INPUTS TO OCHA ON A PEACEKEEPING OPERATION IN MALI

Civilian harm is a risk in any military intervention, including peacekeeping operations, such as the one being considered for Mali. While a peacekeeping force has an obligation to abide by international law, it also has an interest in going beyond its legal responsibilities to proactively mitigate the impact of its operations on civilians. Modern military operations leave no doubt that effective mitigation of civilian harm is a fundamental requirement for mission success.

There are several best practices emerging to mitigate civilian harm including:

- Tracking of civilian harm including investigations into incidents of harm and analysis of operations to better avoid harm;
- Proactive planning by DPKO and force commander to establish a civilian protection mindset including a clear definition of protection in the mandate and complementary ROEs;
- Specific training on operationalizing rules of engagement (ROE) with a clear emphasis on avoiding harm to civilians particularly during use of lethal force; and
- Creation of a robust civilian harm response and amends programs.

RESOLUTION LANGUAGE

A UN resolution on Mali should highlight international humanitarian law obligations and additional precautions the peacekeeping force should take to minimize and mitigate civilian harm. Therefore, we suggest the following for the upcoming resolution:

“Urges Member States, acting nationally or through regional arrangements, to ensure pre-deployment training for all military forces on international humanitarian and human rights law, the development of formal rules of engagement that prioritize civilian harm mitigation, the creation of a mechanism for tracking and analyzing civilian harm caused by the force to improve efforts to avoid civilians, and a plan for comprehensively responding to civilian harm caused by the force that includes public recognition of civilian losses and amends.”

CIVILIAN PROTECTION RECOMMENDATIONS

Civilian Casualty Tracking and Investigation

Tracking civilian harm is an emerging best practice for mitigating civilian causalities and damage to civilian property resulting from military operations. In 2008, ISAF established a Civilian Casualty Tracking Cell (CCTC), later called the Civilian Casualty Mitigation Team (CCMT) to respond to incidents of harm caused by international forces in Afghanistan. AMISOM forces in Somalia are also in the process of creating a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC), endorsed by UNSCR 2036 in February 2012 and further supported by UNSCR 2093 in March 2013.

Establishing a similar mechanism should also be a priority for peacekeeping forces in Mali. Not only could this mechanism be used in Mali to report to the UN on mission progress, to respond publicly to any alleged civilian harm, and to, eventually, help identify civilians in need of help to rebuild. It could be employed for collecting and analyzing data on civilian harm to continuously update procedures to avoid causing further harm. These are benefits to both the mission and to the civilian population.
We stress that a mechanism should be created through which civilian harm can be tracked, investigated, analyzed for opportunities to improve and responded to, including directly to war victims, the UN and the media. The mechanism could also be a first stop for reporting civilian harm that violates international law, to then be handed over to the proper authority.

We recommend a “cell”, which would contain personnel with experience in data management, data analysis, public relations, international law and human rights. The cell should be set up before operations commence, as it becomes more challenging to improve operations if data is not recorded from the beginning.

Definition of “Protection” of Civilians

Any UNSC resolution authorizing a peacekeeping operation in Mali should explicitly define the parameters of that operation with regard to the civilian population. All troop contributing countries must be crystal clear on the parameters of use of force.

If UN peace forces have a POC mandate and are to proactively protect civilian populations from violence, they will require ROE that will afford them enough latitude to successfully fulfill that mandate. However, this also means that civilians may be at increased risk of getting caught in the crossfire. This should be properly planned for, including with training on best practices in civilian harm mitigation. If UN peace forces have a self-defense mandate, troops will still need to understand how to avoid civilian harm in those instances where they come in contact with armed groups (i.e. they should have an indirect fire policy).

Rules of Engagement

DPKO must clearly define the peacekeeping forces’ ROE, including a definition and clear understanding of the concept of ‘self defense’ and when to apply force. ROE should prioritize minimizing harm to civilians and civilian populations during military operations. ROE should go beyond the legal obligations of discrimination and proportionality to ensure the least civilian harm is caused. The legitimacy of the UN force will depend, in part, on its ability not to cause civilian harm. ROE should prioritize, if appropriate, positive identification of targets, restrictions on indirect fire, restraint and tactical patience.

Military Training

Peacekeeping forces must be trained before arriving in Mali on international humanitarian and human rights law and the protection of civilians. Training should focus on best practices in civilian harm mitigation and concrete examples of how to avoid civilians. Training on the mission ROE should focus not just on understanding what they are, but also how to operationalize with a particular focus on when use of lethal force is warranted. Commanders themselves must create a civilian harm mitigation mindset in their planning and continually prioritize this aspect of the operation, both pre-deployment and in theater, as good leadership is the best predictor of adherence.

Amends

Before a military intervention gets underway in Mali, a plan should be in place to address civilian harm caused by the peacekeeping force. This means a consistent method for the force to immediately investigate and publicly recognize civilian harm when it occurs. It also means offering some manner of assistance to civilians suffering losses. Such help can take the form of monetary...
payments, rebuilding, livelihood assistance programs, community aid or other dignifying gestures as culturally appropriate.

Making amends is never a license to harm or an excuse for causing civilian suffering. All violations of international law must be dealt with through the proper official channels.

Monitoring and Reporting

A UN mission in Mali should also have an experienced and well-staffed team of UN human rights observers alongside any peacekeeping force. The team should not only monitor adherence to international human rights and humanitarian law, but also civilian harm that arises from hostilities that aren’t necessarily violations, such as civilian life and property lawfully harmed during combat (i.e. collateral damage), as well as psychological and environmental harm. While this is separate and distinct from a military civilian harm tracking mechanism, the two can be complementary. Findings and recommendations of the mission should be publicly reported to the Security Council at regular intervals. The human rights component should also have adequate security, logistical, and operational support and be deployed within the UN peacekeeping budget.