

## Heavy weapons and civilian protection

Richard Moyes, Maya Brehm and Thomas Nash

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The ongoing use of artillery and other heavy weapons in Syria has been a central focus of humanitarian concern in that context. Whilst the UN Security Council's response to this crisis has been criticised as inadequate by the UN General Assembly and many outside observers, its condemnation of the use of heavy weapons should provide a building block for stronger legal standards for the protection of civilians, including a prohibition on the use in populated areas of explosive weapons with wide area effects.

### Introduction

2011 and 2012 have seen explosive weapons, and heavy explosive weapons in particular, being subject to a new level of criticism for the humanitarian harm that they cause when used in populated areas:

- UN Security Council resolutions have called for an end to the use of heavy weapons in population centres;<sup>1</sup>
- The UN Secretary-General and International Committee of the Red Cross (ICRC) are urging that use of explosive weapons with a wide impact area should be avoided in densely populated areas; and
- NGOs of the International Network on Explosive Weapons (INEW) are calling for states and other actors to stop the use of explosive weapons with wide area effects in populated areas.

The combination of these positions provides a clear indication that the use of heavy weapons in areas of civilian concentration is recognised as a major issue of humanitarian concern. This paper notes that in this context the evolution of policy language around explosive weapons and heavy weapons is driven in large part by the same set of humanitarian concerns. Bringing these terms together provides greater momentum towards stronger international standards for the protection of civilians from the effects of explosive weapons.

### Heavy weapons and explosive weapons – the same humanitarian problem

Regardless of the technical language used, the primary issue of humanitarian concern is death and injury of civilians when explosive weapons are used in areas where civilians live (or are otherwise present in large numbers). The humanitarian problem is particularly acute when the use of explosive weapons affects a wide area. This may be due to an individual explosive weapon having a large blast or fragmentation radius, multiple explosive weapons being launched at an area, insufficient precision in the delivery of an explosive weapon, or a combination of these factors.<sup>2</sup>

The term “explosive weapons” refers to weapons that function through blast and fragmentation. Such weapons range from hand-grenades up to large aircraft bombs.<sup>3</sup> Heavy weapons include large calibre mortars, artillery and tank shells,

rockets and aircraft bombs – explosive weapons that are likely to produce wide area effects. For this reason their use in populated areas tends to cause unacceptable levels of civilian harm.

The link between explosive weapons and heavy weapons, as issues of humanitarian concern, has been made clear in a number of places:

- Landmine Action’s 2009 report, *Explosive violence – the problem of explosive weapons* highlighted the link between explosive and heavy weapons. It noted references by the Centre for International Cooperation and Security to the impact of heavy weapons on infrastructure in Chechnya,<sup>4</sup> by the ICRC president to Israeli heavy weapon use in Gaza,<sup>5</sup> and by Human Rights Watch expressing concern at the their use in crowded areas of Sri Lanka.<sup>6</sup>
- In its advocacy materials, the International Network on Explosive Weapons (INEW) recognised the direct link between concern at the impact of heavy weapon use in populated areas and the humanitarian issue of explosive weapons in such contexts.<sup>7</sup>
- The ICRC president noted in 2009 that a growing number of military operations were conducted “in densely populated urban areas, often using **heavy or highly explosive weapons**, which have devastating humanitarian consequences for civilian populations.” In another statement, he referred to the use of “**explosive force delivered by heavy weapons**”.<sup>8</sup>
- The link between explosive and heavy weapons has been made strongly by the UN Secretary-General. In his 2012 Report on the Protection of Civilians in Armed Conflict he recalled that: “in March 2011 the Council responded decisively to the escalating violence and **use of explosive weapons in populated areas** of Côte d’Ivoire. In its resolution 1975 (2011), the Council recalled its authorization for the United Nations Operation in Côte d’Ivoire (UNOCI) to use all necessary means to carry out its mandate to protect civilians, including **preventing the use of heavy weapons** against the civilian population” [emphasis added].
- Later in the same report he makes the link again: “my Emergency Relief Coordinator highlighted the issue in Côte d’Ivoire, Libya, the Sudan and the Syrian Arab Republic and called upon parties to **refrain from using explosive weapons in densely populated areas**. The Council specifically authorized UNOCI to take action to **prevent the use of heavy weapons** against civilians in Côte d’Ivoire and called upon the Government of the Syrian Arab Republic to immediately **end the use of heavy weapons in population centres** (resolutions 2042 (2012) and 2043 (2012))” [emphasis added].<sup>9</sup>

#### **“End the use of heavy weapons in population centres”<sup>10</sup>**

The linking of technology (heavy weapons) and context (population centres) reinforces ongoing efforts to promote new international standards on the protection of civilians from the effects of explosive weapons. UN Security Council resolutions on Syria were formulated with a focus on the context of use. They called on Syria “to cease troop movements towards population centres [and] cease all use of heavy weapons in such centres.” By focusing on “use of heavy weapons in population centres” the Security Council is recognising that these weapons cannot be used in such contexts without creating excessive risk to the population in those areas, *even if those populations are not actually the target of the attack*.

Along the same lines, UN High Commissioner for Human Rights, Pillay, in April 2011 condemned the use of “imprecise weaponry such as cluster munitions, multiple rocket launchers and mortars, and other forms of heavy weaponry, in crowded urban areas” by the Libyan government.<sup>11</sup> Such a position fits closely with the appeal by the UN Secretary-General, drawing on the position of the ICRC, for “parties to conflict to refrain from using explosive weapons with a wide-area impact in densely populated areas.”<sup>12</sup> In UN Security Council debates and elsewhere the humanitarian problem of explosive weapons in populated area has been recognised, with states increasingly calling for action to address the issue.<sup>13</sup>

This overall pattern of humanitarian concern - from the Security Council, high-level UN representatives, collective bodies and individual states - coupled with the defined recommendations of the UN Secretary-General, ICRC and civil society, should be brought together for focused discussions on how to establish new standards that provide better protection for civilian populations from this form of violence in the future.

### **Different approaches to definition and terminology**

Although the term “heavy weapons” is used in UN Security Council resolutions and elsewhere,<sup>14</sup> there is no commonly agreed international definition. Heavy weapons are not mentioned in international and national standards on the protection of human rights, nor in treaties of international humanitarian law.

A broadly accepted definition of “light weapons” is derived from the *1997 Panel of Experts on Small Arms and Light Weapons*.<sup>15</sup> Small Arms Survey notes that the overall definition of “small arms and light weapons” is based on the capacity of these systems to be carried by an individual, a small number of people, or transported by a pack animal or light vehicle.<sup>16</sup> Thus the definition of a light weapon is based on it being a “crew-operated” weapon that is light enough to be carried manually or by a light vehicle. Whilst such an approach might have been useful for demarcating “small arms and light weapons” - where the problems primarily stemmed from their uncontrolled proliferation and movement - the same approach is not necessarily helpful for addressing where the primary problem is their wide area effects (whether from the scale of the explosive blast, the inaccuracy of their delivery or their use to saturate an area with deadly force).

Given that concern regarding heavy weapons expressed in human rights cases and statements on Syria and other contexts is driven from a consideration of their humanitarian effects, such an approach to definition has few merits. From a humanitarian perspective the portability of the weapons would only really serve as a rough proxy for concern regarding the scale of explosive force that can be brought to bear and the distance at which they can strike at a target.

### **Towards new standards**

The UN Security Council has recognised the use of heavy weapons in populated areas as a clear issue of humanitarian concern and the term is widely used by NGOs and in media reporting on conflict. In order to strengthen humanitarian protection, there is an urgent need to establish new standards that provide a stronger barrier to the use of heavy explosive weapons amongst civilian concentrations in the future.

Such new standards should prohibit the use of explosive weapons with wide area effects from use in populated areas. In order to put such a standard in place states need to take action to review policies at a national level, and work together

internationally to initiate focussed discussions towards an instrument that will draw a clear line against this pattern of violence in the future.

## Notes

<sup>1</sup> UN Security Resolutions have called on Syria to “end the use of heavy weapons in population centres” (Res 2042, 14 April 2012) and “cease all use of heavy weapons in [population centres] (Res 2043, 21 April 2012). See also Security Council Presidential Statement of 5<sup>th</sup> April 2012 (S/PRST/2012/10).

<sup>2</sup> For a more detailed description of the serious humanitarian concerns raised by explosive weapons use in populated areas see [www.inew.org](http://www.inew.org).

<sup>3</sup> Report of the Secretary-General on the protection of civilians in armed conflict, 2012 : <http://www.inew.org/site/wp-content/uploads/2012/06/SG-POC-report-22-May-2012.pdf>.

<sup>4</sup> Hooman Peimani, “Armed violence and poverty in Chechnya: A mini case study for the Armed Violence and Poverty Initiative,” Centre for International Cooperation and Security, Department of Peace Studies, Bradford University, pp. 9-10.

<sup>5</sup> According to an ABC media report the president of the ICRC, Jakob Kellenberger, said that the nature of the injuries he saw in hospitals in Gaza shows the Israeli military used very heavy weaponry, which would have made it virtually impossible to distinguish between civilians and combatants. -- “UN schools reopen in the wake of Gaza war,” ABC News, 25 January 2009, [www.abc.net.au/news/stories/2009/01/25/2473769.htm](http://www.abc.net.au/news/stories/2009/01/25/2473769.htm), accessed 30 July 2009.

<sup>6</sup> Human Rights Watch, “Sri Lanka: Government Admission Shows Need for UN Inquiry,” REUTERS AlertNet, 27 April 2009, [www.alertnet.org/the-news/newsdesk/HRW/dba4d458f48f0c3ca5812bbaf848cb7d.htm](http://www.alertnet.org/the-news/newsdesk/HRW/dba4d458f48f0c3ca5812bbaf848cb7d.htm), accessed 30 July 2009.

<sup>7</sup> Advocacy paper, June 2012: Protection of Civilians, June 2012 - Explosive Weapons in Populated Areas: An urgent humanitarian issue: <http://www.inew.org/site/wp-content/uploads/2012/06/INEW-PoC-advocacy-sheet-June-2012.pdf>.

<sup>8</sup> Cited in ICRC, “International humanitarian law and the challenges of contemporary armed conflicts”, ICRC document 31IC/11/5.1.2, prepared for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011 p. 40. See also Sixty years of the Geneva Conventions: learning from the past to better face the future, Ceremony to celebrate the 60th anniversary of the Geneva Conventions. Address by Jakob Kellenberger, President of the ICRC, Geneva, 12 August 2009. With respect to Israel’s “Operation Cast Lead” in Gaza, the ICRC President considered it very difficult to respect IHL rules on distinction and proportionality: “si vous utilisez des armes si lourdes dans une zone d’une telle densité de population.” Jakob Kellenberger «Combien de morts faudra-t-il encore à Gaza!», Interview by Pierre Ruetschi, 24heures, 2 February 2009; See also, Sixty years of the Geneva Conventions and the decades ahead, Statement by Jakob Kellenberger, President of the ICRC, Geneva, 9-10 November 2009: “...the growing number of military operations conducted in densely populated urban areas, often using explosive force delivered by heavy weapons, which can have devastating humanitarian consequences for civilian populations in such environments.” Knut Dörmann, Head of the ICRC’s Legal Division, remarked on the challenges facing the rules of war today that “military operations have increasingly taken place in densely populated urban areas, often using heavy or highly explosive weapons. From Grozny to Mogadishu and from Baghdad to Gaza City, armed conflict has had a devastating impact on the civilian population.” (“Geneva Conventions still going strong at 60”, 7 August 2009, <http://www.icrc.org/eng/resources/documents/interview/geneva-convention-interview-120809.htm>, accessed 9 August 2012). The “potentially devastating humanitarian consequences of military operations conducted in densely populated areas, especially when heavy or highly explosive weapons are used” were also highlighted in the ICRC’s Annual Report 2009 and in a statement by ICRC Director General, Yves Daccord, at the UN Security Council Open Debate on the Protection of Civilians in Armed Conflict, 22 November 2010, UN document no. S/PRV.6427, p.10.

<sup>9</sup> Report of the Secretary-General on the protection of civilians in armed conflict, 2012 : <http://www.inew.org/site/wp-content/uploads/2012/06/SG-POC-report-22-May-2012.pdf>.

<sup>10</sup> From point 2 of Kofi Annan’s peace plan for Syria, the Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States. See <http://www.un.org/News/Press/docs/2012/sc10609.doc.htm>.

<sup>11</sup> Libya’s indiscriminate attacks on civilians in Misrata may be international crimes – Pillay, 20 April 2011.

<sup>12</sup> Report of the Secretary-General on the protection of civilians in armed conflict, 2012 : <http://www.inew.org/site/wp-content/uploads/2012/06/SG-POC-report-22-May-2012.pdf>.

<sup>13</sup> See for example: Collective statements in 2012:

Switzerland on behalf of the group of friends on protection of civilians (Australia, Austria, Belgium, Brazil, Canada, France, Germany, Italy, Japan, Liechtenstein, Norway, Portugal, Switzerland, UK and Uruguay) noted that they had been briefed on this issue;  
Jordan on behalf of the Human Security Network (Austria, Chile, Costa Rica, Greece, Ireland, Mali, Norway, Panama, Slovenia, Switzerland and Thailand, with South Africa as an observer) welcomed the UN Secretary-General’s recommendations on explosive weapons;  
The European Union, (on behalf of its member states as well as Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Albania, Bosnia and Herzegovina, and Georgia) noted the ICRC’s recommendations and called for more systematic work on the issue;

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Finland, on behalf of the Nordic Countries (Denmark, Finland, Iceland, Norway and Sweden) noted the impact of explosive weapons on healthcare facilities.

In individual statements the issue has been raised by: Australia, Germany, Austria, Japan, Luxembourg, Mexico, Togo, Uruguay, Morocco, Canada, Chile, Gabon, Liechtenstein, Nigeria, Norway, Slovenia, Switzerland and Tunisia. For more information see: <http://www.inew.org/acknowledgements>

<sup>14</sup> For the purposes of the Dayton Accords "heavy weapons" were defined so as to exclude aircraft bombs. The term has also been used in a number of cases in front of international human rights bodies, including for example Ahmet Ayder et al v. Turkey, Hazar and others v. Turkey, Ahmet Özkan and others v. Turkey. It is useful to note that in a number of cases, for example in Isayeva v. Russia, Esmukhambetov and others v. Russia, and AfComHR v. Great Socialist People's Libyan Arab Jamahiriya the terminology of "heavy weapons" explicitly includes forms of aircraft bombing.

<sup>15</sup> This definition was subsequently used in the 2005 *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*. Recognising "small arms" broadly as weapons designed for individual use ("Small arms" are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns) the *Panel of Experts* definition states that: "Light weapons" are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, general purpose or universal machine guns, medium machine guns, heavy machine guns, rifle grenades, under-barrel grenade launchers and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, man portable launchers of anti-tank missile and rocket systems, man portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

<sup>16</sup> See <http://www.smallarmssurvey.org/weapons-and-markets/definitions.html>.