Explosive Weapons in Populated Areas: overview of issues under International Humanitarian Law
Scope of the EWIPA issue

- **“Populated areas”** = any concentration of civilians or concentration of civilians and civilian objects (a city, town, village, refugee camp, etc.)

- **“Wide impact area”** = “wide area effects”, due to:
  1) large blast & fragmentation radius of munition,
  2) inaccurate delivery system, and/or
  3) multiple munitions over wide area.

  <i>Includes IEDs</i>

- **Assumption that aimed at lawful targets**, i.e. directed at military objectives located in populated areas
Key principles and rules of IHL governing the use of explosive weapons in populated areas

- The right to choose means and methods of warfare is not unlimited (Art. 35.1 AP I)
- Civilians shall enjoy general protection against dangers arising from military operations (Art. 51.1 AP I)
- Distinction (Art. 48 AP I)
- Prohibition of:
  - indiscriminate attacks (Art. 51.4 AP I)
  - area bombardment
  - disproportionate attacks (Art. 51.5 AP I)
- Precautions in attack (57)
- Precautions against the effects of attacks (58)
Prohibition of indiscriminate attacks

Indiscriminate attacks are those:

(a) which are not directed at a specific military objective;

(b) which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) 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.
Prohibition of area bombardment

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.
Prohibition of disproportionate attacks

Launching an attack which may be expected to cause incidental civilian casualties and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated.

- includes all foreseeable indirect ("reverberating") effects
Precautions in attack

In the conduct of military operations, **constant care must be taken to spare the civilian population, civilians and civilian objects.**

All feasible precautions must be taken to avoid, and in any event minimize, incidental civilian harm, including in the **choice of means and methods of attack.**

- e.g. manipulation of delivery system, munition caliber, type of fuze, distance from which weapon launched, angle & timing of attack, etc.

- Yet even after taking such measures and precautions, weapon may still be prone to causing significant incidental harm to civilians.
Conclusion

- Due to significant likelihood of indiscriminate effects, avoid the use of ‘wide-impact’ explosive weapons, as a matter of policy and “good practice”.

- Avoidance policy suggests presumption of non-use unless sufficient mitigation measures to limit area effects and risks to civilians.

Adopt strong political declaration!