

INFORMAL EXPERT MEETING ON STRENGTHENING THE PROTECTION OF CIVILIANS FROM THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

Oslo, Norway, 17-18 June 2014

SUMMARY REPORT BY OCHA

Introduction by Mr. Bård Glad Pedersen, State Secretary, Ministry of Foreign Affairs of Norway

Norway attaches great importance to supporting international efforts to strengthen the protection of civilians in armed conflict. We were, therefore, very pleased to convene, with the United Nations Office for the Coordination of Humanitarian Affairs, the informal expert meeting on strengthening the protection of civilians from the use of explosive weapons in populated areas.

Data collected in recent years by civil society and United Nations actors paints a very stark picture of the humanitarian impact of the use of explosive weapons in populated areas. Civilians are killed, injured and displaced; housing, schools, healthcare and other vital infrastructure are damaged or destroyed; explosive remnants of war pose a continuing threat until their removal; and the challenges and costs of post-conflict reconstruction and development increase enormously.

We have to find ways of better protecting civilians and civilian objects from the impact of explosive weapons in populated areas. We have, since World War Two and the Vietnam War become less permissive of the bombardment of villages, towns and cities and it is essential that we continue that progression. The Oslo expert meeting has provided an important milestone along the way. It helped our understanding of explosive weapons with “wide-area effects” which are of particular concern such as heavy artillery, certain aircraft bombs or multiple launch rockets; it deepened our appreciation of the protection provided by international law and policy; and of the steps that have been taken in such places as Afghanistan and Somalia to mitigate the impact of explosive weapons on civilians. Most importantly, the Oslo meeting reaffirmed the views of a number of States, United Nations actors and civil society of the steps that need to be taken to address this most pressing of humanitarian concerns and provided added impetus to our efforts. Norway remains fully committed to working actively with all partners in strengthening the protection of civilians from the use of explosive weapons in populated areas.

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), with the support of the Ministry of Foreign Affairs of Norway, convened a second informal meeting of governmental, military and other experts on strengthening the protection of civilians from the use of explosive weapons in populated areas. The meeting saw increased and more engaged participation from Member States; and although there was not consensus on how to address the problem, it broadly confirmed the validity of the current approach (of collecting and analysing good military practice and developing a

political commitment whereby States recognise and commit to specific steps to address the problem) and evidenced willingness to move forward in these respects. The meeting also saw significant progress in our understanding of the some of the definitional and conceptual aspects of the problem that will be essential in moving forward with a political commitment.

The context

There has been growing recognition in recent years of the humanitarian problems caused by the use of explosive weapons in populated areas. Many types of explosive weapons exist, including aircraft bombs, artillery shells, missile and rocket warheads, mortars and improvised explosive devices (IEDs). Such weapons generally create a zone of blast and fragmentation which makes their use problematic in populated areas. Civilians may be killed and injured and are displaced. Housing and essential infrastructure are damaged or destroyed. Those injured require emergency and specialist medical treatment, rehabilitation and psycho-social support services yet hospitals and clinics may have been damaged or destroyed. Education is interrupted by the damage to and destruction of schools. Livelihoods are devastated as means of production and commercial enterprises are damaged or destroyed. Explosive remnants of war pose a threat until their removal. The use of explosive weapons in populated areas has a dramatic impact on post-conflict reconstruction requirements and costs.

Since 2009, the United Nations Secretary-General has consistently highlighted the use of explosive weapons in populated areas as a major challenge to the protection of civilians and is among the key issues addressed in this year's report on strengthening the coordination of humanitarian assistance in the context of "better serving the needs of people in conflict". The issue has also been acknowledged by other senior United Nations officials, such as the Emergency Relief Coordinator, as a serious humanitarian concern and by an increasing number of Member States, as well as the International Committee of the Red Cross (ICRC).

The Oslo meeting is the second expert meeting convened by OCHA on this issue. The first was convened with Chatham House in London in September 2013. This provided an initial opportunity for Member States, United Nations organizations, ICRC and civil society 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 exist and how their 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 on civilians of the explosive weapons in populated areas, drawing on the experience of field-based United Nations 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 International Security Assistance Force in Afghanistan and the African Unions 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 the steps taken were not necessarily legally demanded but allowed harm to be reduced by curbing the use of certain weapons in certain contexts.

In terms of next steps, the Chatham House meeting identified three future work streams within the broader area of concern:

- addressing the use in populated areas of explosive weapons with wide-area effects, such as heavy artillery, large aircraft bombs and multiple launch rockets.
- addressing the use of IEDs in populated areas, which is often associated with non-State armed groups; and
- affirming the apparent presumption against explosive weapons use in law enforcement.

The Oslo meeting

In his 2013 report on protection of civilians, the Secretary-General instructed OCHA to continue to engage interested Member States, United Nations actors, ICRC, and civil society on the first of these work streams, resulting in the convening of the second expert meeting in Oslo.

The 49 participants included governmental experts from Argentina, Austria, Canada, France, Germany, Luxembourg, Mexico, the Netherlands, Nigeria, Norway, Switzerland, the United Kingdom and United States; representatives from OCHA, the North Atlantic Treaty Organization (NATO) and ICRC; civil society organizations under the umbrella of the International Network on Explosive Weapons (INEW); and active and retired senior military personnel from the United States Army and the Royal Marines, and individual military/weapons experts. It was noted that twice the number of Member States participated, compared to the Chatham House meeting, an indication of the increasing recognition of the importance of the addressing this problem. The meeting was conducted under the Chatham House rule.

Where we are

The meeting began with an overview of where we are on the issue and the steps that have been taken to date to better understand and address the humanitarian impact of explosive weapons in populated areas.

On the basis of ongoing efforts by civil society to collect quantitative and qualitative data on the humanitarian impact of explosive weapons in populated areas, the meeting noted that the magnitude of the problem appears to be increasing rather than decreasing and there remains a pressing need to take steps to address it. For example, during 2013, some 37,809 people were reported killed and injured by explosive weapons, of which 82 per cent were civilians. When explosive weapons were used in populated areas, 93 per cent of casualties were reportedly civilians.¹ Since 2011, the number of civilians casualties from explosive weapons has reportedly increased more

¹ Action on Armed Violence, *An Explosive Situation: Monitoring Explosive Violence in 2013* (April 2014)

than 20% per year.² It was recognized that specific country situations can have an impact on the yearly figures.

The meeting also reaffirmed that the principal areas of concern are addressing the use of IEDs, which are commonly – though not exclusively – associated with non-State armed groups; and the use of explosive weapons with so-called “wide-area effects”.

It was noted that while the problem is certainly grave, there are grounds for optimism: there is increasing recognition among Member States and other key actors of the importance of the issue and the need to address it, We have, moreover, begun to identify actions that can be taken to that end, including the development by Member States of a political commitment through which they would recognise the problem and commit to avoid or minimise the use of explosive weapons in populated areas.

Explosive weapons with wide-area effects

A particular focus of the discussions in Oslo was to move towards a better understanding of explosive weapons that have “wide-area effects”. Important progress was made in delineating the range and specific types of weapons encompassed by that category, based on their common characteristics. In particular it was noted how factors relating to accuracy of delivery, scale of blast and fragmentation, and the use of multiple explosive munitions across an area can work individually or in combination to create wide-area effects. Case studies from Syria illustrated how even when a specific military object was targeted for attack, certain explosive weapons affected the populated areas around that target. However, it was also acknowledged that the term “wide-area effects” requires further discussion and refinement, particularly in the context of any future political commitment.

Connected to this, some participants noted the growing use of the term “heavy weapons” in resolutions of the United Nations Security Council and the General Assembly.³ There was a broad sense that if Member States are able to express concern about the use of heavy weapons and call for constraint in their use, as they have through Security Council and General Assembly resolutions, then it should not be too challenging for Member States to talk about “explosive weapons with wide-area effects”

² Action on Armed Violence, “Three Years of Explosive Violence”. Information sheet distributed at the Oslo meeting.

³ In 2011, the Security Council authorized the United Nations Mission in Cote d’Ivoire to take action “to prevent the use of heavy weapons against civilians” (S/RES/1975). The following year, in resolution 2043, the Council called upon the Syrian Government to cease all use of heavy weapons in population centres. Speaking after the adoption of Council resolution 2043, the United Kingdom Foreign Secretary, William Hague, expressed his extreme concern at the further violence and the use of heavy weapons and called on the Government to immediately end the use of heavy weapons in civilian areas. [See: http://www.huffingtonpost.co.uk/2012/04/21/syria-crisis-william-hague-un-security-council-ceasefire-observers_n_1442698.html]. More recently, the Council demanded that all parties to the conflict immediately cease all attacks against civilians, as well as the indiscriminate employment of weapons in populated areas, including shelling and aerial bombardment, such as the use of barrel bombs (S/RES/2139). The General Assembly has 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 against population centres, as well as the use of cluster munitions (A/RES/66/253).

and they were encouraged to do so. It was also noted that the latter term is preferable in view of the warnings from some participants that the term “heavy weapons” may not capture the full range of explosive weapons that are of concern due to their wide-area effects – that it is possible that there are some “light weapons” that have the broad and destructive characteristics of wide-area effects that are of particular concern.

Protection in international law and policy

Participants discussed the degree of protection afforded to civilians by international humanitarian law. 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. Nor are the particular risks to civilians from blast and fragmentation 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 in such locations was considered to be tenuous. For example, whereas places of worship are specially protected, market places are not. As a result, civilians in populated areas remain at 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 law might not be necessary there was 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 shows 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 not 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 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 Member States are unlikely to want to commit to binding obligations in this area. However, it was recognized that steps need to be taken

by Member States to change practice and move towards avoiding or curbing such use. That is to say, towards a presumption against the use of explosive weapons with wide-area effects in populated areas and, in time, the stigmatisation of such use when it occurs.

Existing practice

The discussion of existing practice revealed that there is already important progress towards avoiding or limiting the use of wide-area effects explosives in certain contexts. As discussed at the meeting, some military forces, such as ISAF in Afghanistan, AMISOM in Somalia, and the North Atlantic Treaty Organization in the context of Operation Unified Protector in 2012, have instituted policy and practice that places limits on the use of certain explosive weapons in certain contexts and that seeks to minimise the impact of operations in civilians in ways that go beyond the minimum requirements of international humanitarian law. This is based on the recognition civilian casualties are not in the best interests of one's longer-term military or political objectives but also reflects the need to take into account the perception of international and domestic audiences.

The meeting also heard from some Member States that there are national laws, policies and doctrine that are also relevant and that they are ready and willing to share. 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 would all contribute to changing practice.

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

Next steps for OCHA

The discussions in Oslo will be used to inform the further consideration of this issue in the United Nations Secretary-General's next report to the Security Council on the protection of civilians in armed conflict, due in May 2015.

In addition, OCHA will move forward with compiling and analysing good practice and policy in this area and making this available with a view to supporting those military actors that recognize the need to take steps to strengthen the protection of civilians from the use of explosive weapons in populated areas.

At the same time, as noted above, a fundamental component of changing practice will be to move forward with discussions on a political commitment through which Member States would recognise the problem and agree to take steps to avoid or minimise the use in populated areas of explosive weapons with wide-area effects. OCHA will work to facilitate discussions to that end with interested States, United Nations actors and civil society.

Agenda

17 June 2014

10.00-12.30 **Registration**

12.30-13.45 **Lunch**

14.00-14.15 **Opening** *Bård Glad Pedersen, State Secretary, Ministry of Foreign Affairs of Norway*

Hansjoerg Strohmeyer, Chief, Policy Development and Studies Branch, OCHA, New York

14.15-15.30 **Session 1** **Where we are**

Session 1 will provide an overview of the problem of humanitarian impact of explosive weapons in populated areas and the policy and other steps taken to date to address the issue.

Simon Bagshaw, OCHA, Geneva

Rob Perkins, Action on Armed Violence, London

Kimberly Brown, Save the Children UK, London

Moderator: May-Elin Stener, Norway

15.30-16.00 **Coffee**

16.00-18.00 **Session 2** **Explosive weapons with wide-area effects**

Session 2 will seek to develop a shared understanding of explosive weapons that may have wide area effects. It will consider their intended military purpose and the manner in which they have been used. It will also consider the purpose of “indirect fire” and “area targeting”, as well as the use of “area weapons”, “unguided munitions”, multiple rocket launchers and cluster munitions. The session will also consider the challenges posed by fighting in or near populated areas, including our understanding of the notion of “populated area”.

Colin King, Fenix Insight, UK

Ole Solvang, Human Rights Watch, New York

Moderator: Paola Ramirez Valenzuela, Mexico

19.00- **Dinner**

18 June 2014

09.00-10.30 **Session 3** **Protection in international law and policy**

Session 3 will seek to develop a shared understanding of the protection afforded to civilians by international law, in particular international humanitarian law, from the serious risk of direct and indirect humanitarian harm associated with the use of explosive weapons in populated areas. The session will also consider the capacity for policy

and rules of engagement to strengthen protection beyond the minimum standards imposed by international humanitarian law.

Richard Moyes, Article 36, London

Maya Brehm, Geneva Academy for International Humanitarian Law and Human Rights, Geneva

Moderator: Robert Gerschner, Austria

10.30-11.00 **Coffee**

11.00-12.30 **Session 4** **Existing practice**

Session 4 seeks to develop a shared understanding of the practical, operational steps that have been, and could be, taken to strengthen the protection of civilians from the use of explosive weapons in populated areas. With reference to Afghanistan, Somalia, and Libya, it will consider the different practices that have been adopted to constrain the use of explosive weapons with wide-area effects in populated areas. It will also discuss challenges to broader acceptance of such practice and how such challenges can be overcome, including the role of civil society in this regard.

Colonel Norm Allen, US Army (Afghanistan)

Major General Roger Lane (Ret'd.), Roger Lane Consulting (Somalia)

Mihai Carp, NATO, Brussels (Libya)

Sahr Muhammedally, Centre for Civilians in Conflict, New York

Moderator: Steve Goose, Human Rights Watch, New York

12.30-13.00 **Final remarks** *Hansjoerg Strohmeyer, OCHA, New York*

May-Elin Stener, Director, Section for Humanitarian Affairs, Ministry of Foreign Affairs of Norway, Oslo

13.00- **Lunch and departures**