Explosive violence in areas of civilian concentration

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"Cities are not targets!" towards a prohibition on the use of explosive force in populated areas.

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My name is Richard Moyes, I am Policy & Research Director for Landmine Action.

My background is working on projects clearing landmine and unexploded ordnance. But most recently, over the last 4 or 5 years, I have been working on civil society efforts for a ban on cluster munitions – so this has been a focus on policy and legal work – and I am Co-Chair of the Cluster Munition Coalition (CMC), the civil society umbrella group concerned with cluster munitions.

But with Landmine Action I have also been working on a specific project looking at explosive violence - looking at the use of *conventional* explosive weapons. And all of my comments here are related to conventional explosive weapons, not nuclear weapons.

This work on explosive violence is much broader than the very specific focus on landmines and cluster munitions – but it is still fundamentally linked to issues arising from specific weapon <u>technologies</u>. Just as approaches structured around nuclear, chemical or biological weapons are fundamentally based on <u>technological categories</u>.

This work is ongoing but will try to draw out some key themes in the discussion here.

And my comments are really intended to do a few different things:

- One is to outline what I see as possible components of a strategy to make progress towards reform in these areas;
- And to do this I will draw on findings from our ongoing analysis of current patterns of explosive violence, looking at some of the data that we have gathered and thinking about how this might justify a movement against the use of explosive force in populated areas;
- And many of my comments on this, even if I don't make it explicit, are based on my perspective of some of the important analytical approaches that made a ban on cluster munitions possible.

Of course this is a huge subject – and has many different aspects – but I would highlight one particular area that I don't touch on in my comments and that is the historical context. By these I mean how considerations of the legality or acceptability of explosive force in populated areas have changed over time. This would warrant a substantial presentation in itself and I am certainly not in a position to do it justice. I will return to this just very briefly at the end.

I am also not going to make any effort here to convey the individual and community horrors of explosive violence. But these are of course fundamental to the human experience of this problem and should always be in our minds.

Discussion here today is about the use of explosive force in cities – or in populated areas.

Landmine Action's ongoing work on explosive violence is concerned with, and questions, the use of explosive weapons as a whole category. And I would argue that this categorical approach is a vital first step.

Explosive weapons *do* constitute a coherent category of weapons: this point is fundamental to the prospects of reform in this area. Bombs, artillery shells, grenades, and landmines all kill or wound by projecting explosive blast and fragmentation out from a point. They generally affect an area, around the point of detonation.

They are different from firearms, they are different from blinding laser weapons, they are different from chemical or biological weapons. I mention blinding laser weapons specifically here because laser weapons fall under the UN Convention on Conventional Weapons – so the categories of "conventional" and "explosive" weapons are not co-located.

Explosive weapons do form a distinct and coherent category – even if they are not currently recognised as such in international humanitarian law.

Mayor Akiba's introduction predicted that defining "explosive force" would be an important part of discussions as this issue moves forwards. Building recognition that explosive weapons form a distinct category is critical to this process.

People that oppose efforts to stigmatise explosive violence in areas of civilian concentration will try to break up and subdivide this category of explosive weapons. They will say "surely this doesn't also include hand-grenades and rifle-grenades?" Small explosive weapons. Or "surely this doesn't also include precision guided munitions"? Smart explosive weapons. So our first challenge is to establish and maintain recognition that explosive weapons, in their entirety, represent a reasonable and coherent category by which to control the use of force.

Explosive weapons are not currently recognised as a special or specific category in international humanitarian law. This may surprise some people. Explosive weapons are considered either as they fall under the general rules (such as Additional Protocol I of 1977 to Geneva Conventions) or they have been subdivided (naval bombardment, landmines, cluster munitions etc). But we can draw attention to a number of useful points of evidence that suggest that explosive weapons can reasonably be considered a distinct and coherent category.

To this end, the pattern of "common usage" with respect to explosive weapons by States is very revealing. These are not generally weapons used by State authorities amongst their own populations. Explosive weapons are not used for policing. And there are reasons for this. They kill and wound too many people that you don't want to kill and wound.

If we look at the pattern of State usage honestly, then we find that explosive weapons are generally for use against foreigners and under "special circumstances" that may or may not be officially described as armed conflict. This categorical pattern is more or less absolute and, *I would suggest*, it stems from the fact that this is a category of weapons that cannot be used in accordance with the standards of accountability we would expect to be applied *within* our own society by representatives of our own society.

Landmine Action gathered a set of data from international newswire reports over a 6 month period in 2006 that reported deaths and injuries from the use of explosive weapons – explosive weapons of all kinds – grenades, car bombs, suicide bombs, aircraft bombs. Only incidents that met certain criteria of detail were recorded - so it is simply a sample of data, we are not claiming that it is comprehensive or geographically representative. But it does point to certain patterns.

Overall incidents of explosive violence, deaths and injuries from explosive weapons, were reported from 58 countries – but only in 15 of these were explosive weapons reported to have been used by State forces (as opposed to non-State armed groups or criminal use). All 15 of

these countries were classified as experiencing armed conflict according to the Uppsala Conflict Database.[1]

In 25% of these incidents the nationalities of the State actors were not explicitly stated. In 16% of incidents they State actors were reported to be of the country they were operating in. And in 59% of incidents they were foreign to that location.[2]

So where States are concerned, there is a tendency for these weapons to be used against foreigners, and only when "special circumstances" apply, the circumstances of conflict.

Now this may also seem fairly self-evident. Most of us would instinctively recognise this picture. Indeed for most of the us the picture is so obvious that we do not really question its meaning.

But if we try to draw out an explicit interpretation of this pattern I would suggest the following:

- These patterns suggest that explosive weapons form a distinct technological category in the common usage and practice of States;
- Secondly, the use of this distinct category of weapons is regulated in very specific ways (although this pattern of regulation is rarely made explicit in policy). The patterns of regulation suggest that there are problems associated with these weapons if they are to be used amongst a population to whom you are accountable.

"Special circumstances" may serve to suspend the usual requirements of accountability. Commonly this is combined with use against foreigners to whom weaker standards of accountability are held to apply.

The dataset we compiled consisted of 1,836 incidents over a 6 month period. These incidents resulted in a total minimum reported killed of 6,115 and a total minimum reported wounded of 12,670.

People who were not identifiable in the reports as armed actors or security personnel made up a significant proportion of the casualties. The great majority of these persons can be assumed to have been non-combatant civilians. Such persons were in involved in 65% of incidents, with a total reported killed of 4,236 (69% of total) and a total reported wounded of 10,560 (83% of total).

A substantial proportion (59%) of incidents were reported to have occurred in populated areas, with a further 29% being unknown.

- 87% of those killed and 92% of those reported wounded in explosive violence attacks in populated areas were not reported to be armed actors.

- Incidents in populated areas accounted for 87% of deaths and 89% of wounded to individuals not identified as armed actors.

Incidents in populated areas present with 2.6 times the average total number of casualties per incident. And this pattern is even more pronounced if we look specifically at killed and injured who were not reported to be armed actors. And it is far more pronounced if we look at incidents in crowded locations such as civilian markets.

27% of reported incidents took place in capital cities and these incidents showed an average level of deaths and injuries higher than those that took place elsewhere. However, although incidents in capital cities were reported from 24 countries, 85% took place in Baghdad, Iraq – which may substantially skew this perspective on the data.

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[1] Afghanistan, Burundi, Colombia, Congo (Democratic Republic of), Georgia, India, Iraq, Israel, Lebanon, Nepal, Pakistan, Philippines, Russia, Sri Lanka, Turkey.
[2] These figures are based on the Israeli forces being considered foreign to the Occupied Palestinian territories.

So to summarise: Most civilian casualties (nearly 90%) were from attacks in populated areas

and

Most casualties of attacks in populated areas (also around 90%) were civilians.

So taking explosive weapons as a category, there is evidence to show that, the use of these weapons, considered only in terms of deaths and injures – not considered wider social and economic impacts - have a particularly high impact on civilian populations. And use of explosive weapons in areas of civilian concentration has a clear and distinct bearing on the levels of civilian suffering experienced.

And this is only intended to be illustrative of the relationship. These numbers don't take any account of the displacement, deprivation and disease that can result from the wider impact of explosive weapons on society and its infrastructure.

So how can we move forward from this?

I would suggest that this data presents reasonable grounds for considering the use of explosive weapons in areas of civilian concentration to be considered a distinct humanitarian problem.

<u>The first challenge in policy terms is to build recognition that this is a distinct and current humanitarian problem.</u> The data presented here is indicative – but it falls far short of a full recognition of the actual public health, development and political cost of this particular form of armed violence.   Much analysis exists of these impacts but it has not been marshalled towards the development of policy goals

Secondly, it needs to be recognised that a large number of the incidents in our dataset result from the use of explosive force by unaccountable non state actors and individuals. This is partly because of the particular methodology that we used in compiling the data – but it is also an fundamentally important element of the humanitarian problem. The role of these groups, and their unaccountable political identities, must not be allowed to wholly shape the response of States to this humanitarian problem. The problem is technological – explosive weapons, in areas of civilian population kill and injure too many people who should not be killed and injured. This is the importance of the technological approach.

Thirdly, increased pressure needs to be put on States to lay out explicitly how they justify the use of explosive force in populated areas – and to explain precisely when they consider such a use of force to be acceptable. States bear the burden of proof to justify the use of explosive force amongst civilians, when they would never ordinarily use such weapons amongst their own populations.   When is it justified to cross this line between accountable and unaccountable practice? Pressing for more explicit State explanations and justifications on this will help to formulate the real policy arguments.

Fourthly, based on a recognition that explosive violence in populated areas is a distinct cause of excessive humanitarian suffering, efforts can be made to build the stigma associated with such acts.

I would caution against any expectation that interpretations of international humanitarian law will result in progress here.   But an initial focus on stigmatisation could be extremely productive. If Government's, International Organisations and NGOs had spoken out with one voice in response to recent international conflicts – speaking directly against the use of explosive force in populated areas - it would have sent a clear signal that this particular form of violence is increasingly considered unacceptable. It could have been applied evenly and non-politically – but it would have spoken directly to the urgent need to protect civilians. That collective response should be our immediate goal.

Finally we should perhaps draw strength from a sense that the historical dynamic is currently favourable to this endeavour. There are great challenges no doubt – conventional explosive weapons have come to be considered far too normal. But movement has been made in international law towards recognition that the civilian populations should not be made the targets of attack. In an international context of greater and greater inter-dependence, more broadly distributed access to the technologies of communication and representation, and growing capacity for collective representation on non-combatants, this movement can go much further.