are attacked and medical personnel are threatened, abducted, injured or killed or prosecuted. As a result, it is difficult or impossible to provide adequate care to those in need. Moreover, a single act of violence that damages a hospital or kills healthcare personnel has consequences for many other people requiring care who suffer further through lack of treatment.

In view of its gravity, the issue has figured prominently in the last two reports of the United Nations (UN) Secretary-General to the Security Council on the protection of civilians in armed conflict. The Secretary-General's report of May 2013 (UN 2013) called on parties in conflict to immediately cease attacks against, or other forms of interference with, healthcare facilities, transport and providers in violation of international law. His report of November 2012 (UN 2012) recommended that the Security Council becomes more "proactive" on the issue. Specifically, the Secretary-General recommended that the Council call for the systematic collection of information on attacks against, or other forms of interference with, healthcare facilities, transport and providers and people seeking medical

treatment. He also recommended that the Council systematically condemn and call for the immediate cessation of attacks against or other forms of interference with healthcare facilities, transport and providers and people seeking medical treatment. It should also apply targeted measures (such as travel bans, asset freezes) against the leadership of parties that perpetrate attacks against or other forms of interference with healthcare facilities, transport and providers.

The adoption of such measures by the Security Council is one potential course of action for seeking to address the problem of attacks against healthcare facilities. But they are not the only one. The aforementioned ICRC study found that the use of explosive weapons caused more deaths, injuries and damage than any other weapon in attacks on healthcare facilities. This finding is important, as it points towards a further course of action for addressing, or at least reducing, the devastating impact of attacks against healthcare facilities – by curbing the use of explosive weapons in populated areas.

The Humanitarian Impact of Explosive Weapons in Populated Areas

Concerns have long existed over the impact on civilians of specific types of explosive weapons. Indeed, the devastating shortand long-term impact of antipersonnel landmines and cluster munitions was a driving force behind efforts by States, the UN and civil society that led to the prohibition of these weapons in the Mine Ban Treaty and the Convention on Cluster Munitions (Borrie and Randin 2006; Borrie 2009).

More recently, concern has shifted away from specific types of explosive weapons to focus increasingly on the humanitarian problems caused by explosive weapons in general when used in populated areas. Many types of explosive weapons exist and are currently in use. These include aircraft bombs, artillery shells, missile and rocket warheads,

mortar bombs, grenades and improvised explosive devices (IEDs). Some are air dropped, while others are surface launched. Whilst different technical features dictate their precision and their explosive effect, these weapons generally create a zone of blast and fragmentation that has the potential to kill, injure or destroy anyone or anything in that zone. This makes their use especially problematic in populated areas – a term that does not refer exclusively to urban areas but more broadly to any concentration of civilians, be it permanent or temporary, such as inhabited parts of cities; inhabited towns and villages; camps or columns of refugees; or displaced persons, evacuees or groups of nomads (Office for the Coordination of Humanitarian Affairs (OCHA) and Chatham House 2013). During 2013, some 37,809 people were reported killed and injured by explosive weapons, of which 82% were civilians. When explosive weapons were used in populated areas, 93% of casualties were reportedly civilians (Action on Armed Violence 2014).

As Valerie Amos, the UN Emergency Relief Coordinator, has observed, as well as being killed and injured, civilians are also displaced, often for long periods and in precarious conditions (SCA 2014). Speaking in February 2014, Amos noted that in Syria, 6.5 million people are internally displaced; nearly 2.8 million have left the country as refugees. Many of those displaced have fled fighting characterized by the devastating and continuing use of explosive weapons in populated areas, in particular barrel bombs. Between February and July 2014, for example, some 650 attacks involving barrel bombs were recorded in the Syrian city of Aleppo alone, an average of five per day (Human Rights Watch 2014). In the Sudanese states of Blue Nile and South Kordofan, aerial bombardment of civilian areas by Sudanese forces and shelling by both Sudanese armed forces and the Sudan People's Liberation Movement-North, continue to result in death, injury and

widespread displacement. It is important to recognize that becoming displaced often marks the beginning of new challenges to the survival of those affected. These include continuing insecurity; repeated displacement through attacks on camps; and exposure to further serious risks, especially in militarized camp settings, such as sexual violence and forced recruitment. Despite the efforts of relief agencies, displacement too often leads to hunger and illness, both physical and mental. It erodes human dignity, as individuals and families become dependent on others for their survival. Where children are deprived of access to education and adequate healthcare, the effects of displacement can last a lifetime and ruin future generations, too. For too many of the world's displaced, the experience will translate into a permanent loss of livelihood, culture and opportunities, and turn into chronic destitution (OCHA 2007).

Amos further notes that explosive weapons use in populated areas results in damage to, or destruction of, housing, schools and other essential infrastructure on which civilians depend, such as water and sanitation facilities. For example, around one-third of housing stock in Syria has been destroyed by the fighting, while nearly one-fifth of schools are either damaged or being used as shelters. Livelihoods are also devastated as land and other means of production are rendered unusable, as explosive remnants of war pose a continuing threat to civilians until their removal. Damage and destruction resulting from the widespread use of explosive weapons in Gaza during the hostilities in July and August 2014 are reported to have cost the private sector more than US\$186 million, affecting small-scale enterprises, including food industries, furniture, construction, metal, wood, small business and commerce, several of which are located in either rented or owned properties that were partially or totally damaged during the hostilities (UN Development Programme (UNDP) 2014).

Explosive Weapons and Attacks on Healthcare

Explosive weapons can result in horrific injuries requiring emergency and specialist medical treatment, rehabilitation and psychosocial support services. But often this treatment and support is unavailable, in part because healthcare facilities have been damaged or destroyed. Indeed, as mentioned above, explosive weapons are the leading causes of damage to healthcare facilities in armed conflict.

The situation in Syria is a particularly acute example of this, with attacks against healthcare perpetrated by both government and anti-government forces. According to the UN Human Rights Council's Independent International Commission of Inquiry on the Syrian Arab Republic (Human Rights Council's 2014), since the beginning of the conflict, government forces have strategically assaulted hospitals and medical units to deprive persons perceived to be affiliated with the opposition of medical care. As the violence escalated in early 2012, government forces reportedly bombed and shelled opposition-operated field hospitals providing treatment to the wounded. According to the Commission, the pattern of attacks indicates that the government forces deliberately targeted hospitals and medical units to deprive anti-government armed groups and their perceived supporters of medical assistance. In Homs, for example, hospitals and medical units came under violent attack throughout 2012. In February and March, the government forces shelled field hospitals in Bab Amr from nearby villages. Three field hospitals providing emergency first aid were hit multiple times, causing considerable damage. The operating room of one field hospital was entirely destroyed. The government forces repeatedly targeted hospitals in Tal Rifat during military operations in northern Aleppo governorate between April and August 2012. On 5 April, a private hospital was aerially bombarded,

reportedly from Mennagh airport. Also in April, Tal Rifat public hospital was destroyed by airstrikes and forced to close. Aleppo's Dar Al Shifa public hospital was one of a number of hospitals in Aleppo to also suffer repeated attacks in 2012 including shelling, rocket and missile attacks. These attacks injured and killed civilians receiving treatment in the hospital and medical personnel, significantly damaged the hospital's infrastructure and substantially reduced its ability to treat patients. These attacks continue to date, including the use of unguided and highly explosive barrel bombs. In March 2014, the World Health Organization reported that 73% of hospitals and 27% of primary healthcare facilities were out of service. According to Physicians for Human Rights (2014), of the 460 health professionals killed across Syria, 41 per cent of the deaths occurred during shelling and bombings.

Acute though the situation in Syria is, it is by no means unique. The problem is global in scope, with the shelling and bombing of hospitals a feature of conflicts in Iraq (Human Rights Watch 2014), Libya (UN Human Rights Council 2012, 2014), Somalia (ICRC 2010), Sri Lanka (Human Rights Watch 2009) and elsewhere.

Strengthening the Protection of Civilians from the Use of Explosive Weapons

The need to strengthen the protection of civilians from the humanitarian impact of explosive weapons in populated areas has emerged in recent years as a key concern for the UN, the ICRC, civil society and an increasing number of States. Beginning with his 2009 report to the Security Council on the protection of civilians in armed conflict (UN 2009), the UN Secretary-General has consistently drawn attention to the issue. In his 2012 report (UN 2012), the Secretary-General recommended that parties to conflict refrain from using explosive weapons with wide-area effects in populated areas. He further recommended that States,

UN actors, international organizations and non-governmental organizations (NGOs) intensify their consideration of the issue, including through more focused discussion (see below).

The UN Emergency Relief Coordinator has highlighted the problem in Côte d'Ivoire, Libya, Sudan and Syria and called upon parties to refrain from using explosive weapons in populated areas (OCHA and Chatham House 2013). Concern has been expressed also by consecutive Special Representatives of the Secretary-General on children and armed conflict (OCHA and Chatham House 2013). In 2011, the Security Council, in resolution 1975, authorized the UN Mission in Cote d'Ivoire to take action to prevent the use of heavy weapons against civilians. The following year, it issued a Presidential Statement on 5 April 2012, in which it called upon the Syrian Government to immediately end the use of heavy weapons in populated centres. The General Assembly, in resolution 66/253, also strongly condemned the continued escalation in the use by the Syrian authorities of heavy weapons, including indiscriminate shelling from tanks and aircraft, and the use of ballistic missiles and other indiscriminate weapons, as well as the use of cluster munitions, against populated centres. An increasing number of States are also referring to the importance of the issue in their statements during the Security Council's open debates on the protection of civilians in armed conflict (OCHA and Chatham House 2013).

Outside the UN, in October 2011, the ICRC noted that due to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, explosive weapons with a wide-area impact should be avoided in densely populated areas. Civil society has also mobilized around the issue, including the establishment in March 2011 of an NGO coalition, the International Network on

Explosive Weapons (INEW). INEW calls on States and other actors to take action to prevent the harm caused by explosive weapons in populated areas, to gather and make available relevant data, to realize the rights of victims and to develop stronger international standards. Civil society is at the forefront of efforts to systematically collect data that more concretely help demonstrate the humanitarian impact.

London expert meeting

In response to the Secretary-General's aforementioned recommendation for more focused discussion of the problem, OCHA, in partnership with the International Security Research Programme of Chatham House and with the support of the Norwegian Ministry of Foreign Affairs, convened an expert meeting on the issue in London, UK, September 23-24, 2013. The 51 participants included governmental/military experts from Australia, Austria, Germany, Kenya, Mexico, Norway, the UK and United States; UN actors; the ICRC and civil society organizations under the umbrella of INEW; and individual military experts and academic and research institutes.

The meeting provided first opportunity for these various actors to discuss the scope of the problem, the key concerns and steps that could be taken to address it. The meeting considered the range of explosive weapons that exists and how its use in populated areas can be problematic. Particular concern was expressed regarding the elevated risk to civilians from explosive weapons that have "wide-area effects," whether from the scale of blast that they produce, their inaccuracy or the use of multiple warheads across an area.

The meeting considered the actual impact of the explosive weapons on civilians in populated areas, drawing on the experience of UN and non-governmental actors in Afghanistan, the occupied Palestinian territory, Somalia and Syria. It also discussed efforts to mitigate that humanitarian impact,

focusing on the operational steps taken by the International Security Assistance Force (ISAF) in Afghanistan and the African Union Mission in Somalia (AMISOM). These include the issuance of tactical directives to ISAF commanders to use the least destructive force to obtain a military purpose in defensive operations and the development and adoption of an indirect fire policy by AMISOM limiting the use of mortars and other indirect fire munitions in populated areas. In both cases, it was recognized that these policies were not necessarily legally demanded but allowed harm to be reduced by curbing the use of certain weapons in certain contexts. Emphasis was also placed on the important role of civilian casualtytracking mechanisms for allowing the parties concerned to better understand the impact they are having on the civilian population and to identify the steps that need to be taken to reduce that impact and strengthen the protection of civilians. In recognition of the significant role of non-State armed groups in the use of explosive weapons, consideration was also given to steps to mitigate the impact of use by such actors, such as through the conclusion of written agreements or commitments, and the challenges in doing so.

In terms of taking the issue forward, the OCHA-Chatham House meeting identified three work streams within the broader area of concern that could be taken forward by interested States, UN actors and civil society. First is the need to address the use in of explosive weapons with wide-area effects, such as heavy artillery, large aircraft bombs and multiple launch rockets in populated areas, by collecting good practice in this area and the development of a political commitment by States through which they recognize the problem and agree to address it. Second is the need to address the use of IEDs in populated areas, which is often associated with non-State armed groups; and third is the need to affirm the apparent presumption against explosive weapons' use in law enforcement.

In 2013, the UN Secretary-General instructed OCHA to continue to engage interested States, UN actors, ICRC and civil society on the first of these work streams. This led to the convening by OCHA and the Norwegian Ministry of Foreign Affairs of a second expert meeting, held in Oslo, Norway, June 17–18, 2014.

Oslo expert meeting

The Oslo meeting saw increased participation from States with governmental experts from Argentina, Austria, Canada, France, Germany, Luxembourg, Mexico, The Netherlands, Nigeria, Norway, Switzerland, the UK and United States; representatives from NATO and ICRC and civil society organizations under the umbrella of the INEW; active and retired senior military personnel from the US Army and the UK's Royal Marines; and individual military experts.

The Oslo meeting reaffirmed the continuing importance of the problem and the need to address it, including through the development by States of a possible political commitment that would recognize the problem and commit to take steps to address it. The meeting also reaffirmed that the principal areas of concern are addressing the use of IEDs, particularly, although not exclusively, by non-State armed groups and the use of explosive weapons with "wide-area effects". In terms of the latter, which was the principal focus of the meeting, important progress was made in delineating the sorts of weapons encompassed by this category, based on their common characteristics (OCHA and the Norwegian Ministry of Foreign Affairs 2014).

Participants discussed the protection from explosive weapons afforded by international humanitarian law, or the law of armed conflict. It was noted that international humanitarian law contains important provisions for the protection of civilians, including from the effects of explosive weapons. The principles of distinction, proportionality and precautions are key in this respect.

It was widely acknowledged that greater compliance with international humanitarian law by parties to conflict would significantly contribute to protecting civilians from explosive weapons, particularly from direct attacks.

However, it was also observed that international humanitarian law does not clearly address the full range of humanitarian impacts resulting from the use of wide-area effect explosive weapons. The general rules on the conduct of hostilities do not provide sufficient guidance on how the risk of civilian harm from the effects of explosive weapons is to be assessed and reduced, and the particular risks to civilians from blast and fragmentation are not explicit in international humanitarian law standards. In addition, while certain types of infrastructure are specially protected and international humanitarian law establishes a presumption that places of an essentially civilian character are not military objectives per se, the protection of civilians at such locations was considered to be tenuous. For example, although places of worship are specially protected, marketplaces are not. Therefore, civilians in populated areas remain at the risk of being harmed by attacks with explosive weapons on military objectives in their vicinity – in particular when those weapons have wide-area effects.

Some participants asserted that existing international humanitarian law is adequate and just needs to be applied effectively. Others noted that whilst new laws might not be necessary, there was a potential for stronger political standards to respond to the consistent, verified and predictable pattern of humanitarian harm. It was noted that under international humanitarian law, the use of wide-area effect explosive weapons in populated areas might be lawful in some cases and unlawful in others. But irrespective of the lawfulness (which is only ever judged on a case-by-case basis and even then only if

there are grounds to suspect that a serious violation has occurred), empirical data show that this practice bears a high risk for civilians, both in the short- and long-term, and so presents a challenge for the implementation of international humanitarian law. Although there was no consensus, there was some agreement that raising the political cost of using wide-area effect explosive weapons in populated areas would be a helpful tool for addressing this challenge.

There was broad agreement that this does not necessarily mean that there is a need for a new law or a specific prohibition on the use in populated areas of explosive weapons with wide-area effects. Indeed, there was agreement that this is not the immediate objective and is probably unrealistic, as States are unlikely to want to commit to binding obligations in this area. However, it was recognized that steps need to be taken by States to change practice and move towards avoiding or curbing such use, that is, towards a presumption against the use of explosive weapons with wide-area effects in populated areas and, in time, the stigmatization of such use when it occurs.

The meeting noted that there is, fortunately, movement in that direction. As mentioned, some military forces, such as ISAF and AMISOM, are instituting policy and practice that place limits on the use of certain weapons in certain contexts. This is based on the recognition that civilian casualties are not in the best interests of one's longer-term military or political objectives, but it also reflects the need to take into account the perception of international and domestic audiences. The meeting also heard from some States that there are national laws, policies and doctrine that are also relevant here. Participants noted that it would be useful to ensure that such policy and practice and lessons learned are also disseminated to other militaries, including in the context

of bilateral training of the armed forces of other States and also members of non-State armed groups. This is all crucial to changing practice.

A fundamental component to changing practice would be moving forward with discussions on a political commitment. It was recognized that, while there is support for such a commitment from some States, there are also concerns from others, and it will be important to continue to engage in discussions on this, to air those concerns more fully and move towards agreement on this.

In terms of next steps, OCHA stated that it will begin a process of capturing and compiling the sort of practice and policy discussed and mentioned in the London and Oslo meetings. OCHA has also indicated that it will work to facilitate discussions with interested States, UN actors, civil society and ICRC on the content and scope of a possible political commitment that would seek to curb the use of explosive weapons in populated areas.

Conclusion

Although at their early stages, and while not specific to healthcare, the ongoing efforts to strengthen the protection of civilians from the use of explosive weapons in populated areas described above could make a significant contribution to protecting healthcare facilities from attack. As indicated, explosive weapons are the leading cause of death, injury and destruction in attacks on healthcare facilities. The greater the degree to which the international community is able to curb the use of explosive weapons, to instil a widespread presumption against the use of the explosive weapons in populated areas and to stigmatize such use when it occurs, the greater are the chances that we will see progress in reducing the incidence and impact of attacks against healthcare facilities and the consequences thereof

References

Action on Armed Violence. 2014. *An Explosive Situation: Monitoring Explosive Violence in 2013*. Action on Armed Violence. Retrieved May, 15, 2016. http://aoav.org.uk/wp-content/uploads/2014/05/AOAV-Explosive-Events-2013.pdf.

Borrie, J. 2009. *Unacceptable Harm – A History of How the Treaty to Ban Cluster Munitions Was Won*. UNIDIR: Geneva, Switzerland.

Borrie, J. and V.M. Randin (eds). 2006. *Disarmament as Humanitarian Action – From Perspective to Practice*. UNIDIR: Geneva, Switzerland.

Human Rights Watch. 2009 (May 8). "Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes." Retrieved May 16, 2016. https://www.hrw.org/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>.

Human Rights Watch. 2014 (May 24). "Iraq: Government Attacking Fallujah Hospital." Retrieved May 15, 2016. https://www.hrw.org/news/2014/05/27/iraq-government-attacking-fallujah-hospital.

International Committee of the Red Cross (ICRC). 2010. "Somalia: Shelling of Mogadishu's Keysaney Hospital Continues Despite ICRC Pleas." Retrieved May 16, 2014. https://www.icrc.org/eng/resources/documents/news-release/2010/somalia-news-010710.htm.

International Committee of the Red Cross (ICRC). 2011. *Health Care in Danger – A Sixteen Country Study*. Retrieved June 8, 2016. https://www.icrc.org/eng/resources/documents/report/hcid-report-2011-08-10.htm.

International Network on Explosive Weapons. 2011. *INEW Call, INEW*. Retrieved June 9, 2016. http://www.inew.org/about-inew>.

Office for the Coordination of Humanitarian Affairs (OCHA). 2007. Security Council open debate on the Protection of Civilians. Statement by Mr. John Holmes, United Nations Emergency Relief Coordinator and Under-Secretary-General for Humanitarian Affairs, 22 June 2007. Retrieved June 9, 2016. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5703>.

Office for the Coordination of Humanitarian Affairs (OCHA) and Chatham House. 2013. Expert Meeting on Reducing the Humanitarian Impact of the Use of Explosive Weapons in Populated Areas. London, UK: OCHA and Chatham House.

Office for the Coordination of Humanitarian Affairs (OCHA) and the Norwegian Ministry of Foreign Affairs. 2014. Oslo Expert Meeting on Strengthening the Protection of Civilians from the Use of Explosive Weapons in Populated Areas. Summary Report. Switzerland: OCHA.

Physicians for Human Rights. 2014 (May 14). "New Map Shows Government Forces Deliberately Attacking Syria's Medical System." Retrieved May 15, 2016. http://physiciansforhumanrights.org/press/press-releases/new-map-shows-government-forces-deliberately-attacking-syrias-medical-system.html>.

Security Council Report (SCR). 2014. 7109th Meeting of the UN Security Council: Protection of Civilians in Armed Conflict. Retrieved June 8, 2016. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7109.pdf.

United Nations (UN). 2009. Report of the Secretary-General on the Protection of Civilians in Armed Conflict. S/2009/277. Retrieved May 15, 2016. http://www.poa-iss.org/CASAUpload/ELibrary/S-2009-277en.pdf.

United Nations (UN). 2012. Report of the Secretary-General on the Protection of Civilians in Armed Conflict. S/2012/376. Retrieved May 16, 2016. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/328/94/PDF/N1232894.pdf*OpenElement>.

United Nations (UN). 2013. Report of the Secretary-General on the Protection of Civilians in Armed Conflict. S/2013/689.

United Nations Development Programme (UNDP). 2014. *Detailed Infrastructure Damage Assessment Gaza*. 24-25. Retrieved May 16, 2016. http://www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-dammageassessment2014.pdf>.

United Nations Human Rights Council. 2012. *Report of the International Commission of Inquiry on Libya*. A/HRC/19/68. Retrieved May 16, 2016. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_689.pdf.

United Nations Human Rights Council. 2014. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. A/HRC/25/65. Retrieved June 9, 2016. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/109/24/pdf/G1410924.pdf?OpenElement>.



Healthcare Quarterly recognizes, nurtures and champions excellence in the Canadian healthcare system. Its objective is to document and disseminate leading practices in health service delivery and policy development. Excellence is achieved through constant innovation, motivated people and inspired leadership at all levels of the organization. Healthcare Quarterly helps Canadian health system managers anticipate and respond to changing environments, demands and mandates.

HealthcareQuarterly.com

Longwoods.com