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PROTECTION OF CIVILIANS IN ARMED CONFLICT

Expected Council Action

The Council will hold an open debate on protection of civilians in armed conflict on Tuesday, 20 November. It seems that the Secretary-General and Under Secretary-General for Humanitarian Affairs John Holmes will address the Council. Members are expected to discuss recent findings and recommendations contained in the 28 October report of the Secretary-General, but no substantive follow-up to the recommendations is expected at this stage.

It is unclear whether members will want to adopt a formal outcome for the debate. It seems that Indonesia has circulated elements of a possible draft presidential statement largely reiterating previous Council commitments and concerns expressed in past statements. However, a number of members seem to prefer to defer formal action until there have been substantive discussions on the Secretary-General's recommendations.

Key Recent Developments

Since its last debate on protection of civilians in June 2007, the Council has acted on a number of country-specific situations in which protection is a core issue. This included authorising two deployments with significant protection mandates, namely:

- the UN-AU hybrid operation in Darfur (UNAMID) in resolution 1769 on 31 July, including a mandate under Chapter VII to take necessary action to ensure the security and freedom of movement of humanitarians and to protect civilians; and
- the UN Mission in the Central African Republic and Chad (MINURCAT), with a mandate to increase security in camps by training and overseeing Chadian police, together with an EU protection force, mandated *inter alia* to take all necessary measures to protect civilians under Chapter VII in resolution 1778 on 25 September.

The issue of violence against civilians was also enshrined in the Council's stepped up involvement on the Myanmar issue, particularly with the adoption of a presidential statement on 11 October deploring the use of violence by the government against demonstrations and emphasising the importance of early release of prisoners.

But divisions remain in the Council on the issue at the thematic level. Some members seem to prefer a focus on country-specific situations and there is no doubt that significant protection challenges remain. UNAMID, MINURCAT and the EU force are yet to become operational. And serious humanitarian situations in Somalia, Iraq, Afghanistan and the Democratic Republic of the Congo (DRC) seem likely to require sustained Council attention and action.

Nevertheless, there are also many Council members who believe that in addition to a country-specific focus there is much more that could be done at the thematic level. In this respect, the Secretary-General's 28 October report notes that large-scale abuses against civilians and violations of international humanitarian law continue in various parts of the globe. There are currently 9.9 million refugees. Another 24.5 million are

internally displaced, particularly in Darfur (2.2 million), Iraq (2.2 million), Colombia (2.1 million registered, with a total number possibly reaching 3 million), Somalia (700,000) and the DRC (500,000).

The report further notes that critical humanitarian access to vulnerable populations is also severely curtailed in the most pressing current conflicts, in that it is “anything but safe, certainly not timely, and far from unhindered” despite calls from the Security Council and the General Assembly. Particular areas of concern are Afghanistan, Iraq, Somalia, Darfur, the DRC and Myanmar.

Key continuing aspects of the current dynamics pertaining to abuses against civilians include:

- the further erosion of the principles of discrimination and proportionality, on the basis of targeting of civilians in conflict as a deliberate military tactic, as well as attacks against journalists;
- the negative impact of such abuses over vulnerable persons such as women, children, the elderly and persons with disabilities;
- widespread use of sexual violence as a weapon of war;
- the role of housing, land and property issues at the root and as a consequence of conflict; and
- the destructive impact of cluster munitions.

Perhaps the most innovative aspect of the report are the recommendations, particularly in areas not previously addressed in the context of Council debates on protection of civilians, such as housing, land and property. The recommendations include the following.

- Conduct of Hostilities: including a requirement for strict compliance with international humanitarian law in all resolutions authorising UN missions; and requesting reports on steps taken to ensure civilian protection.
- Sexual Violence: requesting comprehensive information on sexual violence in an annex to all reports on UN missions; referring situations of widespread sexual violence to the International Criminal Court (ICC) and/or considering targeted sanctions; supporting the establishment of ad hoc domestic judicial arrangements.
- Access: ensuring that UN missions are mandated to contribute to the creation of security conditions for humanitarian assistance; holding situation-specific debates on access; considering the referral of grave instances of impediment of access to the ICC.
- Housing, Land and Property Rights: including language in all relevant resolutions on the right of return and on non-acceptance of the results of ethnic cleansing or sectarian violence; promoting the establishment of domestic mechanisms for addressing such issues; mandating UN missions to prevent the illegal appropriation or confiscation of land and property, to identify and register land and property abandoned by civilians and to issue ownership documentation where this has been lost or destroyed; convening an Arria-formula meeting to explore the content of a UN-wide approach to those issues.
- Establish a Council Working Group: facilitating consideration and analysis of protection concerns, and ensuring consistent application of the 2003 aide-memoire. (The aide-memoire is an annex to a December 2003 presidential statement (S/PRST/2003/27). It lists a number of aspects that can be included as protection mandates for UN missions to improve their design.)

Options

Available options are:

- addressing the Secretary-General’s recommendations in full during the month of November;
- considering updating the 2003 aide-memoire in light of the recommendations;
- deferring adoption of any statement and requesting the political coordinators of the delegations to negotiate a response to the Secretary-General’s recommendations;
- establishing an informal Council group to follow-up on the recommendations (a precedent can be found in 1999, when the Council established an informal working group in resolution 1265 to consider and propose a follow-up to the recommendations in the Secretary-General’s first report on protection of civilians); and
- requesting the Secretary-General to provide more detailed information on options for the implementation of some or all of the recommendations.

Key Issues

The key issue is how best to address civilian protection, in particular whether the subject is more meaningfully approached on a country-specific basis or whether concrete progress can be made in a thematic mode. A related issue is whether a more focused approach can be found, centred upon a procedural formula that will allow discussion over time of a set of issues on which meaningful progress can be made.

The immediate question is whether and when to address the Secretary-General's recommendations. This includes whether to focus on issues that have already been addressed in Council discussions, such as sexual violence and cluster munitions, or whether to include in the consideration new aspects such as land and property rights.

Council Dynamics

It seems that most members are still analysing the Secretary-General's report with a view to forming a position on the subject. Given the large number of recommendations and novelty of some of them, it is unlikely that members will have detailed positions on the whole of the report by next week.

Most members apparently concur that the adoption of a presidential statement would be an important step, and seem sympathetic to the Indonesian text at least as an initial platform for discussion. Some members prefer cautiousness regarding to the Secretary-General's proposals. Others, in particular the UK and other European members, seem to favour more focused language.

Most, in particular European members, seem particularly concerned about issues of access, sexual violence and accountability. They have apparently welcomed the recommendations on systematic inclusion of requirements for strict compliance with international humanitarian law in Council resolutions, and on a firmer, more systematic approach to issues of access, justice, cluster munitions and sexual violence. Some permanent members may be uncomfortable with discussions on cluster munitions. China, Russia, South Africa, the US, Qatar and Indonesia may prefer to defer any discussion of ICC issues.

It seems likely that the recommendations on land and property rights will take time for all members to assess, particularly the implications for country-specific situations in which land and property issues are a vital ingredient of the conflict.

It is unclear whether there will be appetite for a new Council working group on protection of civilians similar to the one on children and armed conflict. Some members may not be ready or able to take on an additional large load of work at the abstract level without some sort of rationing mechanism that clarified and defined the issues to be covered and without some sort of country-specific focus.

UN Documents

Security Council Resolutions

- S/RES/1778 (25 September 2007) established MINURCAT.
- S/RES/1769 (31 July 2007) established UNAMID.
- S/RES/1738 (23 December 2006) condemned intentional attacks against journalists, media professionals and associated personnel, and requested that the Secretary-General include as a sub-item in his next reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel.
- S/RES/1674 (28 April 2006) *inter alia* reaffirmed the responsibility to protect as formulated in the 2005 World Summit Outcome Document and included the Council's intention to ensure that protection is clearly outlined in peacekeeping mandates and implemented with priority in resources.
- S/RES/1593 (31 March 2005) referred the situation in Darfur to the ICC.
- S/RES/1265 (17 September 1999) and 1296 (19 April 2000) expressed the Council's willingness to take measures to protect civilians in armed conflict and to consider how peacekeeping mandates might better address the negative impact of conflict on civilians.

Selected Presidential Statements

- S/PRST/2007/37 (11 October 2007) was the Myanmar statement.
- S/PRST/2002/6 (15 March 2002) and its update, 2003/27 (15 December 2003) contained an aide-memoire to assist Council members in including protection mandates for peacekeeping operations.

Selected Reports of the Secretary-General

- S/2007/643 (28 October 2007) was the most recent report.
- S/2005/740 (28 November 2005) recommended the Council adopt a new resolution to reflect the new challenges to the protection of civilians.
- S/2002/1300 (26 November 2002) contained a road map of recommendations for addressing protection needs.

Selected Meeting Records

- S/PV.5703 (22 June 2007) was the most recent Council discussion on protection of civilians.
- S/PV.4877 (9 December 2003) contained discussions on a 10-point action plan introduced by then Under Secretary-General Jan Egeland on the basis of the “road map” on measures to increase civilian protection suggested in a report of the Secretary-General.

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