

Protection of Civilians in Armed Conflict : Interaction between thematic debate in the Security Council and activities in the field

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1. Introduction

The Security Council (SC) picked up a thematic topic of “Protection of Civilians in Armed Conflict” in 1999 and it has continued the open-ended debate on it. This note traces the debate and tries to ascertain what has been discussed and what has been achieved. My main interests are (1) what degree of the “use of force” under Chapter 7 is presumed and (2) what kind of preparation has been made to fulfill the “protection” mandate under Chapter 7 effectively.

So far, SC has adopted five resolutions on the item and I select three significant resolutions. I will consider how the resolutions enhanced the practical activities on the ground and how the experiences in the field are reflected in the resolutions.

2. SC Resolution 1296 (2000) : advocating “pro-active approach”

The adoption of S/RES/1296 reflected the awareness of the need and importance of protecting civilians in armed conflict. It was widely acknowledged that protection of

civilians has great influence on the credibility of various UN activities and that it is closely linked with the “maintenance of international peace and security”. The “pro-active approach” to the protection was begun to be emphasized in many parts including the reports of the Secretary General.

But in the resolution, it was not made clear on what principle the “pro-active approach” is based. In the paragraph 15, SC indicates its willingness to consider the appropriateness and feasibility of temporary security zones when the situation is characterized by the threat of genocide and so forth. This paragraph strongly reflects the argument of the “Responsibility to Protect”. On the other hand, in the paragraph 13 which treats the protection of civilians under imminent threat of physical danger, the only mentioned interveners were peacekeeping missions. In the debate around the resolution, some countries mention to “Human Security”, some to the “Responsibility to Protect” and others emphasized the role of peacekeeping missions. There seemed no common understanding about the principle.

As to the presumed degree of the use of force, there seems no common understanding also. In the paragraph 5, SC notes that the deliberate targeting of civilian populations may constitute a threat to international peace and security and reaffirms its readiness to adopt appropriate steps in such situations. There is no doubt that “appropriate steps” include the use of force by peacekeeping missions under the Chapter 7 at least, but it is not clear whether the use of more robust force such as peace-enforcement is presumed or not.

Following the adoption of S/RES/1296 which advocates the “pro-active approach” and the conspicuous trend of the debate which led to the resolution, peacekeeping missions which have mandate of protecting civilians under the Chapter 7 were established successively. But in early days, such missions were not prepared to make good use of the authority to use force under the Chapter 7. The limitations of activities of UNAMSIL and MONUC well illustrate this reality on the ground.

UNAMSIL, which was established by S/RES/1270 in 1999, was the first peacekeeping mission authorized under Chapter 7 to take necessary action to protect civilians under imminent threat of physical violence. However some hundred personnel were arrested by the rebel group of Sierra Leone in 2000. They could not protect even themselves.

MONUC was also given mandate to protect civilians by S/RES/1291 of 2000, even if with some reservations. But until 2004, it largely lacked ability to protect civilians, such as necessary equipments, training and strategy. This was the reality.

3. SC Resolution 1674 (2006) : concern for effectiveness

In comparison to S/RES/1296, S/RES/1674 emphasizes the viewpoint of “what preparation on the intervening side is required to make protection of civilians by peacekeeping missions more effective ?” This means two things. First, the resolution reflects the reality that peacekeeping missions which had mandate of protecting civilians under the Chapter 7 could not fulfill the mandate satisfactory. Second, as to the degree of the use of force being discussed under this thematic debate in SC, they chose to limit their scope of discussion to the use of force by peacekeeping missions. That is to say, they chose to leave aside the controversy and division among nations around the more robust use of force based on the “Responsibility to Protect”.

As an example which the content of the resolution is realized on the ground, we can pick up the paragraph 14 which relates to the maintenance of the security and civilian character of refugee and internally displaced person camps. It first stresses the primary responsibility of the territorial states and then mentions to the plan that the “existing” peacekeeping missions will contribute to the security in and around the camps. This idea was applied to MINURCAT established by S/RES/1778 in 2007.

The framework of the operation of MINURCAT was (1) to maintain the security of the refugee camps by giving EU troops mandate of protecting civilians and facilitating the delivery of humanitarian aid under the Chapter 7 for some period and (2) to train elements of Chadian police by UNCIVPOL so that Chadian police can gradually take charge of the maintenance of the security of the camps. In this way, UN and EU collaborated and contributed, in the context of peacekeeping, to make it possible that the territorial state fulfils its primary responsibility.

In the paragraph 16, it is stated that the protection of civilians is given priority in various decisions. This statement is reflected in the practices of many peacekeeping

missions. But the degree and the content of “priority” are various, depending on the situation of the missions.

For example, the protection of civilians was given status of “top priority” in MONUC’s mandate by S/RES/1856 in 2008. At the same time, MONUC had mandate to assist the Congolese governmental force. But the force was not free from accusation of its violence against inhabitants, as other armed groups were not. Facing with this dilemma, SC adopted the policy, in S/RES/1906 of 2009, that the support of MONUC to the governmental force’s military operations is strictly conditioned on its compliance with international humanitarian law. However it was not contemplated that MONUC would use force to stop the violence of the governmental force to civilians.

From the viewpoint of enhancing the effectiveness of protecting civilians by peacekeeping missions, the other part of the paragraph 16 of S/RES/1674 is of some significance. Here it is stated that protection mandates should include clear guidelines as to what missions can and should do to achieve goals. In many cases, interpretations of the protection mandates differ among participating national contingents in the same mission and such differences hampered smooth implementation of the mandates. In order to cope with the problem, the need for such guideline is expressed. But there is no mention as to the concrete way in which guidelines are developed. This part of the paragraph does not go beyond the expressing in general terms the need for common understanding on the intervening side.

4. SC Resolution 1894 (2009) : concrete measures for enhancing effectiveness

S/RES/1894 tries to show more concretely what should be done to enhance the effectiveness of the protection of civilians by peacekeeping missions. Compared with 1999 when SC picked up this item first, the world-wide situation of the protection of civilians in the field had not been improved. So during the deliberation which led to the adoption of S/RES/1894, the need for “result-oriented approach” was emphasized.

The main point of S/RES/1894 on the enhancement of the effectiveness of protecting

civilians is making a mission-wide consistent preparation for better achieving of the protection mandate. The framework of the idea which appears in paragraphs 20, 23 and 24 is roughly summarized as follows ;

SC entrusts peacekeeping missions tasked with protection of civilians with clear, credible and achievable mandates, through consultation with all relevant stakeholders and based on accurate and reliable information on the situation on the ground. Secretary General ensure that such peacekeeping missions incorporate comprehensive protection strategies into the overall mission implementation plan.

Reflecting this idea, mission-wide strategies of protection have been developed successively in peacekeeping missions with protection mandates, such as MONUC (MONUSCO), UNOCI, UNAMID and UNMIS. Each strategy contains concept of the protection of the civilians, spheres and mechanism of activities, priority of protection mandate (including priority of each tasks under this mandate), the mission's capability and limits, overall integration and coordination and so forth.

The best example which developing of mission-wide strategy improved the activities on ground may be UNMIS. In UNMIS, the civil sector and the military-police sector had separate protection strategies and there were problems in information sharing and coordination of operations between the two. To improve such situation, SC encouraged UNMIS to develop a comprehensive strategy of protection in S/RES/1870 of 2007. UNMIS at last completed its comprehensive strategy in October 2010, about one year after the adoption of S/RES/1894. The strategy is evaluated that it made possible for UNMIS of more consistent operation.

From the viewpoint of fostering common understanding on the intervening side, the establishment of the unofficial expert group on protecting civilians under SC in 2009 is of some significance. The group meets at the occasions of renewing mandates or newly establishing of peacekeeping missions with protection mandate. It seems to contribute to deepen common understanding among the member states of SC and between member states and the Secretariat including OCHA and DPKO. But China does not participate and Russia only sometimes participates in the meeting.

From the viewpoint of ensuring effectiveness, assessing the degree of fulfillment of

mandates is required. On this issue, the paragraph 27 of S/RES/1894 states that SC reaffirms its practice of requiring benchmarks to measure and review progress made in the implementation of peacekeeping mandates and that SC stresses the importance of including indicators of progress regarding the protection of civilians in such benchmarks. The benchmarks which were included in the exit strategy of MINURCAT are one of such examples. The joint committee of UN Secretariat and Chadian government made assessment on the attainment of the benchmarks. This kind of assessment system is useful not only at the withdrawing stage of missions but also for constant checking of their activities for better performance. It can also be a tool for open assessment in and outside the UN.

5. Concluding remarks

The discussion on the item in SC started by declaring to take “pro-active” attitude for the protection of civilians and proceeded in the direction of “what must be done to improve the performance of actual peacekeeping missions on this issue?” After more than ten years from the beginning, some frameworks and tools which can facilitate common understanding and cooperation on the intervening side have been gradually prepared, as we have reviewed in this paper.

The reason why the discussion has been able to proceed, even if slowly, is that they have limited their argument about the level of the use of force to that of peacekeeping. Even if peacekeeping missions are authorized under the Chapter 7, the principles of consent of the parties, of minimal use of force and of impartiality are applied to them. Discussing in the context of peacekeeping was the only common ground for the debate among the various states with different perspectives. In other words, the discussion in SC on the item has been based on the recognition of the reality about what the only common ground is, and participants have tried to enhance the effectiveness of protection of civilians in the field.

Though the limitation of the argument seems to be set by political consideration rather than legal consideration, it has practical significance. The cases of Libya and Ivory Coast

in 2011 were not in line with this direction. In these cases, intervening force brought decisive advantages to ones of the conflicting parties in the name of the protection of civilians. The cases might have some relevance with the concept of the “Responsibility to Protect” which does not exclude the use of more robust force as peace-enforcement. But at least concerning the presumed level of use of force, peacekeeping and the “Responsibility to Protect” must be clearly distinguished.