

Explosive Weapons Use in Populated Areas *A Pressing Humanitarian Concern*

October 2010

Report of the 2nd symposium of the Discourse on Explosive Weapons (DEW) project

New York, 15 September 2010

Summary

- There was recognition among participants at the symposium that the use of explosive weapons in populated areas causes a pattern of civilian harm that constitutes a distinct humanitarian problem. Participants felt this issue can and should be more effectively addressed.
- States should be encouraged to engage in a dialogue on the humanitarian impacts of explosive weapons use in populated areas, notably during the upcoming Security Council open debate on the protection of civilians in November 2010.
- More systematic research and adequately disaggregated data is needed on explosive weapons impacts on civilians, as well as greater dialogue and collaboration among humanitarian actors and other stakeholders to consider and act upon research findings.
- Collaborative efforts on enhancing the protection of civilians from explosive weapons are commencing among some humanitarian organizations.

Introduction

The use of explosive weapons in populated areas is a major source of civilian harm, one increasingly recognized as a distinct humanitarian concern. The issue featured prominently in a statement by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator to the United Nations Security Council on 7 July 2010.¹ The humanitarian challenges that the use of explosive weapons in populated areas poses are expected to be a theme of the Secretary-General's upcoming report on the protection of civilians in armed conflict to be presented to the Security Council in mid-November 2010.²

A shared understanding of, and greater international policy focus on the humanitarian problems caused by explosive weapons in populated areas could contribute to more effective measures to prevent and reduce civilian harm. To this end, UNIDIR launched the Discourse on Explosive Weapons (DEW) project in early 2010.³ The project brings together a range of actors to explore issues around the humanitarian problems associated with the use of explosive weapons with a view to contributing to new policies and actions that will enhance the protection of civilians from explosive weapons use.

Together with the Office for the Coordination of Humanitarian Affairs (OCHA), UNIDIR hosted a half-day symposium on “Explosive weapons use in populated areas: a pressing humanitarian concern” in New York on 15 September 2010.⁴ Approximately 20 experts from UN agencies and other international organizations, non-governmental organizations and academic institutions working in the areas of development cooperation, disarmament, human rights, humanitarian protection, mine action and peace promotion participated. The discussions were held under the Chatham House Rule.

This report is not meant to be a comprehensive summary of the discussions during the symposium. Instead, it is intended to convey a sense of the main themes and some particular points raised.

A global pattern of civilian harm

Participants from several organizations carrying out research into the effects of explosive weapons on civilians delivered presentations at the symposium. Drawing on evidence from a number of incidents in Afghanistan, Iraq, Somalia, Yemen and elsewhere, the presentations illustrated that the effects of blast and fragmentation from the use of explosive weapons in populated areas often cause civilian harm, particularly to women and children.⁵

For example, in Mogadishu the use of improvised explosive devices by non-state armed groups and repeated shelling with mortars and heavy artillery of busy markets and residential neighbourhoods by various armed actors frequently causes grave harm to civilians. The humanitarian organization Médecins Sans Frontières (MSF) recently expressed deep concern about this situation, noting that

Of 2,854 patients treated by MSF medical teams at Dayniile Hospital, 48 percent suffered war-related injuries. In the 84-bed hospital, 64 percent of the war-wounded patients sustained serious blast injuries, largely consistent with continuous intensive mortar fire in residential areas of the city. Notably, 38 percent of the people with war-related injuries were women and children under 14 years of age.⁶

The presenters argued that such data along with evidence from other contexts strongly indicate that the use of explosive weapons technology in populated areas causes a consistent pattern of civilian harm. This pattern of harm, while not new and documented in a number of situations, constitutes a serious humanitarian problem that is too often considered a “normal” or “acceptable” feature of contemporary armed conflict.

During the discussion, some participants asked how “explosive weapons” should best be defined and how the term “populated area” was to be understood. Presenters acknowledged that the boundaries of these concepts remain to be delineated, but that a strong argument can be made on the basis of available evidence and with reference to existing legal terminology⁷ that the use of weapons that detonate in the close vicinity of civilians is a humanitarian concern.

Also, questions of a more general nature were raised about how to improve implementation of existing legal norms applicable in armed conflict, and how to engage with non-state armed actors on this issue. These questions were not dealt with in detail, but participants felt that the use of explosive weapons in populated areas could and should be addressed through policies and practices that go beyond the existing legal framework and that these questions should be further explored. Behavioural change by users of explosive force could be brought about, for instance, through changes in military doctrine and rules of engagement, and stronger stigmatization of certain practices.

Toward common recognition and a shared understanding

In general, participants seemed to agree that wider recognition that explosive weapons use in populated areas causes a pattern of unacceptable civilian harm would be an important early step in addressing this humanitarian problem. Many humanitarian actors are, in one way or another, already trying to alleviate civilian suffering from explosive weapons. But it was noted that they use a range of different approaches, often without acknowledging this pattern of civilian harm as a specific consequence of explosive weapons use in populated areas.⁸

Modest changes to how humanitarian concern about civilian harm from explosive weapons is publicly communicated could help to foster a shared understanding of the humanitarian problem and enhance policy and practice, it was argued. In this regard, several participants mentioned that their organizations are in the process of formulating or reviewing relevant internal policies. Among civil society, several non-governmental organizations recently decided to begin working together with a view to develop a common policy approach to address the use of explosive weapons in populated areas.

Participants supported engaging in further dialogue on explosive weapons issues, including with states, and exploring ways to address this humanitarian issue. Existing field-level and coordination mechanisms, and streams of policy work, within the UN system and outside of it, were suggested.

Building on the fact that both the Secretary-General and the Under-Secretary-General for Humanitarian Affairs had identified explosive weapons use in populated areas as a particular humanitarian challenge for the protection of civilians in armed conflict, the forthcoming report of the Secretary-General on the protection of civilians in armed conflict would be a good opportunity in the short term to further raise awareness of the issue, it was thought. In addition to outlining the problem, it is hoped that the report will also recommend steps that could be taken towards addressing the risks to civilians of explosive weapons use in populated areas. UN Member States could be encouraged to expand their dialogue on this issue during the forthcoming Security Council open debate on the protection of civilians in November 2010, at which the Secretary-General's report will be discussed. In addition to this, concern about the humanitarian impacts of explosive weapons could be raised by OCHA on behalf of the humanitarian community during briefings to the Security Council's informal Expert Group on the Protection of Civilians.

In view of the particular impact that the use of explosive weapons in populated areas has on children, the policy area of children and armed conflict was identified as another avenue for engagement, notably via the Security Council Working Group and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, annual reports of the Secretary-General on children and armed conflict, and country-level task forces charged with monitoring and reporting grave violations of children's rights under the monitoring and reporting mechanism on children and armed conflict.⁹

Opportunities also exist in relation to mine action, including mine risk education and victim assistance activities, to raise awareness of the harmful effects of explosive weapons, including through the Secretary-General's reports on assistance in mine action. Similarly, armed violence reduction and development agendas, as well as certain initiatives on improvised explosive devices, offer platforms where explosive weapons concerns could be discussed.

Gathering more evidence

More data collection and analysis were recognized as crucial activities in developing more effective responses to the civilian harm caused by explosive weapons. It was noted that although existing evidence has given rise to serious concern, currently available data on explosive weapons impacts on civilian lives and livelihoods is limited. It was noted that there are various efforts underway to monitor civilian casualties in armed conflict, but such initiatives do not always seek to identify the weapons used, or do not go beyond providing

numbers of dead and injured civilians. More research and systematic data collection were seen as useful in gaining a deeper understanding of how explosive weapons affect different groups of civilians (men, women, boys and girls, as well as disabled or displaced persons), including in terms of mental health, and socio-economic and other long-term impacts.

Participants considered that it was not necessary to start data collection from scratch in all cases, but rather to use existing mechanisms to collect relevant data in the context of other work. Reference was made to the monitoring and reporting mechanism on children and armed conflict and data collected and shared among members of the Global Protection Cluster. One issue with using existing data collection mechanisms, however, is that sometimes the information is not disaggregated in useful ways. Another problem is that data is not always widely shared. The suggestion was made that there is scope for academic study of explosive weapons-related phenomena, including in relation to the applicable legal frameworks.

Conclusion

At this symposium it was generally recognized that, to date, policy-related work on explosive weapons use in populated areas has been focused on identifying and describing the problem. There was a sense that interest in the explosive violence framework is gathering momentum, and that there is scope for greater engagement among humanitarian actors and with users of explosive weapons. Furthermore, the upcoming Security Council open debate on the protection of civilians in armed conflict is particularly opportune for increased engagement with this topic on the part of UN Member States.

It was widely thought that further research by international organizations, non-governmental organizations and academic researchers into this pattern of harm should be a priority since, as was repeatedly noted, evidence on humanitarian impacts was essential in making progress in a number of recent armed violence-related efforts, such as the anti-personnel mine, explosive remnants of war, and cluster munitions processes.¹⁰

Moreover, states subscribing to the 2010 Oslo Commitments on Armed Violence have undertaken to “Measure and monitor the incidence and impact of armed violence at national and sub-national levels in a transparent way”.¹¹ It was suggested that states’ recording and reporting on the use of explosive weapons in populated areas on their territory would be consistent with this undertaking, as would collection of reliable data with respect to victims and survivors of explosive weapons.¹² After all, explosive violence is one form of armed violence.

Participants felt that these activities would contribute towards a deeper understanding of the impacts of explosive weapons use in populated areas, and prepare the ground for exploring possible policy and practical measures that could be adopted to improve the protection of civilians. Mapping possible policy fora and processes in which such efforts could be pursued was seen as useful.

With this in mind a forthcoming UNIDIR background paper will map activities and actors engaged in explosive weapons-related work at the international level.

Notes

- 1 Security Council, UN document S/PV.6354, 7 July 2010.
- 2 The Secretary-General already expressed concern about explosive weapons use in populated areas in his previous report on the protection of civilians in armed conflict. See paragraph 36 of Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN document S/2009/277, 29 May 2009.
- 3 For a description of the DEW project, visit UNIDIR's website at www.unidir.org/bdd/fiche-activite.php?ref_activite=499 or the project website at www.ExplosiveWeapons.info.
- 4 This symposium followed a panel discussion on the humanitarian impact of explosive weapons on civilians held in New York on 14 September by the Government of Austria and OCHA. See www.ExplosiveWeapons.info for further detail.
- 5 For more detail, see in particular Landmine Action, *Explosive Violence: The Problem with Explosive Weapons*, 2009.
- 6 MSF, "Somalia: Civilians Continue to Bear Brunt of Warfare in Mogadishu", 3 August 2010, www.doctorswithoutborders.com/news/article.cfm?id=4640&cat=field-news.
- 7 The phrases "[area containing a] ... concentration of civilians", and "[densely] populated areas" are used in existing international humanitarian law and disarmament treaties more or less interchangeably. See for example Arts. 51(5)(a), 58(b) of the 1977 Additional Protocol I to the Geneva Conventions; Art. 4 of the 1980 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II to the 1980 Convention on Certain Conventional Weapons); Arts. 3(9) and 7(3) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Amended Protocol II to the Convention on Certain Conventional Weapons); and Art. 2 of the 1980 Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III to the Convention on Certain Conventional Weapons).
- 8 For a discussion of what explosive weapons are, see UNIDIR, "Use of Explosive Weapons in Populated Areas: Some Questions and Answers", 2010.
- 9 The mechanism was established pursuant to Security Council resolution S/RES/1612 of 26 July 2005 and developed in S/RES/1882 of 4 August 2009.
- 10 See J. Borrie et al., "Learn, Adapt, Succeed: Potential lessons from the Ottawa and Oslo processes for other disarmament and arms control challenges", *Disarmament Forum*, no. 2, 2009.
- 11 See www.osloconferencearmedviolence.no.
- 12 See, for instance, R. Moyes, "Explosive Weapons in Populated Areas: Implications of the Oslo Commitments for a New Response", www.ExplosiveWeapons.info/wp-content/uploads/2010/07/moyes_ewoslo.m4a.

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