



## **Expert meeting on addressing the use of explosive weapons in populated areas by armed non-state actors 19 November 2018**

### **Summary Report**

Strengthening the protection of civilians from the use of explosive weapons in populated areas (EWIPA) is a major concern for the United Nations (UN), the International Committee of the Red Cross (ICRC), civil society and a growing number of Member States. The UN Secretary-General has repeatedly called on all State and non-State parties to conflict to avoid the use in populated areas of explosive weapons with wide area effects.<sup>1</sup> While their use in populated areas may be lawful in some circumstances, empirical evidence reveals a predictable and widespread pattern of civilian harm. This includes death, injury, psychological trauma, displacement, and damage to or destruction of essential infrastructure on which civilians depend. The use of EWIPA can impede the return of refugees and internally displaced persons. It also presents a major challenge to the achievement of the Sustainable Development Goals.

To date, expert and inter-governmental discussions on addressing the humanitarian impact of EWIPA have tended to focus on the use of EWIPA by State armed forces. It is expected that this will be the principal focus of any future political declaration. Less attention has been paid to the use of EWIPA by armed non-State actors (ANSAs). Yet, such use—and how to avoid or at least limit it—must be considered in order to ensure more effective and comprehensive protection of civilians.

As an initial step towards addressing the use of EWIPA by ANSAs, including through the possible development of a comprehensive and coherent strategy for engagement on this issue, OCHA and Geneva Call convened an expert discussion in Geneva aimed at deepening the understanding of such use and options for engaging ANSAs in order to avoid or limit their use of EWIPA. In addition to OCHA and Geneva Call, the meeting participants included representatives of Austria, Chile, Colombia, Ireland, Norway, Switzerland, the UN Mine Action Service (UNMAS), the UN Institute for Disarmament Research (UNIDIR), ICRC, Action on Armed Violence, Article 36, Humanicemos DH, Humanity and Inclusion, Human Rights Watch, and the Syrian Democratic Forces. The meeting was conducted under the Chatham House rule.

#### **Non-State actor use of EWIPA**

The first session provided an overview of the current state of ANSA use of EWIPA, examining the different contexts and groups using EWIPA and their impact on civilians; and the types of explosive weapons that are being used and particular operational challenges related to this. It was noted that among ANSAs, the Islamic State, Taliban, Al Shaabab, Boko Haram and Syrian ANSAs are those most

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<sup>1</sup> See *Report of the Secretary-General on the protection of civilians in armed conflict, S/2017/414* (10 May 2017), para.20. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/414](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/414) and *Report of the Secretary-General on the protection of civilians in armed conflict, S/2018/462* (14 May 2018), para.42, available at: <https://undocs.org/S/2018/462>

responsible for civilian casualties from the use of EWIPA during the first 10 months of 2018. Civilians constituted 79% of casualties resulting from attacks perpetrated by these ANSAs in 2018, with 84% of the attacks involving the use of improvised explosive devices (IEDs) and 10% involving ground-launched weapons – pointing to the fact that while IEDs may be regarded as the weapon of choice because they are more accessible, some ANSAs are able to access both improvised and commercially-manufactured weapons.

It was noted that the reliance on IEDs was partly a result of the availability of landmines in some contexts which could be re-purposed. But there were instances of other manufactured explosive weapons, such as aircraft bombs with enhanced fragmentation, being modified for use as ground launched weapons after coming into the possession of ANSAs from state arsenals and weapons storage facilities. Multiple launch rocket systems have also been used by some ANSAs which is problematic given that such systems are inherently indiscriminate when used in populated areas. Some ANSAs also possess surface-to-air missiles as well as anti-tank weapons. It was noted that the performance and reliability of such weapons is often undermined due to the lack of proper storage and handling as well as the lack of familiarity within ANSAs with how to use the systems correctly.

The session also considered the legal obligations of ANSAs in relation to the use of EWIPA. Like State-armed forces, ANSAs are subject to the international humanitarian law (IHL) rules governing the conduct of hostilities. They must at all times comply with the principles of distinction, proportionality and precautions, including when using explosive weapons, whether improvised or commercially manufactured. In terms of distinction, it was noted that there are concerns as to whether the use of munitions or weapon systems that have a wide impact area complies with the prohibition of indiscriminate attacks, given the great difficulty of ensuring that the munition(s) fired will actually hit the target and that their effects will not be indiscriminate or disproportionate.

Like States, ANSAs are under an obligation to refrain from launching an attack whose expected incidental harm is excessive in relation to the concrete and direct military advantage anticipated. The incidental harm includes all reasonably foreseeable effects of an attack – whether a direct or indirect. It was noted that what is reasonably foreseeable for an ANSA may be different to that which is foreseeable for a State armed force as a result of different capabilities for collateral damage estimation, access to intelligence etc. This is not to say that the standard is lower for ANSAs than for State armed forces but that reasonable foreseeability is to some extent dependent on the circumstances.

In addition to the obligation to take all feasible precautions in attack and avoid launching an indiscriminate or disproportionate attack and to avoid and in any event minimize incidental civilian harm, like State armed forces, ANSAs are also obliged to take “passive precautions” against the effects of attacks. These include, ‘to the maximum extent feasible, removing the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; avoiding locating military objectives within or near densely populated areas; and taking other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations. This rule is of particular relevance to ANSAs because of their tendency to mingle with the civilian population. This mingling may be intentional with civilians used as “human shields” (a practice prohibited under IHL); or unintentional - sometimes ANSAs fight from within populated areas because they started out as part of the civilian population. This is particularly the case for internal conflicts that grew out of civil unrest. Or, it may be forced when, for example, the adversary besieges a town or city and no escape routes are provided for members of the ANSA.

It was noted that for ANSAs in control of territory, the feasibility of these passive precautions will be greater than for those not controlling the territory in/from which they are fighting. Finally, it was noted that the failure of an ANSA to comply with IHL does not relieve opposing forces of their obligations to comply with the law in the conduct of hostilities.

Participants noted that extent of compliance with the law may be difficult to determine though in some cases there are grounds to assume that civilians were deliberately targeted given the nature of the target – market places, refugee camps, and other civilian objects. For some, being able to distinguish between lawful and unlawful attacks was important as it would dictate how one advocates for restraint in the use of EWIPA and more effective implementation of the law.

While there is value in considering the lawfulness of attacks involving the use of EWIPA, the importance of not looking at the problem of EWIPA exclusively in terms of compliance with the law was also stressed. Rather, we should ensure a focus on the pattern of harm that results from the use of EWIPA. It was noted that it is often difficult to prove whether a given attack was lawful or otherwise and that ultimately it is the cumulative impact in humanitarian and development terms of multiple attacks over a period of time (all of which could have been lawful in isolation) that is of concern.

### **Engaging ANSAs on EWIPA**

The second session considered the steps that can be taken to engage with and address ANSA use of EWIPA. It was noted at the outset that it can be relatively straightforward for the UN and civil society to raise issues relating to the protection of civilians and EWIPA with Member States; to bring Member States together collectively to raise awareness and advocate for a change in practice; and to work with them to develop standards and tools, such as a political declaration.

With ANSAs however, it is less straightforward. This is not to say that ANSAs are not receptive to such engagement – and some clearly are as evidenced by Geneva Call’s work in developing the “Deeds of Commitment” and other examples of ANSAs entering into special agreements and developing codes of conduct to ensure more effective implementation of IHL. Rather, the processes for engaging ANSAs are less formal, and the mechanics of engagement are more complex, not least given the proliferation and fragmentation of ANSAs. Moreover, the act of engagement can itself be controversial with some Member States who are concerned that engagement ascribes a degree of legitimacy to such groups. However, without engagement, the humanitarian impact of ANSA use of EWIPA will almost certainly become more pronounced over time.

#### *Steps taken by ANSAs to protect civilians from EWIPA*

Drawing on Geneva Call’s study, *In Their Words*<sup>2</sup>, the meeting discussed actions that have already been taken by some ANSAs to better protect civilians from the use of EWIPA and which may be usefully replicated in other contexts. It was noted that the groups interviewed for the study attached great importance to protecting the civilian population and preventing incidental harm as a result of their actions, including from the use of EWIPA. Some undertake some form of proportionality assessment prior to conducting attacks based on observation and intelligence gathering and limiting the explosive yield in order to minimise potential incidental damage.

Some ANSAs implement precautionary measures such as sending a warning by exploding a small tin; moving away from populated areas; using lighter weapons; changing the timing of attack; using

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<sup>2</sup> Geneva Call, *In Their Words – Armed non-State actors share their policies and practice with regards to education in armed conflict* (November 2017). Available at: [https://genevacall.org/wp-content/uploads/dlm\\_uploads/2017/12/Explosive-Weapons.pdf](https://genevacall.org/wp-content/uploads/dlm_uploads/2017/12/Explosive-Weapons.pdf)

observers to ensure that only military objectives are struck during mortar attacks; mapping the location of landmines and removing them if the attack was aborted or unsuccessful; placing guards and lookouts to watch for civilians and keep them out of danger; evacuating civilians; and avoiding the use of EWIPA. It was recommended that greater attention be given to promoting (and exchanging) good practice towards minimizing the use of EWIPA (whether IEDs or commercially manufactured weapons), including by building on existing cultural, religious and humanitarian values to protect civilians. The importance of providing a safe space for humanitarian and other organizations to engage with ANSAs was also emphasized.

#### *Engagement by humanitarian organizations*

The meeting also considered the experience of different humanitarian organizations in engaging ANSAs with a view to strengthening their respect for, and compliance with IHL, as well to gaining access to populations in need of assistance and for the conduct of humanitarian operations. It was noted that engaging ANSAs can be challenging in terms of security (both for the actors seeking to engage the group and the group itself). Moreover, acceptability, while key, cannot be taken for granted. There are also practical limitations when organizations are unable or prevented from accessing territory controlled by ANSAs due to the fear that such engagement might legitimize the ANSA. At the same time, it was noted that many ANSAs are present among the civilian population at large and it may be possible to influence or reach their members through community leaders for example. Many ANSAs are also present in third countries and may be open to engagement in those countries.

It was noted that an essential element of engaging successfully with ANSAs is the need to fully understand the group itself – its motivations, formal and informal norms that shape its behaviour, structure, command and control; its zones of control, strategy in terms of the conduct of hostilities, where it gets its support from, the level of compliance with IHL, including the development of codes of conduct; and possible points of contact within and outside the country. Such an analysis should form the fundamental basis for an organization-wide engagement strategy that can encompass of range of activities, such as meeting with commanders, training on IHL, visits to detainees, training on first aid and mine awareness etc.

Engagement with ANSAs may also take place on a less strategic basis and opportunities may arise during the routine implementation of assistance activities conducted by humanitarian organizations. While these are opportunities to raise issues of concern, including with regard to the use of EWIPA, it was noted that doing so could undermine the perception of the organization's neutrality and, in due course, endanger staff and operations – again, underlining the need for a more structured and strategic approach to engagement that would seek to also mitigate such dangers.

#### *Engagement in the context of partnered operations*

Participants considered the opportunities to influence the behaviour of ANSAs and their use of EWIPA, that might arise in the context of so-called partnered operations where State armed forces work “by, with and through” ANSAs. A distinction was drawn between two key elements that are required by ANSAs – moral authority or support for their actions; and material support.

In terms of the former, it was noted that guidance from senior Iraqi leaders, including in Iraq for example, Grand Ayatollah Sistani's 20-point fatwa on “Advice and Guidance to the Fighters on the Battlefields” that included guidance on protection of civilians, have effectively influenced the behaviour of both State and non-state armed actors in Iraq. Similarly, in Syria, Sheikh Muhammad al-

Yaqoubi also issued a series of fatwas via Facebook for rebel fighters that counselled against extremist interpretations of jihad, including a prohibition on the use of suicide bombers and landmines.

In terms of material support in the context of partnered operations, it was noted that while partnered operations are not new, they do present significant drawbacks. ANSAs may have a long history of diverging concerns, objectives, and goals from their sponsor states and even short-term benefits can have a backlash. In the long term, partnering may prolong conflict by providing additional resources that can increase the intensity and duration of fighting. Moreover, by not being directly involved in the conduct of hostilities, supporting forces may be more immune from demands for the conflict to cease; and may be less concerned with the consequences of the conflict for the civilian population – although it was also noted that partnering States are obliged under Common Article 1 of the 1949 Geneva Conventions to also ensure respect for IHL by those actors with whom they are partnered.

It was noted that in the context of partnering with ANSAs, States can take a number of concrete steps to ensure respect for IHL and which could also be used to influence ANSA use of EWIPA. These include training and instruction for ANSAs on IHL and other relevant laws and standards; monitoring ANSAs conduct; sharing and developing good practices and lessons learned; and encouraging ANSAs to engage with neutral and impartial humanitarian organizations.

Despite such opportunities to influence the conduct of ANSAs, it was noted that this is not always prioritised. Appropriate training on IHL and the protection of civilian may fall victim to the need for immediate force generation for a pressing operational requirement. Supporting forces often cap troop numbers in order to limit their exposure meaning that less trainers and mentors are available. Moreover, the need to maintain a high operational tempo can prevent resort to tactical measures that could strengthen the protection of civilians, such as tactical pauses. It was also noted that the risk of weapons proliferation prevents the more effective weapon and munition technology being passed onto ANSAs. This can be problematic as the better resourced and trained a force is, the better able they are to protect civilians. This is especially the case for indirect fire support for which the accurate application requires sophisticated equipment, weapons and ordinance, and a high degree of coordination and training amongst the troops involved which is often lacking within ANSAs.

### **Towards a comprehensive and coherent strategy for engagement on EWIPA**

Looking to the future, the meeting briefly considered possible elements of a comprehensive and coherent strategy for engaging ANSAs on the use of EWIPA. It was suggested that such a strategy might consist of two principal work streams: advocacy/training; and political.

The advocacy/training work stream would focus on the national level and involve raising awareness among ANSAs of the humanitarian impact of the use of EWIPA, the need to address this and possible steps for doing so. This could be stand-alone messaging or part of more general advocacy and training related to IHL and protection of civilians. It might also take place in the context of other more routine activities that involve contact with ANSAs.

Given the difficulty of reaching out to ANSAs *en masse*, it was suggested that advocacy would need to be undertaken directly with individual ANSAs – and based on a thorough analysis of the composition and approach of the groups concerned and their use of EWIPA. This analysis would also identify possible entry points and opportunities to influence conduct such as through the communities from which they draw their support, diasporas and others who might help to identify incentives to bring about a change in practice.

Such a change in practice might be facilitated through the development, adoption and dissemination of specific policy relating to the use of EWIPA; or the inclusion of EWIPA in codes of conduct and other such tools. Consideration might also be given to facilitating the exchange of good policy and practice among ANSAs.

The political work stream would be more global in orientation and involve several elements. As critical element would be to promote the need for engagement with ANSAs on this issue and noting that the failure to do so will almost certainly mean more not fewer civilians casualties and other longer-term consequences from the use of EWIPA by ANSAs. It was further noted that it may be useful to think about ways of making engagement more politically palatable and acceptable to those States that harbour reservations; and to also consider how States could support engagement with ANSAs.

The political work stream could also involve the development of a code of conduct with regard to the use of EWIPA that could be open for individual ANSAs to sign and through which they would agree to specific commitments in terms of avoiding and limiting the use of EWIPA. It may also be useful to examine the extent to which the use of EWIPA could be considered within the context of the six grave violations of children's rights, in particular those relating to killing and maiming and attacks against schools and hospitals. Measures relating to avoiding or limiting the use of EWIPA could be included in Action Plans concluded between the UN and ANSAs, following the listing of the latter in the reports of the Secretary-General on children and armed conflict. Finally, reference was made to the possible imposition of targeted sanctions by the Security Council as a response to the widespread use of EWIPA.

Though not envisaged as part of the strategy, it was noted that it would be useful to reflect further on the operational challenges that ANSAs face relating to their lack of familiarity and training in the correct use and storage of the weapons systems they use and if and how this might be addressed (such as within the context of partnered operations).

OCHA and Geneva Call noted their intention to continue working on issue, including undertaking further consultations and developing a possible engagement strategy along the lines described above.

# Expert meeting on addressing the use of explosive weapons in populated areas by armed non-state actors

19 November 2018  
Concordia 1, Palais des Nations

## Agenda

- 0900-0910 **Welcome and introductions**  
*Simon Bagshaw, OCHA*  
*Ezequiel Heffes, Geneva Call*
- 0910-1100 **Part one - The current state of ANSA use of EWIPA**  
Part one will provide an overview of the current state of ANSA use of EWIPA. It will look at the different contexts and groups using EWIPA and their impact on civilians; the types of explosive weapons that are being used and particular operational challenges related to this.  
  
Part one will also consider the legal obligations of ANSAs in relation to the use of EWIPA, including the obligation to avoid locating military objectives among the civilian population. Importantly, it will also consider ANSA perspectives on the use of EWIPA.  
  
*James Kearney, Action on Armed Violence*  
*Mark Hiznay, Human Rights Watch*  
*Eirini Giorgiou, International Committee of the Red Cross*  
*Yudith Marcela Moreno Muñoz, Humanicemos DH*  
*Mistafa Bali, Syrian Democratic Forces via Skype*
- 1100-1130 **Coffee**
- 1130-1330 **Part two - Addressing ANSA use of EWIPA**  
Part two will consider the steps that can be taken to address ANSA use of EWIPA. It will consider actions that have already been taken by some ANSAs to better protect civilians from the use of EWIPA and to what extent these might be replicated or adapted in other contexts. It will also consider how to address some of the operational challenges relating to ANSA use of EWIPA.  
  
Drawing on experience in other contexts and on other issues, part two will also examine options and possible mechanisms for engagement, including tailored approaches for specific groups and the role of partnered arrangements. It will also consider the relationship between non-State and State actor use of EWIPA, particularly with regard to multilateral processes relating to the use of EWIPA.  
  
*Katherine Kramer, Geneva Call*  
*Georges Baize, ICRC*  
*Bahia Zrikem, Humanity and Inclusion*  
*Ruben Stewart, Independent consultant*
- 1330-1345 **Concluding remarks**  
*Simon Bagshaw, OCHA*  
*Ezequiel Heffes, Geneva Call*