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Cross-Cutting Issues in Protection of Civilians for UN Peace Operations

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Thank you, Prince Zeid. My remarks will draw on the background paper that you have in your folders, which was a joint effort of Alison Giffen and myself, standing in turn on the shoulders of others, including Prince Zeid and Deputy Assistant Secretary Holt and the men and women of UN peacekeeping who contributed their views and their time to the DPKO/OCHA independent study on protection of civilians (POC). But if I mess all this up, it's just me talking.

My job is to address POC as a cross-cutting issue for the United Nations; as such I will touch upon each of the subject areas of this conference, in a way that sets the stage for more thorough conversations on each, in subsequent sessions of the conference.

Strategic Level

The failure of UN peace operations in the 1990s to provide for protection of civilians where those operations deploy, and reports on those failures, and the prospect of more to come in Sierra Leone and the Democratic Republic of Congo (DRC), was the genesis of the Brahimi Report and threats to civilians since it was issued have not diminished.

Multiple groups have targeted civilians in UN peacekeeping missions' areas of operation. Some have political, economic, or ideological aims; others seek new soldiers (often children) and forced labor (often women); while still others are little more than vicious criminal bands or rape gangs. Sometimes they are proxies of the host government or other signatories to a peace agreement. Sometimes their supply lines or safe havens can be found in neighboring states.

Morally, no one wants to be complicit in abuse through failure to act, and the moral imperative to protect requires operational follow-up. Communities where peacekeepers deploy expect protection, so peacekeepers' ability to provide it – and, equally important, not to contribute to public trauma by misconduct – directly affect their operations' legitimacy and thus their ability to reach their overarching goals.

“Protection” has been used to describe a broad spectrum of activities undertaken by UN peacekeepers and other stakeholders, from immediate shielding of persons from physical violence to the full range of peacebuilding, human rights, and capacity-building activities that may contribute to protection in the longer term. For my purposes here, *protection of civilians*

applies to this broad spectrum of circumstances, including generalized violence and post-conflict situations that may not qualify as “armed conflict” and where “civilian” may be a mutable concept in terms of how it applies to any given person at any given time in a setting of general disorder, vendetta, or inter-group strife:

Under international humanitarian and human rights law, governments hold the primary responsibility for ensuring the security of their civilian population and are obliged both to refrain from violent abuse of human rights and to fulfill their obligations to secure civilians from other threats. There is not yet consensus about whether third parties – states and organizations -- are legally obligated in general to secure civilians from such threats if governments do not. The background paper did delve into this issue, focusing instead on what third-party actors can do to better protect civilians under threat, given moral and mandated duties to do so.

In Nov 2009, Security Council resolution 1894 stressed that “mandated protection activities must be given priority in decisions about the use of available capacity and resources.” This was the first time that the Council specified priority for POC; in subsequent Res 1906, as noted earlier by Asst. S-G Titov, the Council specified that the first priority of MONUC, in the DRC, shall be to “Ensure the effective protection of civilians, humanitarian personnel and United Nations personnel and facilities” and that “the protection of civilians...must be given priority in decisions about the use of available capacity and resources, over any ...other tasks.”

In the context of DRC and the wholesale violence against civilians there, this priority makes sense, but people, institutions, and operations still need the mindsets, the organizational plans, the response routines, and the tactical capability to do something that fulfils the priority.

And here we begin to hit the complexity and difficulty of the issue, which in part reflects politics and political risk assessments, and in part reflects differences in institutional and professional perspective – protection implies different things to militaries, police, and humanitarian actors.

Troop and police contributing countries may be reluctant to expose their personnel to the assumed – and real – force protection risks that protection of civilians in faraway places may entail, and even if they were willing to commit those forces without national caveats, a peacekeeping mission, regardless of mandate or resources, will not be able to protect all of the civilians within its area of operation all of the time. Yet, as noted in the first panel, if the security expectations of a host state population are not met, mission credibility and leverage will diminish. Those who are concerned about exaggerated local expectations of UN protective capacities argue for expectation management, but what that should entail is not clear: should it be cast in terms of thresholds of violence? (“sorry, we only deal with incidents involving 5 or more persons”); with areas of violence? (“sorry, we are focused on South Kivu this month, we’ll think about Equateur in May”); or perhaps about duration of violence? (“sorry, call back if this continues for more than two days”). These are all forms of triage. The default form is “sorry, I just don’t have the manpower,” or the transport, or the backup, or the supplies to sustain operations. And these may all be true. They may not be fully resolvable problems, but the degree of resolution will be heavily influenced by the protection strategy adopted by a mission.

For any given setting, these resource issues mean that a mission will be least likely to provide retail protection, that is, of every person, at every time, in every place. That is the job of a competent government and its public security services, which is why early local capacity-building is so important, as Dmitry Titov noted. But even competent, legitimate governments depend on voluntary compliance with social norms and applicable laws by 99 pct of their populations 99 pct of the time. That is, even the best governments rely on wholesale protection, doing retail at the margins in response to 911 or equivalent emergency calls. The ultimate goal of a peace operation is to help a government reach the plateau of wholesale protection. Until it can do so, the real and serious dilemmas of retail protection will remain to be grappled with by meetings like this one and by missions on the ground.

Continuing on the strategic level, humanitarian entities—including UN agencies—have developed a significant body of principles and guidance on protection for people affected by conflict and injustice, including the principle of ‘do no harm,’ educating communities about their rights, providing medical services or promoting access legal systems, and outreach and advocacy (directly or through appropriate intermediaries) to armed actors

Some governments object that the activities encompassed with this framework venture go beyond the bounds of humanitarian action. But humanitarian work necessarily carries political implications – that is, power implications – wherever political power is being contested by violence, and to say that humanitarian aid may not be given to those in need under such circumstances is to take the Athenian position in the Melian dialog of Thucydides, that “The strong do what they can, and the weak suffer what they must.” To accept that proposition is to throw over the entire edifice of international human rights law as developed over the past half-century and more.

UN peacekeeping’s movement toward “integrated missions” intended to pull together UN activities and to “deliver as one” also leaves humanitarian actors either uneasily associated with UN missions or uneasily detached from them. UN humanitarian agency guidelines on civil-military coordination do not (as yet) focus explicitly on protection, but if humanitarian agencies and actors do not engage and coordinate with missions, then both sides of the conversation miss out on what the other side can offer to help them make their respective protection efforts more effective.

Operational Level

Dropping to the operational level, the priority of POC on a mission’s list of priorities will depend on the context. In initially unstable settings in particular, POC is essential to reinforce connections between security, development, and governance. Effective protection mechanisms can also contribute directly to peacekeeper drawdown, which is why troop and police contributors should be willing to take measured risks with their forces on behalf of POC, if they are willing to contribute personnel to a mission at all, and why organizations that mandate and manage peace operations should have well-developed field assessment capacity for POC, against which police and troop contributors can train, gauge the risks of deployment, and guard against them.

Different components of the mission will see protection in different ways, which is why a mission-wide POC strategy is needed that both takes these differences into account and is

proactive in nature – part preventive, part deterrent – to the extent permitted by its mandate. Assuming the availability of trained personnel and political will, the most critical resources for a proactive strategy are then (a) good field intelligence and rapid intelligence analysis capabilities; and b) mobility assets such as transport helicopters that facilitate response to both threats and occurrences of physical violence in more remote mission areas.

Military and Police Components

To make protection work, mission military and police components must collaborate in mission planning, in developing the mission concept of operations, in information gathering and analysis, and in contingency planning for a range of possible scenarios and options for the forces that would be involved in responding to those scenarios.

Missions need improved guidance and training especially with regard to protecting civilians in dispersed rural areas, in densely populated urban areas, and in IDP/refugee camps. Guidance and training are needed to help commander at the sector, battalion, and company level understand the protection environment, identify risks of action, and inaction; and to manage tradeoffs when deciding when and how to act.

These include tradeoffs between short-term long-term objectives, for example, attempting to protect civilians while supporting the reform, and perhaps the operations, of host State armed forces, especially when some of those forces themselves pose threats to civilians, as in DRC.

Police personnel, particularly individual officers, are more likely than military personnel to have been protection-focused in their operations at home, but the mission area of operations may be less stable and more violence-prone than what they are accustomed to. And the great majority of individual UN police deploy unarmed. Missions with executive policing authority or heavily-armed “assistance” missions are the exception.

A growing percentage of police in UN operations are, however, members of formed police units, which are always armed. A higher proportion of FPUs in a mission offers more crowd control, mobility, and firepower against heavily-armed criminals, but proportionally less capacity for community policing, mentoring, information-gathering, and relationship-building that may be crucial for the mission’s interface with both its local police counterparts and the local community.

Armed or unarmed, mission police components require appropriate doctrine and concepts, competent seconded officers who are permitted by their governments to engage in protection operations, good police intelligence, good discipline, and good local language proficiency or access to good interpretation. How local needs, demands, or reports are interpreted on the spot or up the chain of command may have a huge impact on how the mission understands the situation that it faces and how it chooses to respond. Misinterpretation can be far more costly than the price of interpreters.

Even in the wealthiest of countries offering police to peacekeeping, there tend to be more volunteers than government budgets to support their deployment. And a perennial problem is getting the system to generate the specialist talent that policing mandates usually require – by which I do not mean heavy weapons and tactics but instructors and trainers, experienced

mentors, administrators, planners, and crime intelligence analysts and managers, all of whom are needed to help transfer an ethic of protection to the police services that UN operations support.

Conflict Prevention, Justice, and Human Rights

One of the greatest protective benefits that a mission can bring to ordinary people is preventing a country's relapse into war, in whole or in part. Debate continues among scholars about the rate of relapse of countries that have suffered civil war, the conditions that favor relapse, and the role of peacekeeping operations in reducing that rate. The debate tends to view war-torn states as undivided wholes; whereas, at least in the larger places where UN operations deploy, parts of the state may be stable while others are not.

In war-peace transitions, peacebuilders may face trade-offs between peace and justice; for example, between buying the cooperation of war-time wielders of power and confronting that power on behalf of those it has abused. It is not clear, however, that transitional justice necessarily upsets peace processes and it is clear that complete lack of justice may keep open the road to war. I am thinking in the first case of the indictment of Charles Taylor and in the second case of violence, particularly sexual violence, in eastern DRC, which must not be seen as an inevitable cultural byproduct of war but as deeply and destructively aberrant behavior and a form of torture that must be stopped.

For peacebuilding, there is also another side to women's status and war. Recent research indicates that the pre-conflict social status of women significantly affects the probability of successful peacebuilding *when a peacekeeping operation is present*, even when the impact of many other plausible war- and peace-contributing variables is taken into account. The higher the pre-war social status of women, the higher the probability of successful peacebuilding within five years of the end of conflict. These findings have lessons for development and conflict prevention, as well as for peacekeeping and peacebuilding. Protecting and empowering women in post-war settings, often cast as a moral imperative, may also be an operational necessity for sustainable peace.

I will note only briefly here but call your attention the part of the background paper that talks about victim, witness and human rights defender protection efforts by MONUC and the network of Congolese NGOs with which it works. This work closely links protection and justice.

The effectiveness of the rule of law and the institutions of justice depends not only on institutional process and the content of the law but on the *faith and trust* of the people and their conclusion that adherence to the law on a daily basis is in their best collective and individual interests. Where such faith and trust in government was weak, pre-war, or where the authority of the government never reached, those seeking to promote the rule of law will be struggling not only to rebuild or to create formal institutions of governance but also to demonstrate to people that these institutions are or will soon be worthy of their faith and trust, and especially that the laws they attempt to enforce are worthy of voluntary compliance.

Conclusions and Recommendations

In sum, the question before us is not whether to protect but how. Guidance is needed that clarifies what POC means in practice, what effective POC requires, how diverse protection actors should coordinate for greater impact, how missions should manage potential risks in the protection of civilians, and what success looks like for peacekeeping when POC is factored in.

New movement at the political level has let the UN Secretariat take laudable steps toward addressing these gaps. Still, additional work is needed to gather best practices and lessons learned and to translate this work into guidance at the strategic, operational, and tactical level.

Consensus also remains to be built on whether third-party actors are legally obligated to protect - an issue that the background paper did not seek to address. Without this consensus, however, peacekeeping operations will continue to struggle to implement their mandates, fulfill expectations, and protect civilians. Peacekeeping operations are also but one tool to prevent and respond to protection crises. Complementary methods and tools are needed to better address the root causes of conflicts and the underlying motivations of those who target civilians. And at the political and strategic level, peacekeeping operations need to be assured that they will receive the political support they deserve for a task that is difficult, complex, but critical to achieving so much that peacekeeping strives to achieve.