

Political Dilemmas and Operational Challenges

Robustness, Cooperation with Local Forces and the UN Human Rights Due Diligence Policy (HRDDP)

Expert Dialogue in Berlin | December 2–3, 2013

Both the UN's Human Rights Due Diligence Policy (HRDDP) and the future development of robust peace operations have caused considerable debate in recent months among practitioners and policy makers. The Center for International Peace Operations (ZIF) undertook to host a group of key UN stakeholders in Berlin with a view to taking stock of the state of these discussions, sharing up-to-date information, collecting open questions and developing policy options. The resulting Expert Dialogue in early December 2013 brought together representatives from the UN Departments of Peacekeeping Operations and Field Support (DPKO and DFS), the Office of the High Commissioner for Human Rights (OHCHR), and from several UN peace operations located in Africa.

The UN Human Rights Due Diligence Policy – An Overview

The first session began with a brief report on the content and the current status of HRDDP, based on the findings of the second report by the HRDDP Review Group. The policy states that UN peace operations and all other UN entities must ensure that any support they provide to non-UN forces is consistent with international humanitarian, human rights and refugee law. Encouragingly, knowledge about and acceptance of the policy have grown within the UN system as well as among member states. As a result, recent UN Security Council (SC) resolutions on Mali, South Sudan, Somalia and the Democratic Republic of the Congo (DRC) have all referred to it.

However, gaps in understanding and implementation of HRDDP remain. It has two goals: first, protecting the reputation and credibility of the UN presence in the host country and, second, changing the behavior of the local government and security forces towards compliance with Human Rights (HR) standards through a variety of measures. Withholding or withdrawing support by the UN is only one of them, when other measures have failed or are unlikely to reduce risks of violations by support recipients. Constructive forms of engagement, such as setting up procedures to address cases of violations, removing perpetrators and ensuring accountability, and the training of local security forces are at least as important. Yet the second goal is less well understood and therefore often not addressed.

This conference report reflects the author's interpretation of the discussions and not necessarily the views of all other participants or partner organizations.

Human Rights Due Diligence Policy

- Full Name: Human rights due diligence policy on United Nations support to non-United Nations security forces.
- For full text refer to the identical letters dated 25 February 2013 from Secretary-General Ban Ki-moon addressed to the President of the General Assembly and to the President of the Security Council (document A/67/775-S/2013/110).
- Issued on 13 July 2011 as Secretary-General decision 2011/18, the HRDDP sets out principles and measures to mainstream human rights in support provided by UN entities to non-UN security forces globally, in order to ensure that such support is consistent with the Organization's Purposes and Principles in the Charter and its obligations under international law to respect, promote and encourage respect for international humanitarian, human rights and refugee law. UN support should help recipients progress to a stage where compliance with these bodies of law becomes the norm, ensured by the rule of law. The policy was developed by a UN inter-agency mechanism, the Review Group, co-led by OHCHR and DPKO and composed of UNDP, DPA, UNODC, OCHA, OLA, UNHCR, OSRSG/CAAC, UNICEF and PBSO.

The UN HRDDP is also beginning to be applied in the cooperation with regional organizations. It featured prominently, for instance, in the discussions with the African Union (AU) leading to the establishment of UN support for the *African-led International Support Mission to Mali* (AFISMA). At the same time, HRDDP practice is evolving and standard operating procedures (SOPs) for the implementation of HRDDP are being developed. Participants reported that UN operations in South Sudan (UNMISS), the DRC (MONUSCO) and Côte d'Ivoire (UNOCI) already have such SOPs. Several other missions are currently working on such guidelines. Importantly, the policy is being introduced into training manuals and course curricula. In addition, the required risk assessments are becoming more systematic.

In the ensuing discussion, however, several speakers cautioned that much work remains to be done in this area, particularly with regard to moving from the current phase of roll-out and implementation towards using the HRDDP to generate measurable impact on the ground. In fact, insecurity and lack of access to areas of combat or operations may lead to limited information for an adequate assessment of the risk of HR violations committed by local partners. This was identified as one of the key challenges to HRDDP implementation in field missions. Other participants posed additional questions regarding risk assessment

procedures: Who should have a voice in the process: only the field office or also UN headquarters? Who should be screened: commanders, entire units, or even individual soldiers? What about due process, standards of evidence and a right of appeal? It was also pointed out that a lack of staff resources was an additional factor limiting the effectiveness of HRDDP risk assessment processes which often have to be made under strong time pressure.

Further information on HRDDP and its implementation clearly needs to be provided to parts of the UN system such as country teams working outside of a peace operation context, and particularly to partners like other international and regional organizations, NGOs and bilateral donors. Given the UN Department of Peacekeeping Operations' (DPKO) current and probable future focus on Africa, few relationships are more important than that with the AU. A number of speakers therefore suggested either negotiating a Memorandum of Understanding (MoU) on HRDDP with the AU or the development of an "AU HRDDP."

Several participants warned that the introduction of HRDDP might raise unrealistic hopes of quick improvements in the local HR situation – both in the host country and among member states – leading to a backlash once these hopes are dashed. It must be clearly communicated to all



parties that HRDDP can effect fundamental changes only over a long time horizon – and if the required resources are available. An additional precondition for the success of the policy is its embedding into a comprehensive program of *Security Sector Reform* (SSR). Yet, as several speakers pointed out, SSR programs in post-conflict environments have a decidedly mixed record of success.

One speaker emphasized that, beyond technical issues like the accuracy of risk assessments, the decision to offer or withhold UN support to a local counterpart will always ultimately be political. If the Secretariat and the local mission leadership considered a local partner indispensable and believed that his behaviour would improve, they would continue to provide assistance in spite of that partner's current questionable HR record. It must also be born in mind that in several cases where the UN withdrew its support as a result of HR concerns, other bilateral donors continued to provide funds, training and equipment.

There was broad agreement that having to choose between an operationally capable local partner and full compliance with HR standards constitutes the core dilemma of HRDDP. One possible way out is the realization that adopting a simplistic “either fully in or fully out” approach with regard to support offered to local actors is neither practicable, nor necessary. As several speakers noted, the policy must not be misunderstood as a purely punitive device, to be implemented regardless of its effects on public safety. Support aimed at, and linked to, improving HR compliance, for instance, is possible. Given sufficient political will and resources, intense efforts can indeed produce rapid improvements in individual units, as recent events in the DRC have shown. As one participant put it, one must “strike the right balance between incentives, punishment and trust.”

In this context it is imperative to develop procedures on first, what mitigating action local partners in breach of human rights must take and, second, on the timeframe for these actions as local capacities in this field are in most cases objectively quite limited. Several participants urged inviting the host government to participate in the development of such corrective measures.

HRDDP in the Field – Lessons Learned from the DR Congo, Somalia, Côte d'Ivoire, South Sudan

DRC – MONUSCO

A chain of events that took place around Goma in November 2012 drastically illustrated one central dilemma in the implementation of HRDDP. During their withdrawal from the city, two units of the FARDC (*Forces Armées de la République Démocratique du Congo*) committed numerous cases of rape. While the UN put considerable pressure on the DRC government to prosecute those guilty, the units in question were vital for the defense of Goma against the M23 militia and therefore MONUSCO could not possibly withhold all support from them. While the dilemma remains unsolved, the episode led to several changes in MONUSCO's approach. UN peacekeepers are now engaging local FARDC units much more intensely on the subject of Human Rights. Monitoring and training activities have also been increased. However, the communication and cooperation with both the UN country team in the DRC and Congolese civil society actors still needs to be improved.

Somalia – AMISOM and UNSOM

UNSOM is now also tasked with providing assistance to the *Somali Armed Forces* (SAF), in addition to its ongoing support for the AU operation AMISOM. Yet screening SAF units as required under HRDDP has proven extremely difficult due to a lack of information. The situation is made even more challenging by the fact that AMISOM is cooperating with several Somali militias outside of the SAF who have gruesome Human Rights records. In addition, the Ethiopian troops deployed in Somalia, which might soon be re-hatted into AMISOM, have also been accused of grave HR violations. Yet because of AMISOM's key role in providing security, it is politically impossible to withhold UN support from the AU operation.

One participant noted that there exists a lack of knowledge and understanding, and particularly of ownership of the UN HRDDP within AU structures, beginning at the very top. Much work remains to be done in order to make the policy a part of the AU system. It must also be borne in mind that AMISOM as it is currently configured is incapable

of implementing HRDDP – or a future AU equivalent – as it does not possess an HR component. Other participants commented that HRDDP was originally never meant to be implemented in support of a peace enforcement operation like AMISOM and warned that the UN might have to re-think its relationship with AMISOM as a result.

South Sudan – UNMISS

During its first two years of existence UNMISS had not provided significant direct support for military operations of the *Sudan People's Liberation Army* (SPLA). The support provided had mainly been ad hoc support of a logistical, political or technical nature.¹

The Mission does not have the lead role in the national SSR process in which bilateral donors are much more prominent. Participants reported some improvement of the HR record of the SPLA although this occurred in spite and not necessarily because of the application of the HRDDP. This was achieved mainly through a broad engagement of SPLA commanders at all levels. UNMISS adopted standard operating procedures (SOP) for the implementation of HRDDP and has created a HRDDP Task Force to oversee its implementation. Until December 2013, the Task Force has processed approximately 20 requests for support and there has been no case where UNMISS was forced to withdraw support from an SPLA unit, and only one case where requested assistance was withheld. It was noted that the HRDDP does not distinguish that some types of support may be more problematic for human rights than others, nor between routine as compared to specific requests for support.

Three key challenges were identified: First, there remains a certain resistance by some members of the political and military leadership of the Government of the Republic of South Sudan (GRSS) to HR advice by UN staff. Second, better cooperation with the UN country team in implementing HRDDP is required. Third, information gathering on SPLA units needs to be improved to allow a meaningful risk assessment and monitoring. Currently, reports about HR violations are in many cases too vague to be attributable to specific SPLA units, let alone individuals.

Côte d'Ivoire – UNOCI

UNOCI developed standard operating procedures for the implementation of HRDDP in close cooperation with the UN country team and communicated them to local partners. In addition, the mission also reached out to key international actors, particularly France which has a military presence in Côte d'Ivoire. Participants reported that this engagement resulted in strengthened cooperation arrangements and enhanced confidence of all parties in the international community's support to address the challenges in Côte d'Ivoire.

Several challenges have yet to be resolved, however. The fact that Côte d'Ivoire does not have an effective SSR program, for instance, is a serious threat to the long-term stability of the country. After the end of the conflict, the militia of one of the parties (the *Forces Nouvelles*) effectively became the national army and it continues to be regarded with mistrust by a part of the population.

“Robustness,” New Technologies and Asymmetrical Threats

This session was kicked off by brief updates on current developments in Somalia, Mali, and the DRC.

Somalia

The Secretariat and the Security Council both feel that the situation in the country is not yet ripe for the deployment of a UN peacekeeping operation and that therefore a reinforced presence of AMISOM in a peace enforcement role remains necessary. Thus, the SC in late 2013 mandated the enlargement of the AU mission by ca. 4,000 troops and in addition provided the *Somali Armed Forces* with non-lethal support by giving the SAF access to UN logistical assets and to a newly established trust fund. There will be no SAF financing through assessed contributions, however.

Mali

The UN's mission in Mali (MINUSMA) is the first peacekeeping operation deployed in a counterinsurgency environment. Under the model of “parallel forces,” MINUSMA is mandated as a stabilization mission, while counterinsurgency activities are the responsibility of the Malian army and the

¹ This report is based on discussions that took place prior to the December 2013 crisis. As a consequence of the outbreak of hostilities all existing support was ended.





USG Hervé Ladsous inspects one of the new MONUSCO UAVs; the blue berets representing UN Peacekeeping arrive in Mali in June 2013; MONUSCO Deputy Force Commander Maj. Gen. Jean Baillaud meets with elements of FARDC during a joint operation against ADF militia in the Beni region.

bilateral French *Opération Serval*. In spite of this division of labor, asymmetrical attacks on military and civilian UN staff are a very real threat. In an encouraging development, several European countries have contributed valuable assets to MINUSMA. The mission was therefore able to create an “Information Fusion Cell” staffed by military officers from mainly Scandinavian troop contributing countries, and now also possesses dedicated counter-narcotics capabilities.

DRC

The successful attacks by the M23 militia group around Goma in November 2012 radically transformed the political environment of the UN’s engagement in the DRC. Frustration about the perceived passivity of MONUSCO forces mounted within the UN system, among member states, and the population of the DRC. After the crucial agreement on a framework for regional cooperation between the DRC, Ruanda and Uganda, an additional military force was generated by African states and integrated into MONUSCO. This “Force Intervention Brigade” (FIB) was unique in both its mandate and its capabilities. For the first time, a component of a UN peace operation was tasked in SC resolution 2098 with offensive operations aimed at “neutralizing armed groups.”

This change of mandate and capabilities proved to be effective against the M23 in the course of 2013. The three troop contributing countries (TCCs) involved in the FIB (South Africa, Malawi, and Tanzania) were fully committed politically to the agreed goal and provided their troops with advanced equipment in order to achieve it. The improved cooperation between the political and military leadership of MONUSCO, UN headquarters and the FARDC also contributed to the success.

This introduction stimulated a lively debate. At its center was the question of what resolution 2098 and the deployment of the FIB mean for the future of UN peacekeeping. There was discussion to what extent this new type of “super-robust” or “Chapter VII+” operations blurs the line between peacekeeping and peace enforcement and challenges core UN principles laid down in the Brahimi Report and the Capstone Doctrine. The FIB’s offensive operation in close support of the FARDC against M23 clearly stretches the concepts of consent of the parties and impartiality to their limits. Many participants called for a broad debate to (re)create a common understanding of the scope and limits of robust peacekeeping. One commented: “At the moment, doctrine is chasing practice. Sooner or later this will create major tensions between Council, Secretariat and the major troop contributing countries.” Another replied: “Maybe it is time for a new Brahimi Report!”

Some speakers warned that in the DRC and possible similar cases in the future, the UN risked becoming one of the parties to the conflict – and be treated as such by its opponents. In addition, there is the risk that troops for such high-risk operations might primarily be provided by countries with a national interest in the conflict, which would not be accepted as impartial at least by some local actors. Both developments could lead to growing attacks on military, as well as civilian, UN staff, making humanitarian and development work much more precarious. Opposition within the respective components of the UN system and also the NGO community against more assertive mandates was therefore growing.

In this context, several speakers expressed their conviction that it was only a question of time before both military and civilian UN staff became

MONUSCO's Force Intervention Brigade | Facts & Figures

Originally established on 28 March 2013 through UN Security Council Resolution 2098, for an initial period of one year “on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping” (paragraph 9) and confirmed by resolution 2147 of 28 March 2014.

Task

“[...] carry out targeted offensive operations [...] either unilaterally or jointly with the FARDC, in a robust, highly mobile and versatile manner and in strict compliance with international law, including international humanitarian law and with the human rights due diligence policy on UN-support to non-UN forces (HRDDP), in cooperation with the whole of MONUSCO, prevent the expansion of all armed groups, neutralize these groups, and disarm them in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC and to make space for stabilization activities” (paragraph 4b of resolution 2147).

Scope

- 3,069 personnel provided by South Africa, Tanzania, Malawi.
- Three infantry battalions, one artillery and one special force and reconnaissance company.
- The FIB forms part of MONUSCO's generally mandated strength of 22,016 total uniformed personnel of which 19,815 are military.
- Estimated FIB-related additional costs: approximately \$140 million over a full year.
- MONUSCO's approved budget (1 July 2013 – 30 June 2014): approximately billion \$1.45 (A/C.5/68/21).

Leadership

- MONUSCO Head of Mission: Special Representative of the Secretary-General Martin Kobler (Germany);
- MONUSCO Force Commander: Lieutenant General Carlos Alberto dos Santos Cruz (Brazil);
- FIB Commander: Brigadier General Ramadhan Abdul Kimweri (Tanzania).

Further Reading

The UN Intervention Brigade in the Democratic Republic of the Congo, Major General (ret.) Patrick Cammaert and Fiona Blyth, International Peace Institute (IPI), July 2013.

targets of asymmetrical attacks. Others agreed but pointed out that terrorists could not be appeased by the UN's behavior. In fact, the worst attacks on UN personnel in the past did occur in locations without a robust peace operation, such as Bagdad, Algiers and Abuja.

“Super-robust” operations might also pose a threat to the legal position of peacekeepers who could in such cases be classified as belligerents and thus fall under the jurisdiction of the *International Criminal Court* (ICC). Several participants also cautioned that it was only a question of time before an offensive operation went wrong and produced “collateral damage” in the form of civilian casualties. They also wondered if the Security Council and the Secretariat were aware of this danger and prepared for the political fallout of their decisions.

Other speakers responded that under certain conditions highly robust operations were unavoidable in order to protect civilians – a task that the local population, member states and the international public absolutely expect the UN to fulfil. As one participant said: “The UN does not have the option of *not* protecting civilians.” He also noted that the loudest calls for more aggressive action against perpetrators of HR violations sometimes came from humanitarian NGOs. This presents an example of peacekeepers being criticized by some member states, NGOs and the media first for not enforcing a universally accepted end, and then for employing the only means capable of achieving it.

Both the supporters and the critics of “super-robust” operations agreed, however, that this approach could only be successful when it is part of a broader political strategy. It must enjoy



support not only among the Secretariat, Security Council and troop contributing countries, but also among regional actors in the conflict area. And it must be accompanied by increased civilian peacebuilding efforts. One participant emphasized, for example, that the success achieved by the FIB could only be made sustainable through a successful SSR program – something that all international efforts in the DRC have so far failed to achieve.

The discussion then turned towards the operational challenges of future “super-robust” operations and the opportunities provided by the introduction of modern technologies in this context. It was noted, for example, that currently the UN Secretariat is not an operational military headquarters, it is rather a political headquarters. Operational control rests with the local SRSB and the Force Commander. It might become necessary to adjust this Command and Control arrangement to make it fit the new realities of more and more robust peace operations.

Workshop participants then listed a number of military requirements for the success of such operations. One went so far as to call the fundamental reform of the support system “the elephant in the room” in all discussion on future robust operations. They require, among others: a faster response time in force generation; re-designed logistical and medical support packages; and equipment that is more mobile and capable of functioning in adverse environments such as deserts or rain forests and at night. It was suggested that the UN might need to move away from its current approach of standardized peacekeeping forces towards units made-to-measure for each specific operation and provided with high-tech assets, particularly in the area of intelligence gathering. Such advanced technologies that improve not only operational effectiveness but also force protection include unmanned aerial vehicles (UAVs), infrared sensors, and ground radar.

This high-end equipment is most readily available to the armed forces of Western countries – leading one participant to wonder if this situation might not represent an opportunity to bring these nations back into UN operations in a way that is useful to the UN and comparatively cheap and

risk-free for them. As mentioned above, there are already some encouraging developments in this direction, such as the MINUSMA’s “Intelligence Fusion Cell.”

Following up on the issue of intelligence, several participants commented that attitudes within the UN system had changed remarkably. Until recently, as one put it, “‘intelligence’ was a dirty word in New York.” Today it is broadly accepted that the UN needs to develop capabilities in this field, and the peace operations in the DRC and Mali are in the process of doing so. In fact, the first flight of a UN UAV took place in eastern DRC during the course of the workshop. However, there are several hurdles to the deployment of UAVs: *first*, their use depends on the consent of the host government; *second*, the operation of UAVs in border areas – where they are operationally particularly useful – often raises suspicions and therefore protests by neighbouring states; *third*, so far no consensus has been found on the questions of the drones’ operational control, and the analysis, storage, and transmissions of the data received from them.

Finally, the question was raised if greater robustness, with its much greater use of intelligence, might have negative consequences for UN integration. As several participants pointed out, the growing need to protect sensitive information and sources would limit decision-making processes to smaller groups than is current practice in the UN: “need-to-know” might replace “integration.”

Abbreviations

ADF Allied Democratic Forces | **DPA** Department of Political Affairs |
OCHA Office for the Coordination of Humanitarian Affairs |
OLA Office of Legal Affairs | **OSRSG/CAAC** Office of the Special Representative of the Secretary-General for Children and Armed Conflict
PBSO Peacebuilding Support Office | **UNDP** United Nations Development Programme | **UNHCR** United Nations High Commissioner for Refugees | **UNICEF** United Nations Children's Fund |
UNODC United Nations Office on Drugs and Crime

Conclusion

In the final session, participants focussed on collecting open questions, best practices and recommendations on the two main subjects of the workshop, the *Human Rights Due Diligence Policy* and *Robustness*. It bears stressing that the following items do not constitute internally consistent work plans; they are lists of concrete, but sometimes contradictory, Do's and Don'ts.

HRDDP

- Develop and then communicate a consistent application of HRDDP by UN headquarters, field missions, and country teams including by promoting its constructive aspects of more responsible engagement;
- Continue and expand the development of SOPs for HRDDP implementation;
- Mainstream HRDDP into all UN training activities to non-UN security forces;
- Tackle the “turnover problem:” military units rotate every six months, leading to a constant loss of institutional memory;
- Provide more information on HRDDP to all parts of the UN system and to partners such as other international and regional organizations, NGOs and bilateral donors;
- Engage in particular the AU and the African sub-regional bodies to promote the creation of similar policies;
- Provide sufficient resources to gather and analyze information for risk assessments;
- Develop rapid assessment methods in line with operational necessities;
- Be aware of the interconnectedness of HRDDP and successful SSR programs;
- End the widespread culture of impunity for HR violations, beginning at the top;
- Find practicable solutions to the unavoidable HRDDP dilemma: the key local partner guilty of HR violations;
- Continue working on guidance on mitigating action to be taken by local partners in breach of HR and on the timeframe for these actions;
- Manage expectations, particularly with regard to time horizons, or be prepared for a backlash in case of a perceived lack of progress;
- Gather, in a more regular way, good practices and lessons learned on the implementation of HRDDP.

“Robustness”

- Promote debate among all stakeholders about the evolution of peacekeeping doctrine;
- Develop a concrete agreement between the Security Council, the Secretariat and the major TCCs on the scope and the limits of robust peacekeeping;
- Develop adequate rules of engagement and reach an understanding on whether they constitute “the floor or the ceiling” for a unit commander’s actions;
- Pay close attention to regional dynamics and wherever possible create formal frameworks to guarantee neighboring states’ buy-in – and be aware that robust actions are “not the right tool for every job;”
- Be prepared politically and practically for rising numbers of attacks – both conventional and asymmetric – on military and civilian UN personnel;
- Be also prepared for the political consequences of “collateral damage” caused by robust actions by UN troops or local partners;
- Define the role of HR components of UN missions in robust operations: can and should they investigate their own “intervention brigades?”
- Clarify the possible change of the legal status of peacekeepers engaged in robust interventions and discuss political repercussions with all stakeholders;
- Adapt existing Command and Control as well as mission support structures to the requirements of robust operations;
- Improve intelligence gathering and analysis capacities of UN peace operations through the introduction of advanced technologies;
- Engage particularly Western nations to generate high-tech assets for UN missions;
- Take account of the operational as well as political limitations of advanced equipment such as UAVs;
- Be aware that intelligence-led operations will have negative consequences for UN integration;
- Re-focus UN attention on SSR programs as a precondition for long-term stability.

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