



SECURITY COUNCIL REPORT UPDATE REPORT



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PROTECTION OF CIVILIANS

EXPECTED COUNCIL ACTION

On Tuesday 10 May the Council is scheduled to hold an open debate on protection of civilians in armed conflict.

Under-Secretary-General for Humanitarian Affairs Valerie Amos, Under-Secretary-General for Peacekeeping Operations Alain Le Roy and Assistant Secretary-General for Human Rights Ivan Simonovic are expected to speak.

(Security Council Report will soon be publishing its 2011 annual Crosscutting Report on Protection of Civilians. It will unfortunately not be available in time for the May debate, however, because of the recent decision to bring forward the meeting date.)

KEY RECENT DEVELOPMENTS AT THE THEMATIC LEVEL

The last open debate on protection of civilians was in November 2010. The Council considered the Secretary-General's eighth thematic report which focused on the five core protection challenges identified in the Secretary-General's 2009 report:

- enhancing compliance with international law by parties to conflict;
- enhancing compliance by non-state armed groups;
- strengthening protection of civilians by UN peacekeeping and other missions;
- improving humanitarian access; and

- enhancing accountability for violations of international law.

The Secretary-General noted, in particular, that a comprehensive normative framework was now in place and that he believed the focus should be on making progress on the ground. He recommended:

the systematic application of the "Aide-mémoire" on the protection of civilians; active use of the Council's informal protection expert group to discuss peacekeeping and other mission mandates as well as other Council protection action; and monitoring implementation of Council resolutions.

He also called for the UN system to be more effective at coordination, strategy setting, prioritising, monitoring and candid reporting to all relevant bodies, including the Council.

The Secretary-General called on the Council to:

- take a more consistent and comprehensive approach to addressing humanitarian access constraints and ensure accountability for grave instances of denial of access;
- request that situations where humanitarian operations are deliberately obstructed be brought to its attention;
- take action to enhance compliance with international humanitarian law, including by enforcing cooperation with the International Criminal Court

(ICC), requesting investigations of possible violations or mandating commissions of inquiry with a view to imposing targeted measures or refer situations to the ICC. (In this context, the Secretary-General expressed his intention to request the Secretariat to undertake a review of the UN's experience with commissions of inquiry in order to identify how they might be used on a more consistent and less politically-influenced basis.); and

- call on states to establish or mandate mechanisms to receive claims from individuals alleging to be the victims of violations of international humanitarian law and human rights law.

Finally, the report outlined three additional areas for action:

- ensuring a comprehensive approach by finding ways to address situations not formally on the Council's agenda where protection concerns exist;
- ensuring a consistent approach including by considering ways to make further use of the informal expert group on protection of civilians through briefings on thematic protection issues such as peacekeeping and on progress made against established benchmarks; and
- ensuring an accountable approach by developing indicators for systematic monitoring and reporting on the protection of civilians.

The November open debate featured briefings by Under-Secretary-General for Humanitarian Affairs Valerie Amos, Under-Secretary-General for Peacekeeping Operations Alain Le Roy, UN High Commissioner for Human Rights Navanethem Pillay and Director General of the International Committee of the Red Cross (ICRC) Yves Daccord. More than fifty member states also spoke.

Amos said that the Secretary-General's report "painted a very bleak picture of the state of the protection of civilians", but acknowledged that there had been some progress at Council level in the normative approach. She drew particular attention to the humanitarian impact of explosive weapons of war and called for a closer consideration of this issue. She also highlighted the need for drawdown of peacekeeping missions to be conditioned on the achievement of clear protection benchmarks, the need for improved coordination between all actors on the ground to implement protection mandates and the importance of involving local communities in all protection strategies. Humanitarian access was another key concern and Amos called on the Council to ensure accountability for obstruction of access.

Le Roy underlined that peacekeeping operations cannot protect all civilians at all times and cannot act as a substitute for state authority. Nevertheless the Departments of Peacekeeping Operations (DPKO) and Field Support were improving the UN's performance along five tracks:

- development of a strategic framework to provide guidance to missions for comprehensive protection strategies;
- development of pre-deployment and in-mission training modules;
- evaluation of resource requirements for implementation of protection mandates;
- evaluation of protection planning processes; and

- capability development efforts to better understand the requirements for the performance of protection tasks.

Pillay pointed out that human rights are integral to peace and that there are currently 17 human rights components in UN peace missions. She said the approach to protection by her office was prevention through human rights monitoring and reporting. She cited the reporting on the mass rapes that took place in August 2010 in Walikale in the Democratic Republic of the Congo (DRC) as an example of exposing protection gaps.

Pillay noted that access for human rights officers is often severely limited for security or other reasons and called on the Council to ensure that mandates require access for human rights monitoring. Finally, she expressed interest in less formal meetings with Council members such as Arria formula meetings or expert-level meetings to discuss protection issues.

ICRC's Yves Daccord said that the fundamental protection problem was the lack of respect for international humanitarian law together with the "prevailing culture of impunity". He highlighted ICRC's role in ensuring respect for the law and urged all parties to conflict and the Council "to show the necessary political will and good faith to turn legal provisions into reality".

The Council, in a presidential statement, endorsed an updated version of the "Aide-mémoire" that was first adopted in March 2002. The revisions to the "Aide-mémoire" are contained in an annex to the presidential statement. They reflect key developments since the previous revision that was endorsed by the Council in January 2009.

The Council also reaffirmed its commitment to the protection of civilians and its condemnation of all violations of applicable international law. It emphasised in particular the need to fight impunity, the importance

of humanitarian access and implementation of protection mandates in peacekeeping operations. (While the statement did not contain any direct reference to the ICC, it took note of the "stocktaking of international criminal justice" undertaken by the review conference of the Rome Statute held in May-June 2010.) The statement contained several specific requests by which the Council:

- called for the continuation of systematic monitoring and analysis of constraints on humanitarian access;
- welcomed the proposals, conclusions and recommendations on the protection of civilians included in the 2010 report of the General Assembly's Special Committee on Peacekeeping Operations;
- stressed the importance of ensuring engagement by senior peacekeeping leadership on protection;
- emphasised the importance of improving pre-deployment training on protection for peacekeeping personnel;
- underlined the need for peacekeepers to communicate effectively with local communities to carry out protection mandates;
- reaffirmed the importance of benchmarks to measure progress in the implementation of peacekeeping mandates and the need to include protection indicators in such benchmarks; and
- reiterated its request to the Secretary-General to include more detailed and comprehensive reporting on protection issues in his reports to the Council and develop guidance to UN missions on such reporting.

The Council's Informal Expert Group on the Protection of Civilians

In March 2011 the Council's informal protection expert group took a new step when it moved beyond meetings linked to mandate renewals and discussed the protection issues in Côte d'Ivoire. The Office for the Coordination of Human Affairs (OCHA) had asked for the briefing to convey the UN's growing concern about the impact on civilians of the

continuing violence in the country.

There have been no other major changes in the functioning of the group. It has held three other meetings since last November. It met twice in December, first in connection with the termination of the UN Mission in the Central African Republic and Chad as of 31 December and then to discuss the renewal of the authorisation of the AU Mission for Somalia. In March, in addition to the briefing on Côte d'Ivoire, there was a briefing on Afghanistan in connection with the mandate renewal for the UN Assistance Mission in Afghanistan.

Other Developments

There was a new initiative on protection of civilians under the Brazilian presidency of the Council in February 2011. Council members met in informal consultations on 18 February to discuss all three protection-related thematic items on its agenda: protection of civilians; women, peace and security; and children and armed conflict. The aim of the consultations, as outlined by Brazil in a concept note, was to help ensure that the Council dealt with the three related issues in a coherent way and that actions undertaken by the Secretariat were mutually supportive. Brazil also suggested some specific issues to be discussed, including:

- how to ensure that the various mechanisms in place for monitoring and reporting reinforce each other and that complementarities are taken advantage of to most effectively inform the Council;
- implementation of peacekeeping mandates and assessment of remaining protection gaps;
- sexual violence as a cross-cutting issue and how to ensure its mainstreaming in all relevant areas; and
- the reporting and discussion calendar for protection issues and whether it would make sense to adjust reporting and debating cycles in order to ensure that reports and debates are more evenly distributed throughout the year.

The Under-Secretary-General for Humanitarian Affairs Valerie Amos, Assistant Secretary-General for Peacekeeping Operations Atul Khare, Special Representative on Children and Armed Conflict Radhika Coomaraswamy and Special Representative on Sexual Violence in Conflict Margot Wallström were invited to brief. While there was no decision arising from the consultations, it seems there was an understanding that the current framework for Council involvement in the three protection issues functions well and should be retained. At the same time members generally agreed that coordination could be improved, in particular in the field. Most members seemed to find the consultations useful.

Another significant new development was the Council's decision in the area of women, peace and security in December 2010 to establish a new mechanism for monitoring sexual violence. Following an open debate on the Secretary-General's report on sexual violence in conflict and briefings by Margot Wallström, Alain Le Roy and the former force commander of the UN Mission in the DRC, Lieutenant Colonel Babacar Gaye, the Council adopted resolution 1960 (co-sponsored by 67 member states) that establishes a monitoring, analysis and reporting mechanism on conflict-related sexual violence in situations on the Council's agenda. Resolution 1960 calls on parties to armed conflict to make specific, time-bound commitments to prohibit and punish sexual violence and asks the Secretary-General to monitor those commitments. The Council requested the Secretary-General to include in his annual reports on conflict-related sexual violence (next report due December 2011) an annex listing the parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Council's agenda, using the same listing and delisting criteria as the current annexes prepared for children and armed conflict reports. The Council indicated its intention to use

the annex list as a basis for decisions on sanctions.

UN Peacekeeping-Related Developments

The Secretariat has now finalised the framework for drafting comprehensive protection of civilians strategies in UN peacekeeping operations that was requested by the 2010 session of the General Assembly's Special Committee on Peacekeeping Operations. The framework provides the elements seen as essential for missions to ensure "the most effective implementation of protection mandates" authorised by the Council. It contains a template for protection strategies which requires a mission to:

- articulate protection risks in the mission area and identify activities to be undertaken to address those risks;
- analyse resources and capacities necessary to implement protection mandates;
- provide an overview of protection actors and the capacity of the local government to protect itself;
- clarify roles and responsibilities within the mission and with key partners and identify coordination mechanisms;
- ensure that monitoring and reporting mechanisms are in place; and
- ensure there is a system in place to conduct reviews and lessons learned exercises when missions fail to protect civilians.

The Secretariat has also made progress on developing a resource and capability matrix on the protection of civilians to facilitate the planning of missions with such mandates and also to serve as a basis for discussions with troop and police-contributing countries. (This was also requested by the 2010 session of the Special Committee.) In addition, the Secretariat is close to finalising a series of protection of civilians training modules for peacekeeping personnel, as requested by the Council in resolution 1894.

Four of the current seven UN peacekeeping operations with a protection

mandate have now developed comprehensive strategies for the protection of civilians. These are the UN Organisation Stabilisation Mission in the DRC, the AU/UN Hybrid Operation in Darfur, the UN Mission in Sudan and UNOCI in Côte d'Ivoire. The UN Mission in Lebanon is in the process of developing such a strategy.

Protection of civilians was again a key issue discussed at this year's session of the Special Committee (which was held from 22 February to 18 March 2011). The Secretariat presented the finalised framework. At the time of writing, however, the Committee had yet to agree on a final report. This delay appeared to be mostly related to divisions over the issue of troop cost reimbursement rather than over protection issues, although some differences persist.

KEY ISSUES

A key issue with contemporary relevance is the use of military force to protect civilians. A related issue is whether there should be a set of principles to guide future use of force in such cases.

A second issue is whether the Council should be doing more at an earlier stage to respond to protection crises using political solutions so as to reduce the need for future military action.

A third key issue is how to address cases where protection concerns are real and preventive action is called for, but where the situations in question are not yet formally on the Council's agenda. (The Council eventually found a solution to this issue in 2009 in the Sri Lanka case, but the challenge remains.)

A fourth key issue is avoiding the perception that the Council is politically selective in addressing protection challenges. A related issue is the question of what constitutes an "internal matter" when mass atrocities seem likely against civilians and the normative framework for protection of civilians is applicable.

An immediate practical issue is implementation of the Council's most recent thematic decisions on protection of civilians, including resolution 1894 and the November 2010 presidential statement. These decisions indicated several areas for follow-up action by the Council as well as specific requests directed at the Secretariat, in particular relating to peacekeeping, humanitarian access and reporting.

Another issue is how to enhance monitoring and oversight, and specifically whether the Council should provide more detailed guidance on benchmarks and indicators (as it did in the case of women, peace and security when it endorsed the indicators for implementation of resolution 1325 in an October 2010 presidential statement).

A related issue is the Council's own working methods and tools at its disposal, such as the informal expert group on protection, and whether these can be improved. This also includes the question of whether to request more frequent briefings at the Council level that specifically address protection issues in country-specific situations or schedule a follow-up to the Brazilian initiative.

UNDERLYING ISSUES

How to translate thematic principles into protection of civilians on the ground remains an underlying issue for the Council. The five key challenges identified by the Secretary-General as noted above also remain key underlying issues.

OPTIONS

A wide range of options for Council action on protection of civilians, which could still be addressed, have been outlined in the Secretary-General's successive reports on protection of civilians (and also mentioned in previous SCR reports). At this stage, however, given the timing of the May debate (and the actual date being brought forward at short notice) it seems unrealistic to expect major new thematic developments. Also,

given the difficult decisions taken by the Council in some recent cases and the ongoing sensitivities around that, modest expectations are reasonable. Council members may therefore be interested in some practical options:

- Organising a field mission for Council experts (similar to those undertaken by the Working Group on Children and Armed Conflict) which would focus on how concrete protection of civilians activities are carried out on the ground. In particular, such missions could provide an opportunity to get a better understanding of the implementation of protection of civilians strategies in peacekeeping operations.
- Requesting an interactive briefing of the informal expert group on the Côte d'Ivoire experience by OCHA, DPKO, the UN High Commissioner for Human Rights and the Special Representatives on Children and Armed Conflict and on Sexual Violence.
- Repeating the informal consultations initiated by Brazil not only to ensure greater coherence and coordination between the three protection issues, but also get more direct involvement by permanent representatives. An additional option would be to establish a practice of presenting some kind of a brief record from these consultations. Informal conclusions in a note by the Council president would be an option. (It seems the understanding from the February consultations was that the Council's current protection framework functions well, but this is not recorded anywhere and conclusions may be more important as members continue to discuss the reporting cycles and timing of debates for the three different issues.)
- In a similar vein, greater clarity (perhaps in a letter to the Secretary-General) could be an option for the Council so far as the structure and kinds of information the Council would like to see on protection of civilians in the Secretary-General's country-specific reporting, including on the issue of humanitarian access.

- Another option is to ask OCHA to consult with the Council regarding the work being done to develop indicators for the protection of civilians.
- Yet another option is asking OCHA to brief the informal protection expert group on humanitarian access issues.
- A final option is a briefing on the review initiated by the Secretary-General of the UN's experience with commissions of inquiry with the aim of identifying how they might be used on a more consistent and less politically-influenced basis.

COUNCIL DYNAMICS

At the time of writing it seemed that few Council members had begun to focus on the May debate and it was therefore very unclear how the underlying dynamics would evolve. The fact that there is no recently issued Secretary-General's report is also a factor in that there is nothing immediately new to respond to.

A further factor likely to be influencing Council members is that 2011 has been a very busy year in terms of consideration of protection of civilians in specific situations including in Côte d'Ivoire, Libya, Yemen and Syria. There are ongoing tensions arising from these cases, but it is unclear whether the debate will be seen as an opportunity to build bridges by seeking safer thematic ground or as an opportunity to stoke the tensions and entrench divisions.

The abstentions of China and Russia on resolution 1973 on Libya, which authorised member states "to take all necessary measures...to protect civilians and civilian populated areas under threat of attack", suggest that there are some egregious cases of violence against civilians where no one wants to be seen as blocking action and risk incurring again the criticism of the UN and the major powers that followed the blocking of action on Rwanda in 1994. However, the positions later on Yemen and Syria confirm that in some cases there will be

ongoing reluctance to act, especially in light of the wider political dynamics, including historical political relationships. And the possibility of a prolonged and violent stalemate in Libya is leading to renewed anxiety by some Council members who abstained.

India has historically been cautious about protection of civilians in general. But a particular practical focus for India in recent months has been the protection of civilians in UN peacekeeping. India is the largest contributor of UN troops and it therefore had a very large stake in the Council decisions on protection of civilians in Côte d'Ivoire. It frequently argues that the main challenge for the implementation of protection mandates is the lack of adequate resources. India also believes that there needs to be a systematic closer working dialogue between Council members and troop-contributing countries in specific situations. Such interaction could provide valuable two way information about the situation on the ground.

Brazil also abstained on resolution 1973, but it seems that quite different reasons played a part. Brazil seems to support the Council playing an active and constructive role on protection of civilians. It is a strong supporter of the ICC. In the case of Libya, however, (as opposed to Côte d'Ivoire) it seems Brazil was concerned about the long-term implications of the Council's decision to authorise the use of military force to protect civilians (especially if it resulted in a protracted civil war). It seems the risk of a pushback on protection of civilians in other cases and the potential negative impact on the wider protection agenda were important factors. Brazil also worries about the political selectivity that is often apparent in the Council's response to protection challenges.

There seemed to be some similar themes to Brazil in Germany's explanation of its decision to abstain on resolution 1973.

Colombia, Lebanon and African members of the Council supported

resolution 1973, but seem to place themselves in the middle in terms of Council positions. Both South Africa and Nigeria are important troop-contributing countries and therefore have similar concerns as India when it comes to UN peacekeeping and the need for adequate resources and clear mandates. Colombia seems to attach particular importance to the impact of small arms and the need for more effective controls over trafficking in such arms as an important element of protection of civilians. None of these countries seem opposed in principle to robust protection action if authorised by the Council and if there is general support within the region. However, all would like to see also a much greater and substantial preventive and political role by the Council with focus on collective efforts aimed at securing political reconciliation and political solutions at an earlier stage so as to avoid military responses becoming the only available option.

France, the UK and the US seem to share a more assertive view, believing that the advocacy of early preventive action is fine in theory, but seem concerned that, in practice, early preventive political action is almost always blocked on the grounds that the situation is not yet a threat to international peace and security or is an internal affair. And once the situation has deteriorated so much that it cannot be ignored, robust military action may be the only viable option. They also seem unmoved by the selectivity argument, perhaps influenced by the belief that simply because the Council cannot act in every case, it should not fail to act to protect civilians when it can. The strong push by France and the UK for action in Libya demonstrated this approach.

Many Council members continue to favour the development of more systematic monitoring mechanisms, such as indicators and benchmarks relating to the implementation of Council decisions on protection of civilians and a more ambitious agenda for the informal protection expert group. Portugal has indicated that protection

of civilians is among its key priorities. It remains to be seen how all these dynamics will play out in the debate and whether there will be a move for some bridge building at the thematic level.

UN DOCUMENTS

SELECTED SECURITY COUNCIL RESOLUTIONS

- S/RES/1960 (16 December 2010) established a monitoring, analysis and reporting mechanism on conflict-related sexual violence in situations on the Council's agenda.
- S/RES/1975 (30 March 2011) imposed sanctions on former Ivorian president Laurent Gbagbo and his circle and authorised UNOCI to prevent the use of heavy weapons against the civilian population.
- S/RES/1973 (17 March 2011) authorised all necessary measures to protect civilians in Libya.
- S/RES/1894 (11 November 2009) was the Council's most recent resolution on protection of civilians.

SELECTED PRESIDENTIAL STATEMENTS

- S/PRST/2010/25 (22 November 2010) was on protection of civilians, containing an

updated aide-mémoire.

- S/PRST/2010/22 (26 October 2010) supported taking forward the indicators proposed by the Secretary-General to track implementation of resolution 1325 on women, peace and security.

LATEST SECRETARY-GENERAL'S REPORT

- S/2010/579 (11 November 2010)

LATEST COUNCIL MEETING RECORD

- S/PV.6427 and Res.1 (22 November 2010)

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