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COMMITTEE OF THE RED CROSS (ICRC)
FOR THE UNITED STATES AND CANADA

BEFORE THE COMMITTEE ON JURIDICAL
AND POLITICAL AFFAIRS OF THE
ORGANIZATION OF AMERICAN STATES

24 JANUARY 2019



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Explosive Weapons in Populated Areas





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What is the problem?

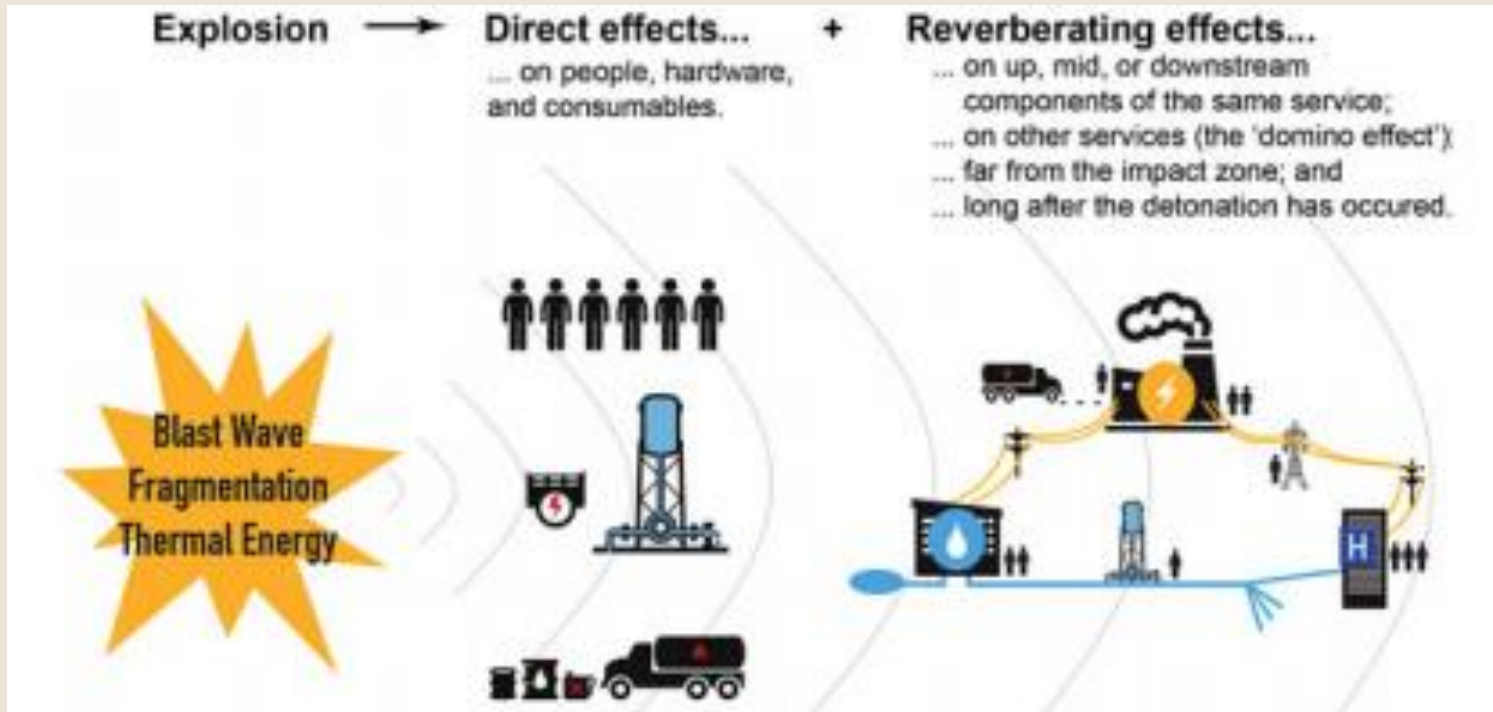
- Weapons designed for use in open battlefield
 - Effects over a wide area
 - “area weapons”
- Are being used instead in populated areas, i.e. urban or other areas where there are **concentrations of civilians**
- Result: devastating short- and long-term, often widespread, **direct and indirect/reverberating effects** on the civilian population
 - Lawful weapons, but **inappropriate** for the (populated environment)



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Humanitarian consequences

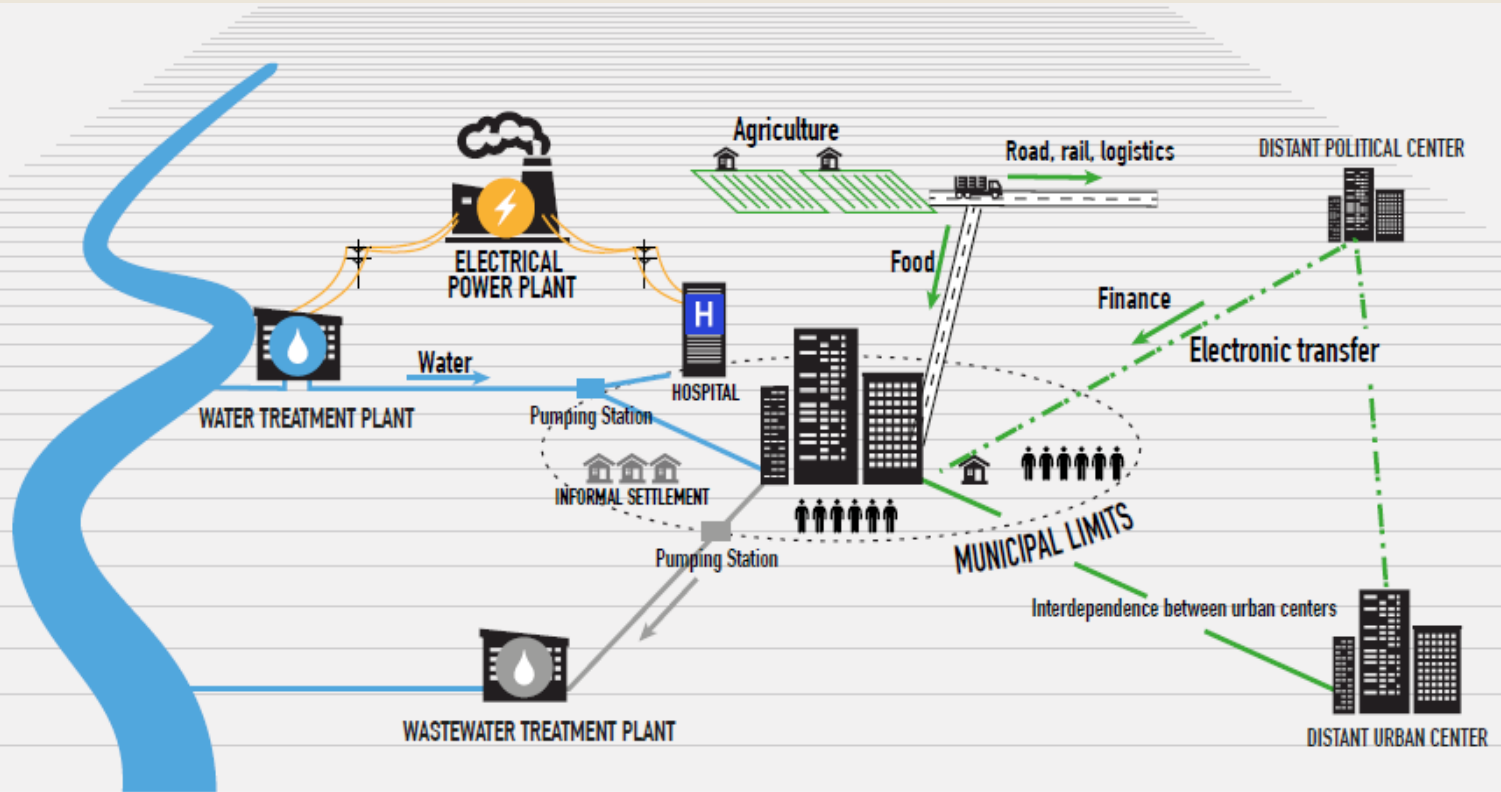
- **Direct effects:**
 - Death
 - Injuries → disabilities
 - Mental harm (**psychological impact**)
 - Damage /destruction of civilian homes & infrastructure
- **Indirect / “reverberating” effects** of damage to critical infrastructure:
 - Disruption of essential services:
 - **health care**
 - water & electricity supply
 - Diseases → death
 - Displacement





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Humanitarian consequences: Interdependencies between services



- Water supply, wastewater collection and treatment, electricity supply, health services, etc...



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ICRC & Movement position:

“Due to the significant likelihood of **indiscriminate effects**, and despite the absence of an express legal prohibition for specific types of weapons, the ICRC considers that **explosive weapons with a wide impact area should be avoided** in densely populated areas” (2011).





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Existing applicable IHL rules:

- **Prohibition against indiscriminate or disproportionate attacks**
- **Prohibition against area bombardments**
- **Principle of precautions**



Existing applicable IHL rules

Indiscriminate attacks (Art. 51.4 AP I)

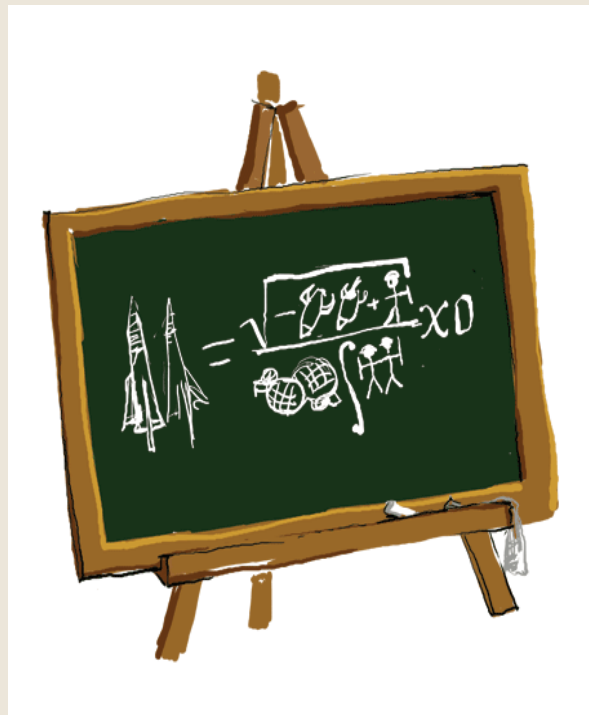
- (a) those which are not directed at a specific military objective;
 - (b) those which employ a method or **means of combat which cannot be directed at a specific military objective**; or
 - (c) those which employ a method or **means of combat the effects of which cannot be limited as required by [IHL]**;
- and consequently, in each such case, are **of a nature to strike military objectives and civilians or civilian objects without distinction.**



Existing applicable IHL rules

Disproportionate attacks (Art. 51.5 AP I)

“an attack which may be expected to cause **incidental loss of civilian life, injury to civilians, damage to civilian objects**, or a combination thereof, which would be **excessive in relation to the concrete and direct military advantage** anticipated.”





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Reasonable foreseeability

- ❑ Standard of the **reasonable commander**
- ❑ **Causal link, *but*:**
 - No geographic or temporal link / limitation
- ❑ Active duty of the commander to **gather information**
- ❑ A subjective as well as an objective standard
 - Circumstances prevailing at the time
 - Past practice, lessons learned, experience

Existing applicable IHL rules

Area bombardments (Art. 51.5 AP I)

“an attack by bombardment by any **methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects.**”





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Existing applicable IHL rules

Precautions (Art. 57 AP I)

- Constant care to spare civilians & civilian objects in the conduct of military operations
- Take **all feasible precautions in the choice of means & methods of attack**, to avoid and in any event minimize incidental civilian casualties & damage to civilian objects





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What's different for explosive weapons in populated areas?

- The responsibility of the attacking force/commander to ensure attacks respect for distinction and proportionality and to avoid or at least minimise civilian harm **is heightened** because of:
 - the characteristics of the weapons (“wide area effects”)
 - the characteristics of the environment (interconnectedness of essential services and critical infrastructure)
 - the vulnerability of civilians therein (dependency on essential services)

International landscape

- **UN SG Report on Protection of Civilians** → regularly calls on states to **avoid** the use of explosive weapons with wide area effects in populated areas
- **OCHA Compilation of Military Policy and Practice**
- **Austrian-led process for a Political Declaration**
- **German initiative on “EWIPA Talks”** (supported by ICRC and GICHD)
 - Two Workshops in June and September 2018
- **GICHD Study: Characterization of Explosive Weapons**
- **Numerous NGO reports and events**
 - ▶ Regional meeting in Mozambique (November 2017)
 - ▶ Regional meeting in Chile (December 2018)
- Enhanced dialogue in the **CCW**

Focus is twofold:

- ◆ **Political Declaration**
- ◆ **Good Practices**



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For more information:

icrc.org/EWPA

EXPERT MEETING

EXPLOSIVE WEAPONS IN POPULATED AREAS

HUMANITARIAN, LEGAL, TECHNICAL AND MILITARY ASPECTS

**CHAVANNES-DE-BOGIS, SWITZERLAND
24 TO 25 FEBRUARY 2015**



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 **Power of humanity**
32nd International Conference of
the Red Cross and Red Crescent
8-10 December 2015, Geneva

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Original: English
For information

**32nd INTERNATIONAL CONFERENCE
OF THE RED CROSS AND RED CRESCENT**


Geneva, Switzerland
8-10 December 2015

**International humanitarian law
and
the challenges of contemporary armed conflicts**

Report


Document prepared by
the International Committee of the Red Cross

Geneva, October 2015



URBAN SERVICES DURING PROTRACTED ARMED CONFLICT:

A CALL FOR A BETTER APPROACH
TO ASSISTING AFFECTED PEOPLE




ARES

Explosive Weapons in Populated Areas:
Technical considerations relevant to their use and effects

Alfonso Cossu
Olivier Dufour
Nikolaus Jönsson-Jones
Marc Garbarino

May 2016

