

PROMOTING THE RULE OF LAW AND GOOD GOVERNANCE SFA IMPLICATIONS IN INTERNATIONAL INITIATIVES

Edited by
Ludovica Glorioso

Prepared by the International Group of Experts
at the Invitation of the NATO Security Force Assistance Centre of Excellence



**NATO Security Force Assistance
Centre of Excellence Rome, Italy**

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NATO Security Force Assistance Centre of Excellence

NATO Security Force Assistance Centre of Excellence (NATO SFA COE) is a multinational entity accredited by NATO as a “Centre of Excellence” with Italy, Albania and Slovenia as Sponsoring Nations.

By virtue of its high potential deriving from multiple military and civilian professionals and the use of a holistic and multidisciplinary approach, the Centre is a hub of reference in the Security Force Assistance field at the national, international and NATO level.

It provides expertise to contribute to the development and experimentation of concepts and doctrines. The Centre also acquires and elaborates lessons learned, contributes to the definition of capacity development models in support of local forces in crisis zones where there is a North Atlantic Council approved NATO operation or mission and conducts educational and training activities for instructors, mentors and personnel belonging to other nations.

To broaden its spectrum and benefit from a different perspective, the Centre also collaborates with universities and international civilian and military organizations to provide a unique capability to the Alliance and NATO Partners.



NATO Security Force Assistance
Centre of Excellence Rome, Italy

Foreword

With great pride, I present the first editorial project of the NATO Security Force Assistance Centre of Excellence (NATO SFA COE).

The NATO SFA COE is a joint and multinational entity sponsored by Albania and Slovenia with Italy as the Framework Nation. Since its accreditation by NATO in 2018 following the Italian Government's proposal to the Alliance, the COE has focused on concept development, doctrine, training and education to promote stability and reconstruction efforts for crisis scenarios, becoming the Security Force Assistance (SFA) focal point for the Alliance.

The COE develops all NATO concepts and best practices related to SFA, integrating them in the revision process of existing NATO doctrines and producing independent research and publications.

The radical change in the international landscape in recent years and the increasingly frequent rift between political, economic, social and geographic powers has had a profound effect on military capabilities, structures and doctrines. SFA activities provide military support to local forces in crisis zones to create, develop and maintain sustainable capabilities to strengthen the legitimacy of the local institutions. The activities are not limited only to the provision of training, but are part of an articulated process to ensure local forces are competent, capable, committed, confident and accountable to create the necessary conditions for an orderly transfer of responsibility to local authorities.

In this book, we highlight the important link between SFA and Cross-Cutting Topics (CCTs) and the legal framework with which both NATO personnel and local forces need to comply to promote security and stability. Although CCTs are a range of different topics falling outside of the primary military area of responsibility (e.g. Protection of Civilians, Conflict-related Sexual and Gender-based Violence, Building Integrity), they are important to the success of NATO missions and operations. The CCTs are linked to respect for the rule of law (including human rights and international humanitarian law) and the levers of governance (such as integrity, transparency and accountability) that the representatives of the host nation and civilian and military institutions need to apply to further stability.

Through our collaboration with all the contributors participating in this volume, we hope to encourage an interdisciplinary approach and a productive discussion aimed at identifying important key elements for developing capacity building and related activities in crisis zones within a consistent legal framework.

We hope that this book will be a useful tool in understanding the complexity of the political, military, economic, social and cultural environments in which international military forces and civilians operate when deployed in crisis zones. It should support their common effort to foster the sustainable development of an assisted nation and its institutions.

I am confident that this initiative, which has brought together the varied viewpoints of distinguished experts and peer reviewers to whom I owe my deepest gratitude, will contribute to the promotion and support for the importance of compliance with the rule of law as an essential premise for a durable and stable environment in fragile states.

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Introduction

This manual is brought to you by the NATO Security Force Assistance Centre of Excellence (SFA COE), Rome, Italy. While the views expressed by the individual authors do not necessarily reflect the position or policy of the North Atlantic Treaty Organization, this compendium is an effort to collect diverse views on a vital subject. It comprises ten Chapters, analysing the various aspects and challenges of SFA in crisis zones.

It starts by providing a framework for the strategic context of SFA operations, focusing on best practices to guarantee the establishment of a stable and safe environment. Within this framework, **Emily Knowles** and **Jahara Matisek** provide a practical guide to adopting a peacebuilding approach in fragile states, and analyse lessons learned in planning, monitoring and evaluating the impact of SFA missions. **Alessandro Marrone** examines the strategic context of SFA in the framework of the cooperation between NATO and the EU, focusing on Afghanistan as a case study. Based on the experience of the International Committee of the Red Cross (ICRC), **Gilles Hansoul** discusses the conditions on which training to local forces in SFA operations can improve the respect of International Humanitarian Law (IHL) and provide a safer environment for everyone. **Marc Schibli**'s chapter provides an overview of the UN approach to Disarmament, Demobilization and Reintegration (DDR) activities in relation to SFA.

The second section of the manual focuses on the importance of the protection of Human Rights in crisis zones and its implications for SFA. It starts by highlighting the issue of the Protection of Civilians (PoC) in SFA. **Marianna Tonutti** analyses the evolution of the NATO approach to PoC, from the articulation of the policy to publication of the Allied Command Operations Handbook. **Beatrice Godefroy**, **Sahr Muhammedally** and **Vianney Bisimwa**'s chapter deals with how different security partnership models can affect the Protection of Civilians and the necessity to mitigate harm. Based on the International Criminal Court Office of the Prosecutor (ICC OTP) policy paper, **Rosette Muzigo-Morrison** examines the measures employed by the OTP for the investigation and prosecution of sexual and gender-based crimes in crises.

The last section examines the relationship between state fragility and corruption, focusing on security sector transformation to favour the promotion of integrity and good governance in challenging circumstances. Starting with an analysis of lessons learned in post-conflict countries, **Laura Valli** discusses the importance of promoting prevention measures in the reform framework of crisis zones and supporting initiatives to promote transparency and political stability. **Oana Topala** describes the UN's work towards security sector transformation to promote integrity and good governance to prevent tensions and disparities from becoming violent. Finally, **Nadja Milanova** analyses NATO's engagement in Building Integrity (BI) at the strategic, operational and tactical levels. This chapter elaborates on NATO's approach to Building Integrity and Good Governance in the defence and related security sector and its contribution to the fulfilment of the Alliance's three core tasks – collective defence, crisis management and cooperative security – and the role of embedding BI in training and education at both NATO and national level.

SFA is a mission set that works to ensure a stable, equitable, transparent and predictable security environment that respects international laws and standards. This is essential in areas that are rebuilding from crises and conflict, natural disasters and other challenges to regional stability. NATO is actively working to ensure a healthy and inclusive SFA programme within the Defence Capacity Building efforts for our Allies and Partners.

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CHAPTER 1

A Practical Guide for Advisors in Fragile States:

Peacebuilding Approaches for SFA Programming

Emily Knowles and Jahara Matisek

Abstract

This chapter serves as a practical guide for Security Force Assistance (SFA) providers interested in adopting a peacebuilding approach, in contrast to our previous work that laid the theoretical and conceptual groundwork for why this approach is well-suited to SFA in fragile states. We begin by providing an initial roadmap and rules of thumb for those planning, advising and evaluating SFA at the strategic level, transitioning to the tactical day-to-day mentoring of host nation local forces. Each section contains best practice examples from our research, and practical checklists using our frameworks of the Three Rs of strategic level advising – Resources, Rules of Engagement and Resolve – and the Seven Cs of advising at a local level – Context, Communication, Cooperation, Compliance, Corruption, Conditionality and Continuity. These are informed by our experience in delivering such programmes in challenging locations, and evaluating the efforts of others.

Keywords: *SFA, peacebuilding, best practice, planning, monitoring.*

1. Introduction

Providing SFA in fragile states is a complex task for military advisors working with host nation forces. In regions where levels of violence are high and states lack the capacity (and in some cases the intent) to protect their populations, numerous practical and political challenges prevent SFA from being a straightforward process of promoting knowledge transfer and professionalisation through military training.

Instead, decisions are made about who can be trained and who cannot, and these choices can affect the course of a conflict and the relationships within a state between armed groups, different parts of the security sector (police, gendarmes, national guard, army, special forces) and civilians. Foreign SFA can be an unintentional ‘kingmaker’ as it strengthens parts of a society in which the relative military might of different groups is often one of the most important levers of power.¹ In a weak and factionalised security environment, tactical training activities can have strategic effects, whether or not these are intended consequences of the engagement.

In fragile environments there is ‘no such thing as a perfect partner’,² which means that training comes with the related risks of exacerbating existing inequalities, entrenching the abuse of populations and contributing to underlying drivers of insecurity. Nevertheless, SFA is usually deployed by western capitals seeking a low-risk alternative to large-scale troop deployments of their own forces to counter threats to their national security. Advisers often have limited permissions that restrict their ability to spend time on the ground with local forces, contributing to blind spots when it comes to evaluating whether partners are respecting human rights, cooperating with civilian authorities, working harmoniously with other security providers and protecting all segments of their populations. This presents a significant hurdle to monitoring any negative effects of SFA on security sector fragmentation, factionalism or predation.

Because western national security priorities funnel substantial amounts of SFA towards countries or regions facing active threats from terrorism or insurgency, the driving priority for many trainers is to improve partners’ combat effectiveness. As a consequence, reforming civil-military relations, creating a more cohesive security sector and addressing the reality that partner forces may themselves be factionalised, politicised and contested are often seen as longer-term priorities that can be addressed once a greater level of stability is achieved. Unfortunately, contemporary experience in Iraq, Syria, Afghanistan, Somalia and throughout the Sahel suggests that this approach has significant drawbacks, from creating ‘islands of excellence’ of highly capable small units that are unable to improve a broadly dysfunctional security sector to empowering

¹ Emily Knowles and Jahara Matisek, ‘Western Security Force Assistance in Weak States’, *The RUSI Journal* 164, no. 3 (16 April 2019): 10–21, <https://doi.org/10.1080/03071847.2019.1643258>.

² Emily Knowles, ‘No Such Thing as a Perfect Partner: The Challenges of ‘By, With and Through’’, *PRISM* 8, no. 4 (2020): 68–83.

predatory forces.³ The net result is often a failure to protect civilians from harm, or to provide a stable foundation for sustainable peace.

Security assistance rarely happens in a vacuum and the solutions to this problem require a level of buy-in and cooperation between civilian, military, national and international actors. We propose a peacebuilding approach to SFA in fragile states which shifts the priority for military training activities towards build relationships of trust both across fragmented security sectors, meaning between informal security providers, armed forces, police, gendarmes and national guards, and around them, meaning between the security sector, civilian ministries, parliaments and civil society.

³ Abigail Watson and Megan Karlshøj-Pedersen, 'Fusion Doctrine in Five Steps: Lessons Learned from Remote Warfare in Africa' (Oxford Research Group, 6 November 2019), <https://www.oxfordresearchgroup.org.uk/fusion-doctrine-in-five-steps-lessons-learned-from-remote-warfare-in-africa>; Abigail Watson and Liam Walpole, 'Why Is the UK Going to Mali?', Oxford Research Group, 30 July 2019, <https://www.oxfordresearchgroup.org.uk/blog/why-is-the-uk-going-to-mali>;

Emily Knowles and Abigail Watson, 'No Such Thing as a Quick Fix: The Aspiration-Capabilities Gap in British Remote Warfare' (Remote Warfare Programme, July 2018), <https://www.oxfordresearchgroup.org.uk/no-such-thing-as-a-quick-fix-the-aspiration-capabilities-gap-in-british-remote-warfare>;

Liam Walpole and Megan Karlshøj-Pedersen, 'Remote Warfare and the Practical Challenges for the Protection of Civilians Strategy', June 2019, <https://www.oxfordresearchgroup.org.uk/remote-warfare-and-the-practical-challenges-for-the-protection-of-civilians-strategy>.

1.1 What does peacebuilding mean in the context of SFA?

In fragmented security sectors, there is a wide range of informal and formal security actors. Militia leaders may have political roles, soldiers may be involved in organised crime and militancy and civil-military relations can be fragmented, factionalised, politicised, personalised and corrupt. The idea that any one part of the security landscape exists to protect the lives, livelihoods and interests of the whole population is often lacking.

This reality presents major ‘red flags’ when it comes to assessing the risk of host-nation forces engaging in human rights abuses or failing to protect civilians. However, rather than simply deciding whether the risks outweigh the national security imperatives, we believe that SFA would have better long-term outcomes in these environments if programmes were designed at least in part to proactively address these pathologies.

A peacebuilding approach uses SFA to increase cooperation between various formal and informal elites in a weak state, facilitating the emergence of more inclusive, durable political bargains that will deliver better protection outcomes for civilians in the longer term. This approach places less emphasis on developing conventional military power and more on facilitating and improving relations between the different factions within the security sector and between the security sector and the civilian population.

This means moving away from a ‘bulk training’ approach where success is determined by the numbers of troops trained to shoot and towards a ‘quality of interactions’ approach that prioritises relationship-building and enduring effects. Expanding SFA programme participation to a wider range of formal and informal actors means that activities like joint planning exercises, collaborative war-games and strategic discussions take on a new dimension because different parts of the security sector are completing them together. Success hinges on structuring interactions and building relationships that can increase trust and reduce drivers of instability and extremism at the same time as building the capacity of all actors to fulfil their distinct roles in positively contributing to peace and security. Ultimately, it means fostering a collaborative vision for each actor and segment of the government and society, identifying that they share more in common than they realise.

2. The planning phase

A principle that should be a mainstay of any SFA programme is *primum non-nocere* – first, do no harm. SFA plans and objectives should be frequently re-evaluated against the potential for training to harm stability in a fragile state. This is less about ensuring that programming is compliant with International Humanitarian Law (IHL) or internal risk assessments for providing support to states although these are important, and more about understanding that any SFA intervention is a political act that will generate local second- and third-order effects.

The potential for harm when providing SFA in fragile states primarily revolves around the consequences of empowering some segments of the population over others. SFA can shift the balance of power in a weak state or result in the capture of the security sector by elites who only represent a narrow portion of the population. To combat these risks, SFA programming should be designed to include a wide range of participants from across the informal and formal security sectors, civilian leaders and civil society. While some combat training should continue, the main objective of the programme should be to promote meaningful participation and interactions between different security forces, government officials and civil society actors. Carefully planned and executed SFA programmes can contribute to these conditions, adding to the ‘enduring effects’ of the programme on stability precisely because there is buy-in from all relevant actors, including those most disenfranchised.

Deciding who to include requires an in-depth understanding of the context, including how different actors in the state, local forces and society are likely to react to the choices made in the design and provision of SFA. It also means getting a good read of the human and political terrain, identifying those actors with a genuine interest in working towards peace and conflict resolution and evaluating the power of potential spoilers and blockers. Understanding this difficult social milieu is necessary to define who should be involved in the SFA process, acknowledging that actors who feel excluded may use their political or military power to undermine the programme. While these factors will need to be assessed and mapped in the planning phase, there is also a need to check and update assumptions as practitioners start to implement activities on the ground to make sure that they have a clear picture of who stands to win and lose from the programme.

This is even more complicated than it sounds because planners must avoid assumptions about the extent to which local groups will use their knowledge and links with the community to solve problems and reduce support for violent

actors. Just because groups are local, this should not be assumed to be a proxy for local legitimacy. This is where community consultation as a part of detailed mapping exercises becomes essential to avoid violent competition between different groups vying for assistance. Rather than allowing international actors and their local government or military counterparts to set the criteria for group inclusion alone, there should also be a locally-led process driven by community responses to the question of: ‘Who do you support to provide your security and why?’ Achieving such understanding and some level of consensus can facilitate the conversion of local warlords into ‘peace lords’ that see value in constructive actions and harmonising behaviours that contribute to stability.⁴

The challenge of launching a community consultation exercise during periods of acute instability should not be understated. However, nor should it be exaggerated and assumed impossible. Many organisations including Friedrich Ebert Stiftung, Mercy Corps or SIPRI⁵ run complex questionnaires and stakeholder interviews across the Sahel, Horn of Africa and the Middle East. Their design and approach could be adapted or supported by SFA planners to collect nuanced insights into security provision that they often lack. By triangulating the results of their own stakeholder mapping, the views of their partners in the recipient’s Ministry of Defence (MOD) or Ministry of Interior (MOI) and the information gathered from local communities, it will be easier to create a template for participation that reflects the security sector as it is, rather than what SFA donors imagine or wish.

2.1 Best practice: Understanding the context

Before deploying to a region to provide SFA, advisors need to understand the operating environment. While it should be almost a given that advisors deploying to an area should be well-studied in the host-nation culture, history and language, the reality is that most advisor forces are ad hoc and have minimal opportunities for preparation. Thus, while it would be ideal to give an advising force several months to prepare, it is more likely that they will have less than a few weeks, with limited time to become competent with the language and cultural nuances of their deployed country.

To mitigate some of the disadvantages of the ad hoc short-term training team model, the British Army has developed a new Specialised Infantry Group (SIG) that is designed to professionalise ‘advising’ as a key role within the military.

⁴ Themnér anders, ed. Warlord democrats in Africa: ex-military leaders and electoral politics. Zed Books Ltd., 2017.

⁵ Stockholm International Peace Research Institute, <https://www.sipri.org/>

Rather than deploying as individuals, the Group contains ‘sister’ companies from the same battalions of experienced advisors that can deploy on rotation for longer periods of time. The fact that units are housed and trained together facilitates communication and lessons-learned sharing between outgoing and incoming advisors. Repeat rotations of the same personnel also boosts continuity, relationship-building and trust with their local partners. While the core of the SIG is formed from the light infantry, they have successfully integrated personnel from cavalry, medical, logistics and other backgrounds once deployed.

This was the model used for the British training team in Baidoa (Somalia) until COVID-19 cut short the last ten-month deployment by a month in April 2020. The latest company to deploy took over from a sister company from the same battalion, easing the transition as staff in the higher headquarters were already fully briefed. The mission put SIG trainers with specialised medical, logistics and cavalry personnel to deliver tactical training to the Somali National Army aimed at helping them push al-Shabaab out of the region.

In the absence of fully-formed units, SFA planners can still make use of the existing knowledge and expertise both within their governments, within NATO and across the wider international expert community. This can boost their knowledge quickly enough to ensure that ‘do no harm’ planning cycles and programmes are effectively designed to deliver peacebuilding objectives. Embassies, civil society, academia and other government departments and ministries are likely to have detailed knowledge on aspects of the situation on the ground that will be useful for SFA planners, and they will also likely have contact information for you to establish trusted networks of formal and informal partners. Ensuring that there is time to consult different stakeholders and resources to set up meetings and briefings – including virtual roundtables – before getting on the ground is essential to maximising the benefits of cross-government coordination and working relationships.

Some guiding questions to ask civilian and security experts

- 1) Who are the formal and informal security providers operating across the country?
- 2) What are the relationships like between security providers that overlap in terms of territory or areas of responsibility?
- 3) Do they compete or cooperate?
- 4) Who do local populations trust to provide their security and why?
- 5) Are there units, identity groups or individuals within the armed forces and wider security sector who have more or less prestige than others?
- 6) What is the formal and informal power balance between the government, legislature, civil service, military and civil society?
- 7) Are there groups within society who receive better protection than others from security providers?

2.2 Checklist for SFA planners

Resources:

- Funding of SFA should not be treated as guaranteed and requires intensive politicking with senior military leadership to ensure they lobby on behalf of the importance of the advisor mission. Collect data on programme outcomes so that actions and effect can be presented to committees tasked with political oversight. This ensures good messaging of being a good steward of taxpayer funds and signals a willingness to provide transparency.

Context:

- Undertake a 'PMESII' assessment that considers Political, Military, Economic, Social, Information and Infrastructure conditions.⁶ This is especially important to conduct at the sub-state level, where fragmented institutions can lead to different regions having different contextual realities.
- Assess urban v. rural conditions within the PMESII construct and map which political leaders are powerful, including identifying informal

⁶ NATO Allied Joint Doctrine for Counter-Insurgency AJP-3.4.4, https://ndupress.ndu.edu/Portals/68/Documents/prism/prism_8-4/prism_8-4.pdf.

powerbrokers that may wield more legitimacy than the locally elected leaders.

Communications:

- ☑ Begin communications with foreign security partners before arriving, including getting detailed phone and email contact lists.
- ☑ It has become common operating practice for most government and security personnel in a fragile state to rely on *WhatsApp* for reliable communication. Thus, anticipate relaying most information via *WhatsApp* with the advisor team.
- ☑ Begin to encourage seamless and informal communication vertically and horizontally, as this will be the key to organisational success on the ground.
- ☑ Engage with other allies that are providing similar forms of security assistance to the same force to establish effective liaison relations before you start delivering your own programming.
- ☑ Embassies, civil society, academia and other government departments are likely to have detailed knowledge of aspects of the situation on the ground that will be useful for SFA planners. Make time to consult different stakeholders before getting on the ground to maximise the benefits of cross-government coordination and working relationships. In many cases, business leaders and former government or military officials will be good contacts to make as they may have much more influence than assumed, meaning they may act as important levers of power in making certain impossible actions, possible.
- ☑ Map existing weekly meetings and working groups to avoid duplication of efforts. This also means building documented logs and forms so that others can easily take over if there is a need to change SFA leadership or personnel quickly.
- ☑ Set up a line of communication with personnel rotating out of the area to get quick anecdotes and advice that will help you build rapport with your partners and minimise the disruption during the SFA handover and transition.

Conditionality:

- ☑ Know what your red lines are and communicate them with your partners before you assist.
- ☑ Make sure you have systems in place to monitor compliance and donor spending, including the authority to cancel classes, aid and programmes if partners deviate from agreed objectives or behaviours. Holding the purse strings is vital for bringing about change in partner behaviours and compelling reforms.

2.3 Best practice for implementers

Militaries are not built overnight. Managing expectations for the political and military leadership is vital to ensuring that an SFA mission can generate ‘enduring effects’. Otherwise, the advisor team runs the risk of only creating short-term gains known as the *Fabergé egg* army problem: big and expensive militaries that crack when the advisors are not around to monitor and support.⁷ Much existing SFA programming can be used to reform relationships and build trust without making huge adjustments to the activities offered, as long as the participant list has been broadened in the planning phase to include the full informal and formal security spectrum and civilians from key ministries, legislative committees and civil society organisations. Bringing in a wider selection of actors to participate in joint planning exercises, such as war-gaming a national disaster or crisis facilitates a shift towards a ‘whole-of-society’ approach. Working through a collaborative exercise helps to improve participants’ perceptions of each other as important actors in the collective security of their community and state, forging new bonds and understanding. By changing perceptions, working through a crisis simulation breaks through perceptions of distrust, demonstrating that cooperation is essential to resolving problems effectively and efficiently.

The nature of such an engagement should be playful in a way that breaks down barriers, showing that everyone’s skillsets are needed in case of a real emergency and contributes to institution- and trust-building. Asking military participants to play civilian roles and vice versa can increase participants’ empathy and understanding of the priorities and constraints experienced by their counterparts. Having access to real-time discussions and reactions from

⁷ Jahara Matisek, ‘The Crisis of American Military Assistance: Strategic Dithering and ‘Fabergé Egg’ Armies’, *Defense & Security Analysis* 34, no. 3 (2018): 267–90.

people with different visions of defence and security can also help participants tackle controversial issues together.

2.4 Delivering Human Rights training: A Vignette

Human rights training is a part of most western military assistance missions. However, changing attitudes and behaviour both on and off the battlefield is a long-term endeavour. As an Afghan Army Colonel cautioned American advisors in 2013: ‘Things were better under the Russians...For one thing, there were no human rights...There should be no human rights in war’.

Connecting with foreign military personnel in completely different political contexts will be the greatest hurdle. For instance, this same Afghan Army Colonel would go onto say ‘It [human rights] works in other countries because the people are educated and the government and the police function,’ adding ‘Here [Afghanistan] the people aren’t educated and the government is corrupt. If I catch a guy planting an Improvised Explosive Device (IED), what am I supposed to do with him? I turn him over to the police and someone bribes them or gives money to the judge and they release him. Now he’s free to go set more IEDs-and he wants revenge against me’. The Colonel concludes ‘It’s better to just shoot him...There should be no human rights in war’.

- 1) How do you convince a high-ranking foreign military officer to be open to your techniques and lesson plans on sensitive topics?
- 2) What would you do to allay similar opinions your trainees might raise?
- 3) Can you think of any unconventional way of overcoming this issue, which could benefit from having a wider range of actors in the room for the discussion?¹

¹ ‘You Make Us Soft’, the American Scholar, <https://theamericanscholar.org/you-make-us-soft/>.

3. Identifying shared priorities across the different stakeholders in SFA

Involving a wider range of participants in SFA activities means that there will also be a full spectrum of priorities and perspectives on defence and security to manage. This may seem daunting for SFA advisors used to focusing on comparatively well-defined concepts such as combat effectiveness and battle readiness. However, whatever the level of the engagement, there will be shared security priorities that emerge from the conversations between participants. At the tactical level,

examples could be re-establishing security in a particular community to allow marketplaces and livelihoods to resume, boosting the state security presence along particular transport corridors and managing land disputes between displaced and local populations in an area. High-ranking participants may also identify broader strategic challenges such as disarming, demobilising and reintegrating militia fighters or defining a national security and policing strategy.

These shared priorities should be used to inform exercises and drills, ensuring that SFA activities help prepare participants for the challenges they will face when they leave the classroom. In this way, SFA advisors help partners conduct their own strategic assessments and gap analyses of their security sectors providing insight and expertise while recipients plan collaborative responses to existing priorities. Allowing participants to jointly nominate their security priorities is not only a good way to build productive relationships, but it also ensures that SFA is tailored to the views and concerns of an inclusive range of actors, reducing the risk that programming empowers one group over another. Joint buy-in makes it far more likely that positive effects will endure in the long-term. Giving partners the lead in setting training priorities also redresses any imbalance in SFA programmes, where partners are rarely brought into the planning phases of SFA or their concerns are an after-thought, leading to weak local buy-in and the failure of training to fundamentally change the way that partner forces operate in the field.

This model also shifts the onus onto trainers from providing good materials to designing good processes. Extensive research has shown that training fails to correct problematic behaviours and attitudes that are not due to a lack of skills or knowledge.⁸ For example, during field research in Kenya to interview forces who were training local troops to contribute to the African Union mission in neighbouring Somalia (AMISOM), interviewees recounted how their courses on gender were poorly attended. We discussed the challenges of mainstreaming topics into military training that were seen as donor-imposed and the way that a lot of these courses end up being seen as a box-ticking exercise to enable trainees to move on to more exciting combat training, a problem also identified with human rights training in some contexts.⁹ A potential solution was identified. In addition to delivering specific taught content on gender, no female international soldiers were deployed on the training mission. Integrating female trainers into combat exercises seemed more likely to shift attitudes

⁸ Knowles and Matisek, 'Western Security Force Assistance in Weak States'.

⁹ Knowles and Matisek, 'Is Human Rights Training Working with Foreign Militaries?'.

towards women's role on the front lines than a few hours of PowerPoint slides on gender inclusion.

For civilian contributions to SFA to be meaningful, providers must take care to select initial activities that do not place the military at an advantage in terms of their existing skills and competences. A joint planning exercise that seeks to establish the best ways to assault or defend a military position, for example, is unlikely to elicit valuable contributions from civilian attendees. Instead, a joint planning exercise that seeks to identify priority areas (e.g. roads, marketplaces, etc.) to secure, or that chooses a scenario such as a pandemic, a natural disaster or a feud between different identity groups is likely to generate a more balanced discussion that makes the most of civilian and military attendees' respective expertise. In the same way that military exercises at home often involve civilian subject-matter experts and injects, there is no reason why SFA providers should not draw on their civilian counterparts in-country to help facilitate these sessions and demonstrate what joint planning should look like in the process.

Efforts to encourage dialogue and relationship-building should not be restricted to military SFA alone. Ideally, these efforts would be joined up with civilian stabilisation, peacebuilding and security sector reform programming to ensure that participants receive coherent messaging from all sides. Simply bringing civil society or informal security providers into SFA is not by itself enough to achieve a joined-up approach and in isolation may lead to the militarisation of traditionally civilian conflict resolution programming or the legitimisation of non-state armed groups. Not all capacity building should be joint and it is important to protect civilian and military spaces to work on their own specific competences. Rather than replacing all combat training, a peacebuilding approach seeks to balance out SFA programming to prioritise activities that build constructive relationships and consensus around security priorities. Similarly, civilian programming should continue to contain elements that are specific to civil society or legislative audiences but should also prioritise activities that promote cohesion and trust-building across and around the security sector.

Including non-state actors in joint planning and strategy exercises is likely to be one of the most contentious aspects of peacebuilding approaches to SFA. However, in many environments, these groups are playing an active and often locally legitimate role in providing security to some populations and livelihoods. For example, in rural areas of Mali, the gendarmerie is, in theory, the principal responder to outbreaks of violence within or between rural

communities, with cases then referred to the criminal justice system. However, a recent SIPRI survey revealed that only 23.6% of respondents in central Mali would seek the help of defence and security forces to resolve a major dispute in their village. Instead, 53.1% opted to alert traditional authorities, which can include traditional militias such as Dozo hunting groups who are perceived by some segments of the population as able to enforce customary laws and traditions.¹⁰ A similar dilemma emerged in Afghanistan in 2020, where shadow Taliban leaders and officials in each province are increasingly taking on the burdens of resolving disputes because the Afghan government and security forces are viewed as incapable and ineffective by the majority of Afghan citizens.¹¹

This dynamic has its own costs. Dozo justice, much like Taliban conflict resolution techniques, often runs counter to human rights, can disadvantage minorities who do not share their beliefs and contributes to a dubious record of protecting the rights of women. However, the Malian armed forces and local law enforcement are not beyond reproach either. The point is not to draw equivalencies, but to accept that the reality on the ground in many fragile states is more complex than is reflected in a traditional SFA approach of picking partners in uniforms and isolating those who are not. It also speaks to informal realities of how authority and power are exercised and how different actors compete to be the most legitimate providers of security informally, especially in so-called ‘ungoverned spaces’.¹²

State and non-state armed groups play both a stabilising and a destabilising role in many places where foreign donors wish to run SFA programmes and automatically excluding informal security providers raises the risk that these groups act as spoilers and that local communities who do not see the armed forces as legitimate security providers feel further alienated by international programming. At the same time, just as not all armed forces are universally good or bad, there are large variances in how informal security providers conduct themselves in their communities. Those affiliated with extremist groups or guilty of egregious abuses should be side-lined, but not at the expense of all groups. These groups should not be provided with tactical military

¹⁰ SIPRI, “The Impact of Armed Groups on the Populations of Central and Northern Mali”, October 2019, <https://www.sipri.org/publications/2019/other-publications/impact-armed-groups-populations-central-and-northern-mali>, p.21.

¹¹ Author fieldwork, Kandahar, Afghanistan, January – September, 2020.

¹² Ahmad, Aisha. ‘The security bazaar: business interests and Islamist power in civil war Somalia,’ *International Security* 39, no. 3 (2015): 89-117.

training, but should be included in exercises and discussions around community priorities for policing and security. The inclusion of a wider spectrum of actors in the community will pay immense dividends, rather than focusing solely on training formal local forces regardless of whether or not they are present on the ground or lack local buy-in and legitimacy.

3.1 Best practice: Let participants select priorities

In SFA programmes around the world, decisions around what to include on courses can seem less than imaginative. Legacy programming, specific requirements of different funding bodies and political risk assessments can all have an outsized impact on what an SFA programme looks like. Rather than being driven by an in-depth analysis of partner requirements, honest discussions between partners and providers about areas of strategic overlap or broad consultations around desired security goals, SFA can seem an insular and siloed process to outside observers and partners alike.

To change partner behaviour away from the classroom, partnering should be more of a partnership. Giving local troops control over parts of the programming is a good way to ensure strong local buy-in, build relationships of trust between providers and recipients and improve the way that programming responds to local contexts and priorities.

Some contractors have adopted innovative approaches to this on UK Ministry of Defence contracts across Europe, Africa, Asia, Middle East and Latin America. On one programme, recipients are asked to select their own priorities for the last half of the course out of a list of pre-prepared broad categories such as counterterrorism, crisis management and/or resilience. The remaining content, although chosen by the international provider, is delivered in a participative way. For example, governance and leadership modules may consist of discussions around what security, corruption, or civil-military relationships mean to local institutions of the hosted nation, setting the tone for an exchange of ideas rather than giving the impression that course facilitators have all the answers (Hint: Foreign interveners rarely do!).

If this participative model was extended to allow for broader-based discussion about what the priorities of the course should be, to include for example the perspectives and involvement of civilian leadership and civil society, it would generate shared buy-in for the programme. Using the first half of the course to set the basic foundations for relationships between participants sets the stage for more meaningful interactions and participation in the second half, when participants can explore the shared priorities and expectations in more depth. Periodically selecting issues that arise in conversation as the themes for joint exercises is a good way to observe relationships as they develop and tweak programming to address the strengths and weaknesses on display during the practical activities.

An exercise example would be a flooding scenario that damages a power plant and a major bridge crossing, displacing populations and ruining harvests in an area where tensions between farming and herding populations are already high.

- 1) Who has a role in resolving each of these issues?
- 2) What is the impact of these events on the individuals/agencies in the room?
- 3) How can informal actors like civil society, religious leaders, or traditional authorities be leveraged in this scenario?
- 4) How would participants coordinate their activities with each other, including identifying potential hurdles and points of friction?

3.2 Checklist for SFA implementers

Resolve:

- Articulate the long-term and short-term objectives to partners to signal resolve. This is a key component to building a relationship of trust and mutual commitment to the SFA programme.

Rules of Engagement:

- Notions of what can and cannot be achieved should be embedded within the realities of the SFA programme. This can entail something as simple as the ‘when’ and ‘where’ the advisor teams are allowed to work with partner local forces.

- ☑ Creative approaches to traditional accompanying or monitoring such as the use of bodycams or Go-Pros may be required to strike a balance between what is needed to adjust partner behaviour and what is permissible under mission Rules of Engagement (ROE).
- ☑ Communicate ROE clearly to own forces and partners, tempering expectations and making clear to partner forces the limits and tolerances of the advising mission.

Context:

- ☑ Be prepared to adapt the SFA programme to a new problem set. Whether it is a coup, civil war, humanitarian crisis or natural disaster, an advisor team needs to be flexible and include a ‘bug-out plan’.
- ☑ Identify and re-identify any voices that are missing around the table. Are there participants who speak less than others, or not at all? Are your participants diverse in terms of age, gender, ethnicity, background and social class/caste? Is there any way of compensating for these subtle and nuanced differences in power relations?

Cooperation:

- ☑ Interpersonal relationships mean everything when advising a partner force. This requires intently listening to partner concerns and finding mutual priorities to cooperate and align with.
- ☑ Informal partnerships may be more important than the formal SFA programme due to the contextual nature and character of politics in the host nation society. Make sure lasting relationships with SFA participants from all backgrounds are built.
- ☑ Help partners conduct their own strategic assessments and gap analyses of their security sectors to build productive relationships while making sure that programmes are tailored to the priorities of their own mission and their partners’ needs.

Such alignment makes it more likely that positive effects will endure in the long-term, producing the necessary ‘virtuous cycle’ of institution building without advisors around.

4. Monitoring, Evaluation and Learning (MEL)

Broadly speaking, many existing MEL criteria for SFA programmes focus on metrics that monitor the combat effectiveness and professionalisation of a partner force. For example, the UK’s ‘Defence lines of Development’ model sets out the following categories for baseline capability assessments that form the basis of evaluations of partner progress: training, equipment, personnel, infrastructure, doctrine/concepts, organisation, information/intelligence, logistics and sustainability, and interoperability.¹³ The EU Training Mission in Mali (EUTM-M) model contains different but similar lines of effort: force protection, medical support, training, unit/organisation preparedness, advising, information campaign, infrastructure and global effort/strategic communications.¹⁴

To the best of their ability, SFA providers attempt to gather a baseline assessment before beginning training, with the contingent constraints posed by a lack of hosted nation transparency and ability to provide documentation to inform the assessment and an often-limited presence of international personnel on the ground to provide input. Partner capabilities are re-assessed throughout a training programme and may be assigned traffic light ratings depending on whether improvements are hitting or falling short of targets. Formal debriefs, structured interviews and anecdotal evidence may be used to complete the assessment, with sources ranked according to their reliability.

When combined with quantitative measures such as the number of courses and the rate of attendance, this system provides SFA advisors with useful data that demonstrates the level of activity and whether or not the activities delivered the intended increases in combat readiness or military capability. However, without the ability to monitor the behaviour of troops that have been trained once they have been deployed, the feedback cycle is incomplete. Most training missions will have ROE centred on Force Protection (FPCON) measures rather than accompanying partner forces on the front lines, precisely because the SFA programme was likely sold to the general public by political and military leadership as a low-risk advisor mission. Restrictive ROE should be expected, which means that creative approaches to

¹³ Land Warfare Development Centre, ‘Capacity Building Measurement of Effectiveness (MOE)’, 2017.

¹⁴ Ibid.

traditional accompanying or monitoring may be required to strike a balance between what is needed to monitor partner behaviour and what is permissible under a mission's ROE. This might require outside-the-box thinking, such as employing drones for monitoring, GPS tracking devices or equipping partner forces with live-feed cameras. These approaches do not need to seem so burdensome as they can be primarily treated as learning tools, in which data collected can be utilised in de-briefs with partner forces so that their performance improves in future operations.

A peacebuilding approach requires different metrics for success, but a similar process to traditional SFA evaluations. In the short term, the answer to the questions 'did we do what we planned?' and 'did the activities deliver the intended outputs?' can be demonstrated through a range of indicators. Metrics could include: did members from all the country's ethnic groups attend the course? What was the level of participation from marginalised populations and genders? Did certain individuals or groups dominate the course and did this change as the course progressed? Were interactions between attendees from different groups positive or negative overall, and did this change as the course progressed? This data can be gathered anecdotally from the personnel delivering the training and compared against impressions given by external observers who might attend a session close to the beginning and close to the end of the engagement. These observers can be drawn from a country's civil service (for example the UK's Stabilisation Unit), a multinational organisation's Civil Affairs department or private sector evaluators as appropriate.

However, the evaluation cannot stop there. The overarching goal of a peacebuilding approach to SFA is to improve long-term stability by creating a more cohesive and locally legitimate force. To that end, SFA evaluators need to draw on the same broad range of expertise and experience to determine the eventual effectiveness of the programme as the planners did before the engagement began. Key determinants of whether attitudes and relationships have shifted can be drawn from community consultation, focus groups, surveys of local stakeholders and open and closed-source information about the conduct of troops in the field.

Not every SFA programme will succeed. Recipients might disengage or deviate from the objectives of the programme and in other cases, non-compliance might be due to a lack of preparedness or resolve from the advisor team and its government. Regardless, as programmes are established with partner forces, advisors should be mindful of monitoring the activities of the host nation local forces to ensure that they are faithfully executing missions and operations as they

perform them without advisors. Suspicions of or evidence suggesting significant deviation from human rights rules or poor protection of civilians must be documented and passed up the chain of command. At the same time, if one is too intrusive with monitoring for compliance, this can generate trust issues leading to a breakdown in cooperation with a partner. Managing expectations and building rapport that enables monitoring and evaluation to be presented as ways to improve training and advising and providing accountability for home governments are essential. Expectations of partner behaviour on- and off-duty should be clearly communicated upfront and numerous times throughout SFA engagement activities, so that it is demonstrated as an advising pillar of importance.

Successful MEL relies on generating feedback loops to constantly improve programme delivery. This requires syllabus updates and revisions – even as classes are ongoing – adapting to partner needs and changing conditions. As demonstrated with the Coronavirus pandemic, many SFA programmes transitioned to electronic delivery and Video-Teleconferencing (VTC) became a common substitute for face-to-face interactions. This can even include follow-ups after the advisor team, using VTCs, text messages (such as *WhatsApp* group threads) and emails, ensuring that the partner forces can receive some reach-back support when they encounter problems and hurdles. Such support should not create a dependency and instead should be seen as a productive exercise in problem-solving, assisting partner forces in finding solutions to their unique problems their way, so that it can eventually become institutionalised.

4.1 Best practice: Creative MEL

Building a relationship of trust between advisors and partners is essential for conducting effective MEL. International forces need to engage their partners in the evaluation process in ways (and languages) that they are most comfortable with, to avoid the evaluation bias of only consulting one side of the partnership. Most training missions do not have permissions that allow trainers to accompany partner forces on or near the front lines of ongoing operations. This rules out using direct observation or joint operations to identify gaps in partner competences and inform training schedules. While there are some allied forces who have accompany or combat permissions (for example operation BARKHANE in Mali), getting reliable feedback on troop performance depends on the strengths of informal and liaison relationships and is often complicated by poor record-keeping.

In Somalia, UK forces in Baidoa leveraged strong relationships with their partner force to collect Go-Pro imagery of their operations. Using the monitoring as a training opportunity made it clear to both sides that it was in their interests. For example, after spending time with the force practicing building defensible positions, the advising team monitored their partners' efforts to recreate those structures on their operations. By receiving clear and consistent feedback on the recordings, the partner force was able to improve their positions and was ultimately able to defend them against attack. The advisors gained valuable footage of their hosted nation operating on the front lines that could be used to verify that troops were behaving how they had been trained.

For the US, the creation and use of Security Force Assistance Brigades (SFABs) is meant to establish these institutionalised SFA partnerships with countries over the long-term. Each SFAB has been assigned a different Area of Responsibility (AOR) around the globe to enable the transition towards dedicated military advisors being able to develop relationships and deeper understanding of the local forces they will work with.

We would also recommend separating the reporting process from performance evaluations that inform future posting and promotion decisions. Tying the two together creates a perverse incentive towards reporting successes and suppressing challenges. As the final reports of outgoing teams are also often used as introductory material for incoming trainers, there is an immediate need to ensure that these reports are as unvarnished and truthful as possible to maximise opportunities to learn lessons and adapt programming.

4.2 Checklist for SFA evaluators

ROE:

- Identify ways to monitor partner behaviour outside the classroom that do not contravene the permissions granted for the mission. Creative approaches to traditional accompanying or monitoring roles such as the use of bodycams or Go-Pros may be required to strike a balance between what is needed to adjust partner behaviour and what is permissible.

Cooperation:

- ☑ Make it clear to local authorities what they stand to gain from having their operations and interactions monitored by advisors. Watch footage together and integrate findings visibly into training material to reinforce the message that monitoring benefits the partner force and advisors.

Compliance and corruption:

- ☑ Identify chronic and acute versions of corruption with the partner government and local forces. However, understand that there is a difference between corruption that occurs out of necessity, such as troops and police setting up checkpoints to charge ‘tolls’ because they have not been paid in weeks. Be vigilant against tolerating corruption that is driven by individual greed or political predation. If a well-paid commander is listing more troops than they have on their books to extract more money out of the advisor team or their defence ministry, then this ‘Ghost Soldier’ problem should be addressed.

Conditionality:

- ☑ Impose conditionality if red lines are crossed. This requires follow-through and can be painful, but is necessary for demonstrating that tactical level advisors have purse-string power.

Continuity:

- ☑ Achieving ‘enduring effects’ and the ‘virtuous cycle’ of institutionalised learning and training means having a way for partner forces to stand up their own internal abilities to continue training and education programmes once SFA advisors depart. Achieving a viable ‘T3’ (Train-the-Trainer) programme means being able to hand-pick trainees that performed at the top of their class to become instructors and evaluators in the programme. This initially may not be easy to achieve with a partner military leadership, but getting them to adopt the idea of sustaining effective training and education programmes will be vital to making the long-term reforms and change that is needed in a partner military.

5. Conclusions

Trust-building takes time. No international trainer, no matter how experienced, can walk into a room full of participants from different parts of a fragmented security sector, representatives from the civilian leadership and civil society and generate an immediate spirit of collaboration and cohesion. First encounters may be heated, tense and unproductive while participants use the opportunity to vent and confront groups that they hold responsible for their insecurity. In reality, international training teams will require time on the ground with local forces to develop their own relationships of trust before they can realistically leverage those ties to ease them into difficult conversations with people they regard as competitors or challengers.

It is vital to sequence activities by starting small and expanding once the basic groundwork has been laid for relationships between trainers and partners and between different participants. This might mean that both civilian and military advisors focus on their own training with partners for the first few weeks before the first joint session is attempted, but the start of collaborative exercises should not be long delayed. The first meeting could be simply a presentation and question session by each group on who they are and what they see as their role in the country's defence and security, before leading to more ambitious discussions such as shared strategic, operational, or tactical priorities (depending on the level of engagement) and joint exercises.

In the long-term, transitioning the ownership of a training programme to the partner forces is dependent on these forums for exchange being valued by the host nation military and government. If host nation leaders do not see the importance of eventually taking over an SFA programme via the T3 approach, then it will be treated as a temporary activity. Worse, a partner may engage in 'performance legitimacy', looking for ways of appeasing donors to keep SFA resources flowing in, but not committing to the behavioural changes needed to lay the foundations for effective, legitimate security provision that serves the population equally.

Ultimately, if the host nation designates important individuals to operate training programmes after SFA donors leave (i.e. T3), then this increases the likelihood of success. However, even with this sort of ownership, there is still value in SFA donors providing over-the-horizon support to SFA programmes as a way of providing long-term engagement and advice to help partners adapt to changing conditions and overcome constraints. Building productive relationships across and around fragmented and disputed security sectors is a

long-term endeavour and great care and attention will be needed to ensure that gains are not wiped out by personnel or personality changes within the advising and the local forces teams.

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CHAPTER 2

The Strategic Context of SFA and NATO-EU Cooperation

Alessandro Marrone

Abstract

This chapter analyses the main features of the EU and NATO approaches to crisis management and stability operations and discusses the achievements and limits to NATO-EU cooperation in the field of SFA. Despite the challenges, there has been significant progress towards the establishment of full capacity building cooperation to perform an effective joint external action with both third states and partners. Over the last decade, both NATO and EU countries have started giving priority to Defence Capacity Building (DCB) over long-term and large-scale military engagement for two complementary reasons. First, local forces are better suited to tackle country-specific security threats effectively and sustainably, due to their greater understanding of local actors and dynamics. Second, tailored DCB and SFA require a smaller military footprint than stabilisation operations, even though the former can be an element of a larger campaign such as happened in Afghanistan from 2006 to 2014. Within this framework, the strategic partnership on capacity building between the EU and NATO has made considerable progress over the past few years.

Keywords: *NATO-EU cooperation, common security and defence policy (CSDP), defence capacity building (DCB), Afghanistan, US.*

1. Introduction

Despite the specificities of each operational theatre, the SFA activities do not take place in isolation, neither are they influenced only by local and regional actors. Rather, they are deeply affected in multiple ways by trends in the international security environment. The analysis of recent trajectories and the current status of these trends provides a better starting point for reflecting on the various aspects of SFA by connecting them to the strategic context.

Among numerous important trends, five are particularly relevant for SFA activities because they influence the mandate, size, resources, planning, conduct, risks, challenges, outputs and assessment. First is the reluctance of NATO members to deploy armed forces for new large-scale and long-term operations. Closely connected with this reluctance is the increasing risks in crisis areas due to the stronger involvement of hostile third states. Because of these two trends, Western countries have over recent years given greater priority to Defence Capacity Building (DCB) of local military and security forces as a way to contribute to stabilisation by reducing foreign footprint and its related risks. After the difficult experiences in Afghanistan and Iraq, the US and Europeans have become more aware of local politico-security environments and the importance of local ownership and decision-making autonomy. Finally, while the US recognised from the 1950s the importance of equipping the military and security forces of assisted countries, in the last decade the Europeans have also devoted more attention to the train and equip nexus.

Regarding the first trend, an in-depth reflection on recent Western retrenching after the military interventionism of the 1990s and 2000s goes beyond the scope of this manual. Suffice to say that the US has been the driving force of NATO military commitment in both the Balkans and Afghanistan, first under the aegis of the humanitarian war and then in pursuing the war on terror. Despite other NATO members playing an important role on the ground, these missions could not have taken place without US political weight and military assets.

The Afghan case epitomises this trend. Because of the link with the 2001 terrorist attacks in New York and Washington which prompted the invoking of Article 5 for the first time in NATO history, Afghanistan has been a top priority for the US over the 2000s. As a result of US interest and allied solidarity, at its height the International Security and Assistance Force (ISAF) had more than 130,000 units contributed by 51 NATO and partner nations.¹⁵ As of February 2021, Resolute Support Mission (RSM) has about 9,600 troops, including 2,500 from the US and the others from 35 contributing nations including Germany (1,300), Italy (895), Georgia (860) and the UK (750).¹⁶ The 93% decrease in NATO deployment in Afghanistan over the 2010s was partly the result of improved conditions on the ground, such as greater capacities of

¹⁵ https://www.nato.int/cps/en/natohq/topics_69366.htm.

¹⁶ NATO, 'Resolute Support Mission (RSM): Key facts and Figures', February 2021, <https://rs.nato.int/rsm/newsroom/key-facts-and-figures>.

Afghan National Security Forces (ANSF), but in large part was motivated by Washington's decision to de-prioritise Afghanistan, with a view to a complete withdrawal from the country.

A second important factor lies in the unwillingness of European countries to take the leadership for new, significant operations, whether within NATO or the EU. The Libyan case typifies this European-wide reluctance. In 2011, the 7-month long Operation Unified Protector (OUP) involved about 8,000 troops, 260 air and 21 naval assets. The air campaign performed 26,500 air sorties, including over 9,700 strike sorties.¹⁷ However, only 11 NATO members contributed to the air campaign. For the first time in Alliance history, half of the allies abstained from a joint operation, including important countries such as Germany, Poland and Turkey. After OUP ended in November 2011, no stabilisation operations were launched under the NATO EU or UN auspices, although Libya was heading towards political anarchy. While the US did not want to get involved in the collapsing state, European countries had no political will to sustain a collective, long-term engagement to rebuilt Libyan institutions.

Since 2011, several groups have been fighting each other in Libya, exploiting the large arsenals of the Qaddafi regime or trading energy resources for arms through the black market. From 2019, Russia became heavily involved. Egypt, the Gulf States and other countries in the region support various Libyan militias. As a result, the conflict escalated with the use of fighter aircraft, drones and air defence systems,¹⁸ well beyond the intensity faced by NATO troops over 15 years in Afghanistan. Such escalation did prompt European countries and other actors to hold a conference in Berlin in January 2020 to contain the regional spill-over.¹⁹

In the same period, in Iraq, the situation escalated rapidly towards the high-end of the spectrum. After the Global coalition militarily defeated Islamic State in most of Iraqi territory, a strategic confrontation emerged between the US and Iran. A series of ambushes, raids and attacks culminated in the death of Iranian General Soleimani and the subsequent Iranian missile strike against American military bases in Iraq hosting coalition troops from the US, Italy and other

¹⁷ NATO, 'Operation UNIFIED PROTECTOR Final Mission Stats', 2 November 2021, https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_11/20111108_111107factsheet_up_factsfigure.pdf.

¹⁸ <https://www.defensenews.com/smr/nato-air-power/2020/08/06/libya-is-turning-into-a-battle-lab-for-air-warfare/>.

¹⁹ <http://library.fes.de/pdf-files/bueros/rom/16768-20200421.pdf>, p.11.

countries.²⁰ The conflict intensity is even higher in Syria where, in October 2019, the US decided to withdraw its troops.

By looking at Libya, Iraq, Syria and Afghanistan, it is clear that the whole of North Africa and the greater Middle East is experiencing a tendency towards high-end conflicts through rapid escalations and the wider use of conventional weapons. This poses many challenges for NATO military forces deployed on the ground, including those focusing on non-combat tasks such as DCB or SFA like the Italian troops in Libya and Iraq.²¹ This trend is partially caused by US disengagement from that region and by Europe's inability to step in, which left a vacuum filled by other countries prone to military actions. In turn, the higher level of conflicts raises the bar of risks for Western armed forces, thus making it more difficult for policymakers in the US and Europe to undertake direct military intervention.

1.1 The NATO approach to crisis management and stability operations

In the 2010s, both NATO and EU countries gave greater priority to defence and related capacity building, for two complementary reasons. First, the growing awareness that local forces are better able to tackle country-specific security threats effectively and sustainably, particularly looking at the mid-to-long term: in other words, 'investing in developing local institutions and forces is a cost-effective means to prevent and fight terrorism and destabilisation'.²² The second reason is that tailored DCB and SFA require a smaller military footprint than counter-insurgency or stabilisation operations, although the former may well be an element of a larger campaign as happened in Afghanistan from 2006 to 2014. In turn, fewer Western troops and assets on the ground means a reduced risk of casualties.²³ However, casualties cannot be completely avoided among the trainers, mentors, advisors, experts and their support staff since they work in theatre with local forces countering hostile actors. Such a risk reduction approach is compatible with both the reluctance to large-scale military engagement and the increasing level of conflicts in North Africa and the greater Middle East.

Several NATO members have been engaged in DCB- and SFA-like activities for a long time, even before these concepts were formally developed and

²⁰ <https://www.theguardian.com/world/2020/jan/08/suleimani-assassination-two-us-airbases-in-iraq-hit-by-missiles-in-retaliation>.

²¹ <https://www.iai.it/en/pubblicazioni/le-forze-italiane-missione-allestero-trend-e-rischi>.

²² <https://www.nato.int/docu/review/articles/2018/03/13/projecting-stability-an-agenda-for-action/index.html>.

²³ <https://abcnews.go.com/Politics/us-troops-prepare-pull-war-afghanistan-numbers/story?id=77050902>.

endorsed within the Alliance. This was the case in the Western Balkans after the crisis management operations in the 1990s and is still the case in Kosovo. Afghanistan has for more than a decade been the single largest NATO effort in capacity building. Allies including the US, UK, Italy and Germany have heavily engaged in DCB in Iraq at different times over the last two decades. Among the lessons learned there is a greater awareness of the country – and sub-national – specificities. The tendency is to avoid the one-fits-all approach and to tailor activities in line with a comprehensive exploration of local circumstances through a multi-layered dialogue with stakeholders in the theatre. This has been the case, for example, in ISAF’s Regional Command West and Resolute Support’s ‘Train, Advise and Assist Command West’ (TAAC W) under Italian leadership. A related lesson learned regards the importance of local ownership and decision-making. This is a sensitive political issue. Both DCB and SFA are based on a set of principles shared by NATO members including the rule of law and the integrity of personnel, rejecting things like corruption. However, there is a specific cultural, social and economic context influencing local decision-making. Because of the failure of the one-fits-all approach, a new and dynamic equilibrium has to be found in each operational theatre to increase ownership by local actors which cannot be decoupled from autonomy in decision-making at the tactical, operational and strategic levels.²⁴

The greater priority for DCB and SFA entails a renewed attention on the equipment at disposal of local partners. Particularly as the conflict’s level can easily escalate towards the high-end of the spectrum and hostile actors can be substantially supported by third countries, the procurement of adequate tools has to be considered from the beginning. It is not by chance that the EU has moved forward on train and equip. On the NATO side, the reflection on projecting stability in the southern neighbourhood has widened to equipment²⁵ to ensure interoperability with Allied forces and the ability to effectively counter threats, ensuring control of critical infrastructure, territory and borders.

In relation to DCB and SFA, a train and equip approach covers Intelligence, Surveillance and Reconnaissance (ISR) assets, protection systems for local forces including those needed to counter Improvised Explosive Devices (IEDs)

²⁴ NATO Standardization Office, ‘AJP – 3.16 Allied Joint Doctrine For Security Force Assistance (SFA)’, Edition A Version 1 (May 2016), 10 - 11.

²⁵ ‘Projecting Stability in NATO’s Southern Neighbourhood’, Margherita Bianchi, Guillaume Lasconjarias and Alessandro Marrone; NDC conference report, July 2017.

and drones threats, equipment related to Chemical Biological Radiological Nuclear (CBRN) attacks, Command, Control, Communication and Computing (C4) capabilities and forensics tools. The support for logistics and Maintenance, Repair, Overhaul and Upgrade (MROU) activities are also important, particularly in the mid- to long-term sustainability of local forces.²⁶ The approach has seen a convergence between public institutions and the private sector in NATO countries. Militaries and security forces in the West have an obvious interest in cooperating with partners which use the same, interoperable equipment and procedures, since this makes the whole DCB and SFA effort more effective, efficient and timely.

These five trends significantly shape the international security environment and the operational theatres where allies' militaries are deployed, particularly in Africa and the greater Middle East. Against this backdrop, member states have increasingly sought cooperation between NATO and the EU to face common threats and challenges.

2. NATO-EU cooperation

2.1 From the 2003 Berlin Plus Agreements to the 2018 Brussels Declaration

The Atlantic Alliance and the European integration process have been synergistic but separate for most of their history. During the Cold War, NATO provided the collective defence for Western Europe and the European integration process developed civilian fields. Only when in the late 1990s the EU formally established a Common Security and Defence Policy (CSDP), the issue of the relations between the two organisations was put on the political agenda by their respective members who were usually members of both. The crisis management operations constituted a sort of middle ground between the previous focuses of each organisation and the main question was whether their convergence would result in competition or cooperation.²⁷

²⁶ Alessandro Marrone and Ester Sabatino 'Main Battle Tanks, Europe and the Implications for Italy', <https://www.iai.it/sites/default/files/iai2007.pdf>.

²⁷ See in this regards Simon J. Smith and Carmen Gebhard, 'EU-NATO Relations: Running on the Fumes of Informed Deconfliction,' *European Security*, vol. 26, no. 3 (July 3, 2017), pp. 303–14, <https://www.tandfonline.com/doi/abs/10.1080/09662839.2017.1352581>.

The first legal basis for the cooperation between the two actors was laid down through the Berlin Plus Agreements signed in 2003.²⁸ They are a ‘package of arrangements that allow the Union to make use of NATO assets and capabilities for EU-led crisis management operations’.²⁹ Overall, they aim to ‘improve the working partnership between the two, to ensure effective consultation, cooperation and transparency in crisis management and stability operations’.³⁰ In particular, there is a ‘NATO-EU Security Agreement that covers the exchange of classified information under reciprocal security protection rules’.³¹ Access to NATO planning capabilities is ensured for EU-led operations and terms of reference are laid down for using NATO’s Deputy Supreme Allied Commander Europe (DSACEUR) to command such deployments.³² NATO assets are available for EU-led operations through specific procedures for releasing, monitoring, returning and recalling these capabilities and NATO-EU consultation.³³ There are also ‘arrangements for coherent and mutually reinforcing capability requirements, in particular, the incorporation within NATO’s defence planning of the military needs and capabilities that may be required for EU-led military operations’.³⁴

In the framework of the Berlin Plus Agreements, the EU has launched operations in Western Balkans, with Concordia in North Macedonia in 2003³⁵ and EUFOR Althea in Bosnia Herzegovina in 2004.³⁶ However, the terms of the agreements have not been used since and the EU has launched more than 20 operations without relying on NATO assets or planning capabilities.³⁷

From 2003 to 2016, NATO-EU cooperation remained limited to the tactical and operational level in areas where both actors deployed their respective missions, namely Afghanistan, Kosovo and the Gulf of Aden where NATO’s Ocean Shield and EUNAVFOR Atalanta successfully countered piracy together between 2008 and 2016.³⁸ At the politico-strategic level, after 2003

²⁸ <http://www.eufp.eu/eeas-berlin-plus-agreement>.

²⁹ Shaping of a Common Security and Defence Policy: https://eeas.europa.eu/headquarters/headquarters-homepage/5388/shaping-common-security-and-defence-policy_en.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ https://eeas.europa.eu/headquarters/headquarters-homepage/5388/shaping-common-security-and-defence-policy_en.

³⁵ https://ec.europa.eu/neighbourhood-enlargement/policy/eu-and-western-balkans_en.

³⁶ <http://www.euforbih.org/index.php/about-eufor/background>.

³⁷ https://eeas.europa.eu/sites/eeas/files/eu_military_operations_and_civilian_missions_july_2020.pdf.

³⁸ While Ocean Shield terminated in 2017, Atalanta continues its activities, <https://mc.nato.int/missions/operation-ocean-shield>.

there was no strong, systematic effort to move cooperation forward until 2015, even though both the 2010 NATO Strategic Concept and the 2008 EU document on the implementation of the European Security Strategy supported cooperation between the two organisations.³⁹

The EU has increased its role in the defence and security field through the institutional innovations established by the Lisbon Treaty (2009), the experience gathered through the CSDP missions and the political momentum led to the creation of the EU Global Strategy (2016). Meanwhile, NATO has broadened its mandate by including crisis management and cooperative security in its core tasks set by the 2010 Strategic Concept. Both actors have enlarged their European membership by increasing the number of countries belonging to both organisations having only a single set of military forces at their disposal.

All these elements contributed to creating the structural preconditions for a renewed political commitment to NATO-EU cooperation. In 2016, this led to the joint declaration by the representatives of both organisations in Warsaw⁴⁰ in parallel with the NATO summit of Allied Heads of State and Government. The declaration explicitly aimed to ‘give new impetus and new substance to the NATO-EU strategic partnership’ and stated that ‘[a] stronger NATO and a stronger EU are mutually reinforcing’.

³⁹ <https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf>.

⁴⁰ signed-copy-NATO-EU-declaration-en.pdf (europa.eu).

The 7 identified priorities of the NATO – EU Joint Declaration 2016

First, to boost ‘NATO and EU ability to counter hybrid threats, including by working together on analysis, prevention and early detection, through timely information sharing and, to the extent possible, intelligence sharing between staffs; and cooperating on strategic communication’. Second, to ‘broaden and adapt operational cooperation including at sea and on migration, through increased sharing of maritime situational awareness and better coordination’¹. Third, to ‘expand coordination on cyber security and defence’. Forth, ‘to develop coherent, complementary and interoperable defence capabilities of EU Member States and NATO Allies’. Fifth, ‘to facilitate a stronger defence industry and greater defence research and industrial cooperation’. Sixth, ‘to step up coordination on exercises, with parallel and coordinated exercises in 2017 and 2018 for the first time’. Finally, ‘to build the defence and security capacity and foster the resilience of partners in the East and South in a complementary way’². Altogether, the priority areas cover a wide range of interconnected issues and provide a top-down mandate for cooperating across the board.

¹ https://www.nato.int/cps/en/natohq/official_texts_149522.htm?selectedLocale=en.

² Ibid.

Alongside a new level of ambition for the NATO-EU partnership, the joint declaration established new ways of working together. It tasked the ‘European External Action Service (EEAS) and the NATO International Staff, together with Commission services as appropriate, with developing concrete options for implementation, including appropriate staff coordination mechanisms, to be presented to North Atlantic Council and European Council by December 2016’.⁴¹ Forty-two actions were approved by both Councils by the end of that year and further 23 actions were approved jointly in December 2017.⁴² This included counter-terrorism activities. In particular, on the EU side, the steering and the coordination of this endeavour became the prerogative of the Vice President of the Commission.

NATO and the EU committed to reviewing progress regularly.⁴³ Joint reports have been regularly presented to the respective political authorities⁴⁴ and

⁴¹ Ibid.

⁴² https://www.nato.int/cps/en/natohq/official_texts_149522.htm?selectedLocale=en.

⁴³ https://www.nato.int/cps/en/natohq/official_texts_133163.htm.

⁴⁴ As of December 2020, the latest available progress reports dates June 2020: https://www.nato.int/nato_static_fl2014/assets/pdf/2020/6/pdf/200615-progress-report-nr5-EU-NATO-eng.pdf.

NATO-EU cooperation has been supported by the European Commission since 2020.⁴⁵ The underpinning rationale is to force the institutions and personnel of both actors to establish praxis of cooperation, build networks and mutual trust and enshrine consultation, meetings and exchanges to create the structural, long-term attitude for growing cooperation at all levels and areas. In 2018, the Brussels Joint Declaration confirmed this approach, welcomed progress and recommitted both NATO and the EU to implement the cooperation and further deepen and broaden it.⁴⁶

2.2 Obstacles and constraints to NATO-EU partnership

Despite the recognition that the Alliance and the European Union are ‘essential partners’ and have to cooperate across the board to face common security challenges, there are constraints and obstacles. The first concerns the overlapping but diverse membership of the organisations. Currently, 21 European countries belong to both NATO and the EU. Within the former, the US plays a leading role based on its capabilities and size, while France prefers the EU as the major framework for its defence policy precisely because of the absence of US leadership. In recent years, Washington’s criticism of EU defence initiatives such as the European Defence Fund⁴⁷ and French pressure towards greater European strategic autonomy⁴⁸ has created significant tensions. Other Alliance and institutional representatives of both organisations tried to set a positive, cooperative agenda. For instance, Germany and Italy have constantly supported a strategic partnership between NATO and the EU.

In mandate, the Alliance has always been focused on defence and international security, first with a limited focus on the Washington Treaty Article 5 and then, during the post-Cold War period, with a broader approach encompassing crisis management and stability operations and partnerships and cooperative security. The NATO budget and personnel are rather limited in comparison with the EU ones, but it is devoted to defence and international security. Accordingly, the Alliance has gained substantial experience at the tactical, operational and strategic levels. In contrast, the Union has a much larger political mandate, of which the military aspects represent only a minor and a rather novel part. Accordingly, only a tiny percentage of the EU budget and personnel are devoted to defence and international security and there is little institutional

⁴⁵ https://eeas.europa.eu/sites/eeas/files/eu_nato_factsheet_november-2020-v2.pdf.

⁴⁶ https://www.nato.int/cps/en/natohq/official_texts_156626.htm.

⁴⁷ <https://www.ft.com/content/ad16ce08-763b-11e9-bbad-7c18c0ea0201>.

⁴⁸ <https://www.diplomatie.gouv.fr/en/french-foreign-policy/news/article/president-macron-interviewed-by-le-grand-continent-12-nov-2020>.

memory in this field. Such an imbalance between the Alliance and the Union creates constraints and obstacles for bilateral cooperation; for example, a misunderstanding in NATO expectations of what the EU can deliver on capabilities.

Regarding the institutional setting, the Alliance comprises a number of institutions, commands, agencies and Centres of Excellences built over decades which are not always integrated and aligned. It is a complex universe of diverse actors and greater effort is needed to better connect the different parts, not only for the sake of the effectiveness and efficiency of the Alliance's activities but also to enable partnering with other international organisations.⁴⁹ Similarly, the EU currently encompasses several relevant bodies ranging from the EU Military Committee to the EU Military Staff – both within the broader EEAS – from the European Defence Agency (EDA) to the DG Defence Industry and Space. Institutional coordination is a thorny issue for the Union.⁵⁰ This variety of voices within both NATO and the EU adds complexity and complicates cooperation. However, such articulated institutional landscape also provides the opportunity for several points of contact and affinities such as, for example, between NATO Allied Command Transformation and EDA which over time established growing relations.

Against this backdrop, in 2020 the Alliance undertook the NATO 2030 process led by Secretary-General Stoltenberg and supported by a Group of Experts to reinvigorate, upgrade and expand political consultation to inform a new strategic concept.⁵¹ In parallel, the EU has initiated the Strategic Compass exercise to move from the 2016 EU Global Strategy to more concrete actions, tools and capabilities in light of the threat assessment of the current international security environment.⁵² Each process aims to increase cohesion among member states and coordination between the respective institutional bodies, to augment the effectiveness of both NATO and EU with positive effects on their strategic partnership.

The fourth Progress Report which was published in 2019 assesses that 'cooperation on defence and security capacity building continues to develop in

⁴⁹ <https://www.iai.it/en/publicazioni/projecting-stability-unstable-world>, p.44.

⁵⁰ <https://www.consilium.europa.eu/en/policies/defence-security/defence-security-timeline/>.

⁵¹ See in this regards the Report of the NATO2030 Group of Experts: https://www.nato.int/nato_static_fl2014/assets/pdf/2020/12/pdf/201201-Reflection-Group-Final-Report-Uni.pdf.

⁵² https://eeas.europa.eu/sites/eeas/files/towards_a_strategic_compass_20_november.pdf.

informal staff-to-staff consultation, deconfliction and strategic communication’.⁵³ The latest 2020 edition states that, as a whole, ‘political dialogue has further intensified at all levels and settings, including in virtual formats while maintaining the positive trend of mutual and reciprocal cross-briefings’.⁵⁴ In practical terms, EU funding for the NATO BI programme did support the participation of Armenian, Georgian, Jordanian, Moldovan, Tunisian and Ukrainian representatives in several NATO capacity building activities in the second half of 2019.⁵⁵ In 2020 the pandemic slowed things down, particularly anything necessitating travel and contact with personnel in partner countries, but cooperation continued on strategic communication, CBRN and counterterrorism. Noticeably, the EU and NATO missions in Iraq have developed a good level of regular coordination and de-confliction of activities, which has allowed avoiding duplication of efforts and developing greater synergies.⁵⁶

To sum up, the joint declarations and their subsequent implementation have established a blueprint for NATO-EU strategic partnership on capacity building. However, ‘mapping, de-conflicting, communicating and familiarising staff with the other organisation’s “way of doing business” is one thing; establishing full capacity building cooperation that results in effective joint external action with third states and partners is quite another’.⁵⁷ There still much room for improvement and this will partially depend on the features and evolution of the EU’s approach to capacity building.

3. The European Union and capacity building

3.1 The EU approach to crisis management and stability operations

Within the broader CSDP framework, the EU overall approach to crisis management and stability operations has developed over the last two decades through continuous interaction among member states and Brussels institutions. Indeed, the variety of strategic cultures in Europe⁵⁸ and other factors has imposed significant differences among EU members. For instance, countries like France, Germany, Italy and the UK have been traditionally ready for more robust CSDP

⁵³ https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2019_06/190617-4th-Joint-progress-report-EU-NATO-eng.pdf.

⁵⁴ Ibid, p.1.

⁵⁵ Ibid, p.12.

⁵⁶ Ibid, p.13.

⁵⁷ <https://www.iss.europa.eu/sites/default/files/EUISSFiles/EU%20and%20NATO.pdf> , p.57.

⁵⁸ For an in-depth and comprehensive analysis of the strategic culture of 27 European countries see at: <https://www.springer.com/gp/book/9783658011673>.

operations⁵⁹ and keen to equip the armed forces of partner countries, while countries in northern and central Europe have been more reluctant because of their history of neutrality. A second cleavage lies between those who are strongly pro-NATO and the US versus those who are more EU-oriented.⁶⁰ The European Commission has traditionally prioritised development over security, while the EEAS, including the EU Military Committee and the EU Military Staff, has supported the defence and security elements of crisis management and stability operations. Because of such dynamic equilibrium among different national and institutional approaches, CSDP missions have been launched and managed through a process able to guarantee consensus among member states and accountability to the European Parliament.⁶¹

Such a complex interaction at both intergovernmental and supranational levels has led to strategic guidelines that share and affirm a common denominator, beginning with the 2003 European Security Strategy.⁶² The 2016 EU Global Strategy (EUGS) laid down the Union's current approach to international affairs. Concerning security and defence, the document states that 'Europeans must be able to protect Europe, respond to external crises and assist in developing our partners' security and defence capacities'.⁶³ Interestingly, such prioritisation puts capacity building on the same level of Europe's defence and recognises the crucial link between the stability and security of the EU and those in its neighbourhood. The document commits the Union 'to invest in the resilience of states and societies to the East stretching into Central Asia and South down to Central Africa',⁶⁴ thus delineating a geographic perimeter for the Union's CSDP missions including DCB and SFA activities.

The basic assumption is the 'security-development nexus, according to which security and development are two sides of the same coin: in any crisis, a decent level of security is a precondition to sustainable development, while development, in turn, allows for peace to endure'.⁶⁵ Accordingly, the EU aims

⁵⁹ Such a preference goes back to the 1999 Saint Malo Agreements which de facto launched the CSDP.

⁶⁰ Policy Department for External Relations - Directorate General for External Policies of the Union, 'CSDP Missions and Operations', January 2020:

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603481/EXPO_IDA\(2020\)603481_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603481/EXPO_IDA(2020)603481_EN.pdf)

⁶¹ <https://www.europarl.europa.eu/factsheets/en/sheet/159/common-security-and-defence-policy>.

⁶² <https://data.consilium.europa.eu/doc/document/ST-15895-2003-INIT/en/pdf>.

⁶³ https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf, p.19.

⁶⁴ https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf, p.23.

⁶⁵ https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_18_Train_and_Equip.pdf p.1.

to adopt an ‘integrated approach’⁶⁶ to conflicts and crises, across their various dimensions – security, economic, governance, etc. – and through various phases from prevention to management and stabilisation. The EUGS explicitly states that ‘CSDP capacity building missions must be coordinated with security sector and rule of law work by the Commission’.⁶⁷ This hints at an important feature of the EU approach: its broad scope. In comparison with the narrower NATO mandate, the Union’s integrated approach to capacity building includes not only the whole spectrum of military and security forces but also the judiciary and the rule of law, with wide implications on the whole governance of the country. It postulates that each conflict country has to rebuild the ‘social contract’ between state and citizens. The Union ‘will support such efforts, fostering inclusive governance at all levels’,⁶⁸ but it recognises that leadership and responsibility lie in the hands of local actors. The scope of activities is wide and comprehensive, but they are all meant to support local ownership of the capacity building process while the EU pursues a role of facilitator, mentor and partner. Finally, the EUGS confirms that all EU missions should operate in full compliance with international norms and that Union ensures its ‘security sector reform efforts enable and enhance our partners’ capacities to deliver security within the rule of law’.⁶⁹ The strong reference to the legal aspects reflects the deep-rooted normative nature of CSDP missions and operations, linked to the principles stated in the EU Treaties.

The approach by the Union up to the 2016 EUGS goes hand-in-hand with the reality of more than 30 CSDP operational deployments launched from 2003 onwards. As of 2020, the EU runs 6 military operations and 11 civilian missions deploying around 5,000 people in Europe, the Middle East and Africa.⁷⁰ They include civilian capacity building missions in Somalia, Mali and Niger; military training missions in Somalia, Mali and the Central African Republic; and advisory missions in Iraq, the Central African Republic and Ukraine. Althea, the oldest and among the largest EU missions, has as its key objective ‘Supporting the Armed Forces of Bosnia and Herzegovina (AFBiH) collective and combined training’.⁷¹ Ten of the 17 EU ongoing deployments deal one way or another with

⁶⁶ See in this regards Faleg, G., ‘The EU: from comprehensive to integrated approach’, *Global Affairs*, Vol. 4, No. 2–3, 2018.

⁶⁷ https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf, p.50.

⁶⁸ *Ibid*, p.31.

⁶⁹ *Ibid*, p.26.

⁷⁰ https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_en.

⁷¹ <http://www.euforbih.org/eufor/index.php/about-eufor/background>.

DCB or SFA and if completed missions are included, 22 of the 34 CSDP missions and operations are purely or predominantly civilian in nature.⁷²

This demonstrates the priority attached to security forces from the police to coast- and border-guards over the military. Half of the current missions launched before 2010 show the EU is willing and able to ensure a long-term and relatively stable operational commitment in the European, African and Middle Eastern theatres. Finally, just as with NATO, in recent years the EU has placed increasing emphasis on capacity building as an alternative to a more direct, robust and large-scale military engagement, an engagement which has been facing strong and growing reluctance in European capitals.

3.2 A broad portfolio of limited capacity building activities

In the EU framework, capacity building covers a wide range of activities that can be grouped into four categories: 1) mentoring, monitoring, advising; 2) training; 3) provision of equipment; and 4) strengthening of local infrastructure.⁷³

The first is outlined in the EUGS Security and Defence Implementation Plan, with a reference to the strategic level.⁷⁴ Several CSDP missions in the Western Balkans have adopted this focus, with EU-provided technical assistance and expertise for new regulations, policies and procedures to be introduced in Bosnia Herzegovina, Serbia and Kosovo.⁷⁵ For instance, EU EUFOR Althea has embedded advisory teams in key units from brigade level and above to advise the Bosnian armed forces on key issues such as capability development, budget and information technology.⁷⁶

Training is also mentioned in the Security and Defence Implementation Plan.⁷⁷ It is usually coupled with mentoring, monitoring and advising, but it is probably the most evident activity within the capacity building perimeter. It can be summarised as the transfer of knowledge and skills from EU missions to local actors in the form of workshops, seminars and training of trainers. The latter element is particularly important since it implements the goals to enable the local actors to autonomously develop their capacities sustainably. Training has been and continues to be a key aspect of CSDP missions in Western Balkans and the Horn of Africa. For example, the EU Training Mission

⁷² [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603481/EXPO_IDA\(2020\)603481_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603481/EXPO_IDA(2020)603481_EN.pdf), p.5.

⁷³ EU-CIVCAP Preventing and Responding to Conflict: Developing EU CIVILIAN CAPABILITIES for a sustainable peace, Evaluating international efforts on local capacity building, p.19.

⁷⁴ <https://www.consilium.europa.eu/media/22460/eugs-implementation-plan-st14392en16.pdf> , p.13.

⁷⁵ Ibid, p.19.

⁷⁶ Ibid, p.19.

⁷⁷ Ibid, p.13.

(EUTM) Somalia was staffed by personnel from seven EU countries under Italian leadership and deployed about 200 officials to support capability-building within the Somali Ministry of Defence (MoD) and Somali National Army (SNA) General Staff.⁷⁸ Between 2010 and 2016, EUTM Somalia has trained 3,600 Somali officials focusing on commanders from company to battalion level, in addition to specialist training in the areas of military police, civilian-military cooperation, intelligence and combat engineering.⁷⁹

The provision of equipment is perhaps the most politically sensitive element of the EU approach to capacity building. Early CSDP experiences in Somalia and Mali demonstrated that the shortage of the most basic equipment, including even uniforms and boots, negatively affected training. The principle to ‘train and equip’ gradually gained ground among EU institutions, up to the Joint Communication released in 2015 by the High Representative for Foreign and Security Policy and the European Commission.⁸⁰ Yet a number of concerns have remained in place. In particular, the provision of lethal equipment has seen fierce opposition, and so the EU has limited itself to non-lethal equipment provided under certain conditions.⁸¹ Against this backdrop, any EU-funded programme entailing the transfer of military equipment to a third state has to be carried following an in-depth political analysis of the potential associated risks, since the restrictions on EU funding of military activities were designed partly to prevent any unintended and indirect role in military actions.⁸² The EUGS Security and Defence Implementation Plan finally affirmed that ‘the provision of equipment and infrastructure is an indispensable part of training and capacity building activities. It is crucial to allow the EU to provide this assistance in an effective, responsible and seamless way’.⁸³ Yet such provision has been so far limited in size and scope: the only major example is EUCAP Nestor donating computers, radios, five second-hand cars, inflatable boats and radar equipment to the Somaliland maritime authorities.⁸⁴ Noticeably, the limited but increasing EU effort on equipping local actors takes place alongside

⁷⁸ https://www.eutm-somalia.eu/wp-content/uploads/2019/08/FACTSHEET-2019_G.B.-DE-SIO.pdf.

⁷⁹ EU-CIVCAP Preventing and Responding to Conflict: Developing EU CIVILIAN CAPABILITIES for a sustainable peace, Evaluating international efforts on local capacity building, p.19.

⁸⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015JC0017&from=en>.

⁸¹ https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_18_Train_and_Equip.pdf , p.2.

⁸² Ibid, p.3.

⁸³ <https://www.consilium.europa.eu/media/22460/eugs-implementation-plan-st14392en16.pdf> , p.13.

⁸⁴ EU-CIVCAP Preventing and Responding to Conflict: Developing EU CIVILIAN CAPABILITIES for a sustainable peace, Evaluating international efforts on local capacity building, p.21, https://eucivcap.files.wordpress.com/2017/05/eu-civcap_deliverable_6-1.pdf.

national programmes by member states prioritising local forces, from Bosnia to African countries such as Mali.

The fourth category of CSDP missions' capacity building activities aims to strengthen local infrastructure such as headquarters, academies and prisons. For instance, EUCAP Nestor has contributed to establishing a Maritime Operations Centre for the Somaliland coastguard in Berbera.⁸⁵ Once again, in the Horn of Africa and other operational theatres, such effort takes place alongside national programmes by European countries and UN initiatives.

3.3 Increasing EU funding for capacity building

Until 2020, each CSDP deployment had been predominantly financed by participating member states based on the principle 'costs lie where they fall'. Only a relatively small percentage of common costs of military operations, between 5% and 10%, has been funded by the EU budget through the so-called Athena mechanism. Capacity building and peace support operations in Africa have also benefited from the African Peace Facility, depending on a number of conditions including partnership with the African Union.

The security-development nexus and related intra-EU debate have been important in shaping additional funding, the Instrument contributing to Stability and Peace (IcSP). The IcSP had a €2.3 billion budget for the period 2014-2020 as part of the EU Multiannual Financial Framework (MFF). About 70% of this budget was allocated to crisis response and another 9% to conflict prevention, peacebuilding and crisis preparedness.⁸⁶ Since the end of 2017, its portfolio has included capacity building in support of security and development and working with military actors. This can happen only where and when three conditions are met:⁸⁷

- The requirements cannot be met by recourse to non-military actors;
- There is a threat to the existence of functioning state institutions or to the protection of human rights and fundamental freedoms and state institutions cannot cope with that threat; and
- There is agreement between the partner country concerned and the EU that these first two conditions are fulfilled.

⁸⁵ Ibid, p.22.

⁸⁶ https://ec.europa.eu/fpi/what-we-do/instrument-contributing-stability-and-peace-preventing-conflict-around-world_en.

⁸⁷ Ibid.

This initiative excludes financing of recurrent military expenditure, procurement of arms or ammunition and funding of training specifically designed to contribute to the fighting capacity of armed forces.⁸⁸ Such a restriction epitomises EU caution towards the provision of military equipment. The IcSP has also played the role of bridge-builder in the EU approach to security development and particularly to capacity building. It linked in legal and institutional terms to security and development policy and brings together in its management the EEAS and the European Commission.⁸⁹ It also coupled short-term crisis response funding with long-term investment in conflict prevention and peacebuilding.⁹⁰ Finally, the IcSP paved the way for the proposal of a more ambitious Peace Facility Instrument in the EU Multiannual Financial Framework 2021-2027, with a budget of €5 billion.⁹¹ This should bring together activities previously funded through IcSP, the Athena mechanism and the African Peace Facility by increasing the share of the costs of CSDP missions and operations covered by the EU budget.⁹² It is meant to increase EU funding on defence capacity building, with a focus on the partner countries' armed forces, enabling the Union to provide integrated support packages including training, equipment and other means of support.⁹³ It should make capacity building more effective by contrasting the negative influence of other actors more eager to provide military capabilities to local forces.⁹⁴ Such a step is partly the result of the lessons learned from two decades of operational experience from Central Africa to Afghanistan.

4. The Afghan case study

4.1 The NATO largest effort in institution building

Afghanistan saw the largest effort in NATO history in institution-building, even larger than the massive investment made by the Alliance in the Western Balkans since the 1990s. It began in 2003 with the International Security

⁸⁸ Ibid.

⁸⁹ Julian Bergann, 'A Bridge over Troubled Water? The Instrument Contributing to Stability and Peace (IcSP) and the Security-Development Nexus in EU External Policy', Discussion Paper 6/2018, German Development Institute, February 2018, https://www.die-gdi.de/uploads/media/DP__6.2018.pdf, p.10.

⁹⁰ Ibid, p.10.

⁹¹ <https://fnf-europe.org/2020/08/06/eu-budget-2021-2027-whats-in-it-for-europes-defence/>.

⁹² European External Action Service (EEAS), European Peace Facility - An EU off-budget fund to build peace and strengthen international security, 2 June 2020, https://eeas.europa.eu/headquarters/headquarters-homepage/46285/european-peace-facility-eu-budget-fund-build-peace-and-strengthen-international-security_en.

⁹³ Ibid.

⁹⁴ <https://www.csis.org/analysis/european-peace-facility-bolster-european-foreign-policy>.

Assistance Force (ISAF), reached its peak in 2011 when ISAF deployed more than 130,000 troops and continued after 2014 when the RS mission took over with a more modest mandate and strength.

Such an effort focused on the Afghan National Security Forces (ANSF), which encompasses the Afghan National Army (ANA), Afghan National Police (ANP) and, more recently, the Afghan Air Force. The building up of professional and self-sustaining ANSF represented a central effort of ISAF mission and consisted of taking the international lead in assisting Afghanistan to establish security while enabling other international organisations in matters of development and governance.⁹⁵ Training the ANSF complemented ISAF combat operations, civil-military cooperation and material reconstruction efforts. In 2009, the NATO Training Mission-Afghanistan (NTM-A) was established under ISAF Joint Command⁹⁶ and was responsible for the formation of fielded units through advice and assistance activities. NTM-A broke new ground by tying the full Alliance to training and mentoring ANSF. The mission became symbolic of the allied agreement to invest in local capacities to counter the full range of threats to Afghan stability, from insecurity over high levels of corruption to the lack of good governance.⁹⁷ The aim was to reach a more structured approach toward the training and mentoring activities for both ANA and ANP under a single NATO framework in recognition of the complementary role of each in the achievement of a secure and stable national environment.⁹⁸ NATO sought also to coordinate international efforts in the field of security sector reform to guarantee efficient use of resources and a more coherent approach.⁹⁹ NTM-A was to act in close cooperation with other international actors such as the European Union Police Mission (EUPOL) and the International Police Coordination Board (IPCB), among others.¹⁰⁰

⁹⁵ Paola Sartori and Alessandro Marrone, 'Capacity Building as Partnership: NATO's Future Role', in ten Rynning (ed.), *South Asia and the Great Powers: International Relations and Regional Security*, London and New York, I.B. Tauris, 2017, p.89.

⁹⁶ North Atlantic Treaty Organisation, 'NATO Training Mission Afghanistan,' *News*, April 4, 2009, http://www.nato.int/cps/en/natolive/news_52802.htm.

⁹⁷ Paola Sartori and Alessandro Marrone, pp. 89-90.

⁹⁸ North Atlantic Treaty Organisation, 'NATO Training Mission Afghanistan,' *News*, April 4, 2009, http://www.nato.int/cps/en/natolive/news_52802.htm.

⁹⁹ Ibid.

¹⁰⁰ IPCB membership consists of 14 Nations (Australia, Canada, Denmark, Egypt, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Turkey, United Kingdom and United States) and eight organisations (MoI, European Union, EUPOL, ISAF, GPPT, NATO SCR, UNAMA and UNDP/LOTFA).

From September 2009 to September 2013, the ANSF more than doubled in size up to a total number of 352,000 soldiers and police officers.¹⁰¹ Concerning the number of trainers employed, according to data released by the US Defense Department, 1,653 trainers were in place in November 2013.¹⁰²

NATO financial sustainment for ANSF has been provided by the ANA Trust Fund, which was created in 2007 to cope with costs of installations and transportation of equipment and services and in- and out-of-country training.¹⁰³ Since then the Trust Fund has repeatedly expanded: firstly in 2009 with the allied commitment to ANA long-term sustainment, later in 2011 with the pledge to finance long-term literacy programmes.¹⁰⁴ Further adaptation of the Fund occurred in 2013 to increase its flexibility to provide support to other elements of the ANSF, although its focus remained primarily on the army. By 2013, 23 nations had contributed more than \$761 million.¹⁰⁵ By 2014, after incremental progress and with considerable limitations, the ANSF were able to perform autonomous combat operations in addition to activities regarding military police, intelligence gathering, route clearance, combat support, medical assistance, aviation and logistics.¹⁰⁶ As for the ANP, its role has gradually shifted from that of a para-military force to a more conventional police role through a steady transition from counterinsurgency to civilian police functions.¹⁰⁷

The year 2014 marked a watershed for the NATO presence in Afghanistan. The transition of security responsibilities from ISAF to ANSF was deemed complete, the Allied mission expired and was replaced by the RS mission. This relies on the Status of Force Agreement (SOFA) between Afghanistan and the Alliance signed in September 2014.¹⁰⁸ RS mission has since maintained a force of between 10,000 and 20,000 troops and in February 2021 stood at 9,500 personnel¹⁰⁹ to achieve a complete withdrawal by September 2021. The RS

¹⁰¹ North Atlantic Treaty Organisation, News, NATO and Afghanistan, on the website: http://www.nato.int/cps/en/natohq/topics_8189.htm?

¹⁰² Department of Defense of the United States, Report on Progress toward Security and Stability in Afghanistan, November 2013.

¹⁰³ North Atlantic Treaty Organisation, 'NATO's commitment to Afghanistan after 2014,' Media Backgrounder, September 2014.

¹⁰⁴ Paola Sartori and Alessandro Marrone, p.90.

¹⁰⁵ Department of Defense of the United States, Report on Progress toward Security and Stability in Afghanistan, November 2013.

¹⁰⁶ Paola Sartori and Alessandro Marrone, p.90.

¹⁰⁷ Ibid, p.90.

¹⁰⁸ NATO Secretary General welcomes signing of security agreements with Afghanistan, Press Release (2014) 138, 30 September 2014. http://www.nato.int/cps/en/natohq/news_113393.htm.

¹⁰⁹ <https://rs.nato.int/rsm/newsroom/key-facts-and-figures>.

deployment in Afghanistan is clearly of relatively modest size in comparison with ISAF, in line with the trends discussed before. The mission has also a more limited mandate than that of ISAF since it excludes combat operations and focuses exclusively on training, advising and assisting the ANSF.¹¹⁰ RS capacity building efforts have embraced a quite broad range of aspects including operational planning, force generation, budgeting, the execution of programmes, intelligence and strategic communications.¹¹¹

The mandate has been fully in line with the 2014 Wales Summit Declaration which reaffirmed the Alliance's commitment to Afghanistan and the capacity building of its forces.¹¹² It has been also in line with the Declaration on Enduring Partnership signed by NATO and the Afghan government in 2010. The aim was capacity building and the sustainable development of Afghan institutions. According to the Declaration:

“[NATO’s] sustained practical support to Afghan security institutions aimed at: sustaining and improving their capacity and capability to counter threats to the security, stability and integrity of Afghanistan effectively and contributing to regional security; and doing so with full respect for Afghan sovereignty and leadership, in a manner consistent with and supportive of the Afghan constitution and international law.”¹¹³

The efforts by the Alliance on capacity building encompassed NATO's BI programme to strengthen integrity and transparency in the defence sector and the Defence Education Enhancement Programme (DEEP) to provide for professional military education and also training activities in civil emergency planning and disaster preparedness.¹¹⁴

4.2 EU investment in the Afghan police

The EU investment in ANSF has been significant, albeit much smaller than NATO's or the Union's previous commitment in Kosovo or Bosnia Herzegovina. EUPOL Afghanistan was launched by the Council of the EU in May 2007 as a non-executive CSDP civilian mission and lasted until December 2016. It was the first civilian CSDP mission to be deployed in a war-like

¹¹⁰ <https://rs.nato.int/rsm/about-us/mission>.

¹¹¹ Paola Sartori and Alessandro Marrone, p.94.

¹¹² Wales Summit Declaration on Afghanistan, Issued by Heads of State and Government of Allies and their International Security Assistance Force (ISAF) troop contributing partners, 4 September 2014.

¹¹³ Ibid.

¹¹⁴ Ibid.

environment, a risk taken by the EU in light of the country's importance for the US and NATO at the time.

EUPOL Afghanistan was mandated to:

significantly contribute to the establishment under Afghan ownership of sustainable and effective civilian policing arrangements, which will ensure appropriate interaction with the wider criminal justice system, in keeping with the policy advice and institution-building work of the Community, member states and other international actors.¹¹⁵

To fulfil these objectives, EUPOL was mandated to:

- 1) Work on strategy development, while emphasising work towards a joint overall strategy of the international community in police reform, taking into account the Afghanistan Compact and the interim-Afghan National Development Strategy (i-ANDS);
- 2) Support the government of Afghanistan in coherently implementing their strategy;
- 3) Improve cohesion and coordination among international actors; and
- 4) Support linkages between the police and the wider rule of law.¹¹⁶

Since the beginning, EUPOL's tasks included monitoring, mentoring, advising and training. From 2014, following a revision of its Operations Plan, it focused only on mentoring and advising on a strategic level. Such a reduction of mission mandate proceeded in line with the decrease of NATO efforts from ISAF to RS.

EUPOL costs amounted to about €405 million (not including the costs of personnel), or an average of €45 million per year with a peak of about €70 million in 2014.¹¹⁷ The EU commitment to support the rule of law in Afghanistan was €319 million for the period 2014-2020.¹¹⁸ As of March 2019, about 124,600 police officers received salaries from a trust fund supported by the EU.¹¹⁹ EUPOL's overall costs made it the second most expensive civilian mission ever after EULEX Kosovo.¹²⁰

¹¹⁵ Council of the EU, Council Joint Action 2007/369/CFSP, 30 May 2007.

¹¹⁶ Thierry Tardy, 'EUPOL Afghanistan: Civilian Policing in a War Environment', in *European Law Enforcement Research Bulletin*, Issue 17, Winter/Spring 2018, p.32s.

¹¹⁷ See Yearbook of European Security 2016 and Yearbook of European Security 2017.

¹¹⁸ EU announces further support for the development of Afghanistan', European Commission, Press Release, 11 October 2014.

¹¹⁹ European Union External Action, 'EU-Afghanistan relations, factsheet', March 2019, https://eeas.europa.eu/sites/eeas/files/eu-afghanistan_march_2019.pdf.

¹²⁰ Thierry Tardy, p.32.

Its main targets were the higher ranks and senior leadership of the Afghan Ministry of the Interior (MoI) and the ANP. It aimed at supporting reform through strategy development rather than through classic training of the lower levels.¹²¹ This partly explains the relatively modest numbers of EUPOL personnel: 350 international police and 200 local officials at its peak in 2013.¹²² By 2013 it had trained more than 5,000 Afghan police officers and officials from the Minister of Interior, prosecutors and anti-corruption units.¹²³ However, it found it difficult to operate outside Kabul and its target audience was affected by a high degree of illiteracy (up to 80%) and corruption in both law enforcement and judicial institutions.¹²⁴ This may explain the poor results of the mission, which various reports consider mixed or at best only partially positive.¹²⁵ One of the critical issues was the EU goal to establish a civilian police service, while US efforts favoured military police.¹²⁶

4.3 NATO-EU cooperation in theatre

According to some observers, NATO and the EU cooperated rather well in Afghanistan.¹²⁷ Others believe they had a difficult relationship that prevented any formal arrangement between the two institutions.¹²⁸ That ISAF ensured the security of EUPOL personnel could be seen as a good example of cooperation, but has also been criticised as a constraint on the EU mission's room for manoeuvre.¹²⁹ The reality is mixed, complicated and difficult to assess, as it depends on several factors:

- 1) The EU found it difficult to make a synthesis of different views among its members on EUPOL and to ensure coherence between mandate and resources, with the latter insufficient for the former.
- 2) The US view on military police supporting counterinsurgency largely influenced the NATO approach to ANP training and divergence from the EU approach.

¹²¹ Ibid, p.32.

¹²² Michael Holtje and Ronja Kempin, *The EU in Afghanistan* (Berlin: SWP, December 2013), 1.

¹²³ Ibid.

¹²⁴ Thierry Tardy, pp. 33-34.

¹²⁵ See House of Lords (2011) *The EU's Afghan Police Mission. Report with evidence*. London; European Court of Auditors (2015) *The EU police mission in Afghanistan: mixed results. Special report*. Brussels.

¹²⁶ Samina Ansari and Elliott Memmi, 'Europe in Afghanistan: After Nearly 20 Years, What Has Been Achieved?', in *The Diplomat*, 8 February 2020, <https://thediplomat.com/2020/02/europe-in-afghanistan-after-nearly-20-years-what-has-been-achieved/>.

¹²⁷ Paola Sartori and Alessandro Marrone, p.90.

¹²⁸ Fescharek, N. (2015) *Forward procrastination? Afghanistan's lessons about Europe's role as a security provider*. *The International Spectator: Italian Journal of International Affairs*. 50 (3), 43-59.

¹²⁹ Thierry Tardy, pp. 33.

- 3) NATO and the EU did not agree on a clear division of labour and allocations of leadership responsibilities regarding the ANP capacity building.
- 4) Both NATO and EU strategies on Afghanistan stabilisation evolved over the decade-long commitment to establishing a functioning police service and often without synchronisation.
- 5) The Afghan theatre was a priority for NATO at least until 2014, but never top of the CSDP agenda, thus contributing to a gap between NTM-A and EUPOL Afghanistan.
- 6) The Afghan case has probably been the most challenging and difficult experience of capacity building for both NATO and the EU, further complicating the conditions for cooperation. Suffice to say that in 2013 the ANA attrition rate was estimated as high as 25-30% per year and the ANP 10-15% per year.¹³⁰
- 7) EUPOL Afghanistan came to an end few months after the 2016 signature of the Strategic Partnership document between the Alliance and the Union, thus it could not benefit from the impetus generated by a top-down political mandate to NATO-EU cooperation.

5. Conclusions

In the broader context of NATO-EU cooperation, the field of capacity building has witnessed significant progress in recent years. Until 2016, the main EU documents on capacity building barely mentioned the Alliance and the 2015 Joint Communication on Capacity Building in Support of Security and Development referred only to the possibility of extending the sharing of information to the EU's multilateral partners, including the UN, NATO and the OSCE.¹³¹

The 2016 Joint Declaration clearly stated the urgent need to 'build the defence and security capacity and foster the resilience of our partners in the East and South in a complementary way through specific projects in a variety of areas for individual recipient countries, including by strengthening maritime capacity'.¹³² The 2018 Brussels declaration then confirmed that NATO and EU

¹³⁰ Michael Holtje and Ronja Kempin, p.1.

¹³¹ European Commission, 'Joint Communication to the European Parliament and the Council. Capacity Building in Support of Security and Development - Enabling Partners to Prevent and Manage Crises'.

¹³² https://www.nato.int/cps/en/natohq/official_texts_133163.htm.

together ‘support the defence and security capacity of our neighbours to the East and the South’.¹³³

The top-down mandate officially declared the need for joint efforts to project stability in the common eastern and southern neighbourhood, something not recognised before but much needed. This led to real progress in broadening and deepening NATO and EU knowledge and added value in capacity building experience, albeit with different approaches and cultures.¹³⁴ Since 2016, both organisations have spent considerable time and effort in mapping, coordinating and developing areas of mutual interest and concern, including a substantial list of geographical focus and issues that have resulted in a more communicative and institutionally thicker relationship.¹³⁵

Following the 2017 second Progress Report on the implementation of the Joint Declaration, Bosnia Herzegovina, Moldova and Tunisia were selected as pilot countries to focus efforts to establish a praxis of cooperation. Extensive staff-to-staff consultations have been established on a variety of capacity building aspects including strategic communication, small arms and light weapons, civil protection, cybersecurity, CBRN issues and counter IED work.¹³⁶ In July 2017, the EU allocated €2 million as a contribution to NATO’s BI programme to cover neighbouring countries voluntarily.¹³⁷

According to the 2018 third Progress Report, information exchange and staff-to-staff consultation have also begun regarding Ukraine, Georgia and Jordan. In Ukraine, under the auspices of the EU Delegation:

NATO has been chairing a donor coordination group for the defence and security sector and is closely cooperating with the EU Advisory Mission on issues such as strategic communications, communications capacity building, training and reform of the Security Service of Ukraine.¹³⁸

¹³³ https://www.nato.int/cps/en/natohq/official_texts_156626.htm.

¹³⁴ <https://www.iss.europa.eu/sites/default/files/EUISSFiles/EU%20and%20NATO.pdf> , p.57.

¹³⁵ Ibid, p.57.

¹³⁶ See in this regards The EU and NATO, ‘Second Progress Report on the Implementation of the Common Set of Proposals Endorsed by NATO and EU Councils on 6 December 2016’.
https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_11/171129-2nd-Joint-progress-report-EU-NATO-eng.pdf.

¹³⁷ The EU and NATO, ‘Second Progress Report on the Implementation of the Common Set of Proposals Endorsed by NATO and EU Councils on 6 December 2016’,
https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_11/171129-2nd-Joint-progress-report-EU-NATO-eng.pdf.

¹³⁸ https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_06/20180608_180608-3rd-Joint-progress-report-EU-NATO-eng.pdf.

NATO and EU staffs are also coordinating their activities in and on Iraq with their respective missions in the country¹³⁹ and cooperation has intensified in the three pilot countries. For example, the European Centre of Excellence for Countering Hybrid Threats has been involved in supporting capacity building in the Western Balkans in strategic communications.

In recent years NATO-EU cooperation has moved on from the bottom-up, limited cooperation on the ground, which in Afghanistan was constrained by the huge challenges posed by the local reality. The top-down mandate to cooperate reflects the trends affecting the strategic context of SFA. Since the risk in the crisis zone increases and the political will for large-scale military engagement decreases, member states of both NATO and EU seek to optimise the results of DCB and SFA activities by exploiting the synergies between the Alliance and the Union. The latter has also adjusted its approach to capacity building to expanding the mandate and resources for its ‘train and equip’ approach. Structural obstacles and constraints for NATO-EU cooperation remain, including the geopolitically diverse membership and the diverse set of strategic cultures within the EU, ranging from neutral countries to nuclear powers.¹⁴⁰

Within this framework, a better understanding of the strategic context of SFA enables better decisions in both the planning and execution of the activities undertaken.

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¹³⁹ Ibid.

¹⁴⁰ On Strategic Cultures in Europe see <https://www.springer.com/gp/book/9783658011673>.

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CHAPTER 3

IHL Training to Local Forces in SFA Operations: A Contribution to a Safe and Stable Environment for the Population

Gilles Hansoul

Abstract

This chapter examines the conditions in which well-tailored and contextualised training in International Humanitarian Law (IHL) of local forces in the context of a SFA mission can contribute to improving their respect for IHL norms and providing a safer and more stable environment for the population. It offers practical observations and recommendations based on the International Committee of the Red Cross's (ICRC) decades of experience in disseminating IHL to arms carriers¹⁴¹ around the world, feedback from the training provided by other actors and independent research.

This chapter suggests adopting a horizontal approach, connecting IHL training programmes with broader efforts aimed at strengthening the rule of law, and by reflecting IHL considerations in other relevant training (e.g. firing practice or planning of operations). It suggests that, for a lasting impact on the behaviour of local forces, an IHL training programme should be contextualised and it proposes ways of fostering socialisation – the process by which soldiers will integrate IHL norms in their behaviour and use of force. It details the various components and modalities of an IHL training programme (tailored content, mixed teaching methods, adapted materials, audience and trainers) and identifies challenges and factors of effectiveness. A section is also dedicated to the complementary role mentors can play.

¹⁴¹ 'Arms carriers' is here used to designate armed forces, security forces, police forces, non-state armed groups and private military or security companies.

Finally, it examines the strategic importance of planning and staffing a robust outcome-based evaluation mechanism to verify and monitor the effect of training in bringing about a positive change in the behaviour of the supported local forces.

Keywords: *IHL training, mentoring, monitoring, evaluation, adaptation.*

1. Introduction

In execution of its role as the guardian of International Humanitarian Law (IHL), the International Committee of the Red Cross (ICRC) has pursued a continued bilateral and confidential dialogue with most of the armed forces of the world and hundreds of armed groups aimed at enhancing respect for IHL. This dialogue includes, where relevant, matters related to IHL training. In many contexts, the ICRC itself is engaging in IHL training activities for military actors and other weapons bearers – be it by delivering training itself, training the trainers or advocating at the highest level for integration of IHL in military training curricula.

In recent decades, in contexts where foreign militaries are deployed in support of a host nation, the ICRC has seen that military support has at times included capacity building and the teaching of IHL to partner local forces. The ICRC’s confidential dialogue with military actors, both trainers and trained forces, coupled with its own training experience, has allowed it to identify some of the most recurrent issues and challenges to training local forces in IHL, and certain practices that showed good results. A summary of these challenges and practices is presented in this chapter.

Hence, the focus of this contribution is not to discuss ‘What’ should be part of IHL training but rather to look at ‘How’ training can be conducted to bring about improvements in practices and behaviour.

1.1 Setting the Scene: IHL in Security Force Assistance missions – why does it matter?

Why does respect for IHL by local forces matter to an SFA mission?¹⁴² It matters because SFA activities aim to contribute to regional stability by

¹⁴² Whilst the chapter mostly focuses on NATO SFA activities, member states also recognise individually the importance of ensuring that the supported forces respect IHL and human rights and include it in their assessment criteria; for example the Leahy Law in the US or the Overseas Security and Justice Assistance (OSJA) Human Rights Guidance for the UK.

developing legitimate local forces,¹⁴³ and these local forces are unlikely to be regarded as legitimate, nor contribute to regional stability, if they operate in violation of the basic rules of war.

Looking at the NATO doctrine on SFA,¹⁴⁴ having a legitimate and credible force operating within the rules of war appears as a pre-condition to bringing stability and security in the host nation and achieving a sustainable end state. Respect for IHL can also contribute to creating the conditions for sustainable peace in mitigating the consequences of conflicts and ultimately in providing a common ground for the parties to enter into negotiations.¹⁴⁵

IHL also matters to an SFA mission because the mission itself, through the military support it provides, presents risks and opportunities related to the behaviour of local forces: risks, because SFA will strengthen the capacity of local forces to execute security responsibilities to its citizens and, if done poorly, the civilian population would certainly suffer the consequences; opportunities, because this military support and the leverage it may offer, can be used to positively influence the way local forces behave and reduce the humanitarian impact of conflicts.

Studies¹⁴⁶ have shown that training in IHL increases restraint on the battlefield.¹⁴⁷ Armed forces should provide for clear standards of conduct, training of their personnel and effective sanctions in the event of misconduct. As part of an SFA mission, IHL training, therefore, appears as a critical means to foster better knowledge of and respect for IHL among assisted local forces. It is a long-term endeavour but a valuable way to mitigate – though not a complete answer to – some of the risks arising in an SFA mission.

¹⁴³ NATO Standard AJP-3.16 Allied Joint Doctrine for Security Force Assistance (ed. May 2016), § 0307, p. 3-3.

¹⁴⁴ Ibid, p. 2-9.

¹⁴⁵ 'Changing the narrative on international humanitarian law' (2017) <https://blogs.icrc.org/law-and-policy/2017/11/24/changing-the-narrative-on-international-humanitarian-law/>.

¹⁴⁶ Studies and research mentioned in this chapter mostly refer to the report *The Roots of Restraint in War* (2018), a publication based on empirical research led by 6 independent researchers (Andrew Bell, Francisco Gutiérrez Sanín, Yvan Guichaoua, Ferdaous Bouhleb, Oliver Kaplan and Naomi Pendle) and commissioned by the ICRC to advance the organisation's understanding of the workings of armed forces and armed groups.

¹⁴⁷ ICRC, citing Andrew Bell, 'Measuring the effect of norm socialisation on the treatment of civilians: An analysis of U.S. army conduct in Iraq and Afghanistan', paper presented at the annual meeting of the American Political Science Association, San Francisco, 31 August–3 September 2017; Christopher H. Warner et al., 'Effectiveness of battlefield-ethics training during combat deployment: A programme assessment', *The Lancet*, Vol. 378, September 2011, pp. 915–924.

In an SFA mission, a broader strategy to promote the rule of law in the host nation should include IHL training and related mentoring. At the political level, for example, the host nation's legislation should be brought in line with IHL treaties and conventions, whilst national criminal legislation should prohibit and punish violations of IHL. At the military level, IHL training would make little sense if its core principles are not properly reflected in the existing doctrine and procedures followed by the local forces.¹⁴⁸ In addition, the mission may consider supporting the Ministry of Defence of the host nation in improving policy and operational instruments to better integrate respect for IHL into operations and activities.¹⁴⁹

Even more importantly, the strengthening of national institutions' (civilian or military) capacity to hold members of the armed forces accountable for violations of IHL will often be required if the host nation is to ensure long-lasting respect for IHL by its own forces.

2. IHL training to local forces: challenges, practices and recommendations

2.1 Preliminary remarks

'IHL training' hereafter refers to training activities specifically designed to ensure knowledge of and respect for IHL and other relevant norms that protect people and objects affected by an armed conflict.

Proper training and instruction are central to ensuring respect for IHL and the protection of victims of armed conflict more broadly.¹⁵⁰ They ensure that the applicable rules are systematically known, internalised and put into action. But not just any training. Research has found that intensity (in frequency and methods) matters: conflict data from Afghanistan and Iraq suggest that military

¹⁴⁸ See ICRC publication 'Integrating the Law'. The law becomes an integral part of the conduct of operations through integration in doctrine, education, training and equipment and sanctions.

¹⁴⁹ The NATO Resolute Support Mission in Afghanistan offers examples of such instruments adopted by the Afghan forces: the drafting of an Afghan IHL/human rights policy, the development of civilian harm mitigation and accountability mechanisms, or the building of a section of Afghan legal advisers for military operations.

¹⁵⁰ ICRC, citing Andrew Bell, 'Measuring the effect of norm socialisation on the treatment of civilians: An analysis of U.S. army conduct in Iraq and Afghanistan', paper presented at the annual meeting of the American Political Science Association, San Francisco, 31 August–3 September 2017; Christopher H. Warner et al., 'Effectiveness of battlefield-ethics training during combat deployment: A programme assessment', *The Lancet*, Vol. 378, September 2011, pp. 915–924.

units led by officers with more intensive training in norms of restraint engaged in less violence against civilians.¹⁵¹

Buy-in from the local forces' leadership is the obvious starting point. IHL-focused training may not necessarily be its first priority. Local ministries may be more interested in legal mentoring related to, for example, voting rights, sexual harassment or military justice and it may therefore sometimes be necessary to incorporate both the local forces' legal learning priorities and IHL.

If training and instruction in IHL are to be part of a broader SFA mission and incorporated in Training, Advice and Assist programmes, the mission will want to put in place the best possible, well-tailored and contextualised training programme with the most lasting effect.

2.2 Some key factors to consider

- Do the personnel have the appropriate skills to provide training and advice, including an understanding of the language and culture of the trainees?
- Has an assessment been conducted to ensure that the training programme is adapted to the partner force, as concerns content, methods and materials, timing and frequency, audience?
- Is the IHL training integrated across the broader training programme of the mission, for example, in combined exercises, etc.?
- What events, legends, personalities and values form part of the local force's identity?
- How do these influence the formal and informal socialisation of IHL norms?
- What intersecting identities (e.g. religious, ethnic) do members of local forces have?

¹⁵¹ Andrew Bell, 'Measuring the effect of norm socialisation on the treatment of civilians: An analysis of U.S. army conduct in Iraq and Afghanistan', paper presented at the annual meeting of the American Political Science Association, San Francisco, 31 August–3 September 2017; Christopher H. Warner et al., 'Effectiveness of battlefield-ethics training during combat deployment: A programme assessment', *The Lancet*, Vol. 378, September 2011, pp. 915–924.

- Do they offer other entry points for IHL messages?
- What trainer profile would be most credible with particular audiences?
- How much influence do junior and non-commissioned officers have on unit members' behaviour and viewpoints?
- Will training or instruction be complemented with mentoring?
- How is the effectiveness of the IHL training to be assessed and incorporated into subsequent training cycles?¹⁵²

2.3. IHL training programme

2.3.1 No 'one-size-fits-all'

The selection of content, format, audience and trainers is central to ensuring that a training programme is effective. Ideally, a programme will be adapted to the needs, functioning and organisational structure (level of integration, type of command, etc.) of the recipient local forces, as determined during an assessment phase of the broader SFA mission conducted before implementing the training. NATO SFA doctrine provides guidance to assess the local forces and their functional components, notably stressing that such an assessment should precede any SFA activities to determine capability gaps that will be addressed by the SFA mission.¹⁵³

In the specific case of IHL training, it is important to include this activity in the initial SFA mission assessment and evaluation. Assessing the needs and capacities of the local forces in relation to IHL and understanding the realities they are operating in will help tailor the training. It will help set realistic objectives and the conditions that define a successful training programme, thereby contributing to defining a reasonable end state for the programme. As developed in section 2.5 on evaluation and adaptation, formal assessments of the needs should be reviewed regularly in light of operational observations, whether they concern the performance of past trainees, specific issues of humanitarian concern or other changes in the operational environment.

¹⁵² The Roots of Restraint in War, ICRC, 2018.

¹⁵³ AJP-3.16, §0225, p. 2-10.

IHL is extensive and there are various activities that training could focus on, such as the conduct of hostilities, detention operations or the protection of cultural property. Fixing the scope and focus of the training in accordance with the operational needs of the local forces will allow clear objectives to be pursued, monitored and subsequently evaluated (subsection 2.3.3).

2.3.2 Incorporation of IHL considerations in other training programmes

IHL should not be taught as a stand-alone module or course. All military training must be consistent with the requirements of IHL and other training programmes or exercises will provide opportunities to reinforce or clarify IHL rules (subsection 2.3.6). For example, firing practice will offer the possibility to put IHL into action as it applies to the use of certain weapons.

2.3.3 Content

Depending on the needs and absorption capacities of the local forces, training could focus on the most relevant rules applicable to activities that these forces are most likely to carry out. For those engaged on the battlefield or in proximity to the civilian population, it should include rules relating to precautions, distinction and proportionality in attack, the protection of the wounded and sick and norms and principles governing the respectful engagement with the civilian population and particularly vulnerable groups. For forces involved in detention operations, it should include the treatment of people deprived of liberty.

Below the threshold of an armed conflict, local military forces may also have to engage in law enforcement operations. In such situations, other legal frameworks will govern the use of force by local forces such as international human rights law. It is therefore important to anticipate the need to provide training and equipment that are appropriate and lawful in a law enforcement operation. This will depend on the expected functions of the forces being trained and may change over time.

Beyond the letter of the law, training should highlight why IHL is important for the local forces from a military perspective: to be seen as a professional fighting force, to protect the civilian population and obtain its support, to maintain international support, etc. IHL strikes a balance between military necessity and humanitarian imperatives and its respect will also help achieve

longer-term objectives by having a positive effect on societies and significantly contributing to stabilisation.¹⁵⁴

SFA trainers should also consider including a gender perspective into all relevant aspects of their training. Gender-blind training can have a negative effect both on the military mission and the protection of affected populations. Conversely, incorporating a gender perspective in the training can increase situational awareness and result in better protection of those affected by conflict and violence. A gender perspective will allow forces to better identify and address particular vulnerabilities of men, women, boys and girls in situations of armed conflict and violence.

In preparing a training programme, SFA actors would gain by consulting local partners to identify context-specific realities and challenges and adapt the training accordingly.¹⁵⁵ Priority topics for training could be decided based on feedbacks from the local forces' operational branch (what the situations are that they are most exposed to, what their recurring dilemmas and challenges are) and the branch in charge of investigations (trends of incidents causing harm to civilians and main issues reported).

In certain situations, organisations such as the ICRC may be in a position to offer assistance in developing an IHL curriculum, or to contribute to the training itself.

2.3.4 Socialisation

A key factor for success in preparing, planning and executing an IHL training programme is a sound understanding of the process of socialisation, i.e. the process by which soldiers will adopt IHL norms and rules in their use of force.

There are formal socialisation mechanisms in armed forces: IHL in education programmes, IHL incorporated into practical training and sanction mechanisms in case of non-compliance. There are also informal norms that can be as strong as formal norms, even within highly professional armed forces. Think of peer-group conformity, or the spirit of camaraderie that have a fundamental influence on the views and actions of soldiers. New recruits may be introduced to the formal norms by the institutional hierarchy, but their peers will show

¹⁵⁴ See for details and examples: <https://www.icrc.org/en/document/changing-narrative-ihl>.

¹⁵⁵ In line with NATO Standard AJP-3.16, § 0320 p. 3-6: 'In partnership with the HN, commanders should design, establish and deliver training programmes for the local forces'.

them how to interpret these formal norms in real-world operations. The more official norms are supported at the peer level, the more likely they are to be internalised and become part of the soldier's identity – the 'right thing to do'.¹⁵⁶

In this sense, IHL training should not be seen as a tick-the-box activity. IHL training is everything from the first interaction with trainees until they leave for operations. As much as its content, it is the whole spirit and energy around the training that will carry the messages of IHL. It is about drinking tea, telling stories and sharing experiences of applying IHL, about discussing what it is to be a warrior; all this contributes to building a culture of respect for the rules of war.

Hence, the SFA trainer should endeavour to better understand socialisation processes and find ways to address local informal codes and practices that do not align with formal rules, such as marching songs glorifying sexual violence.¹⁵⁷

2.3.5 Challenges, incentives & ownership

Perhaps one of the greatest challenges to socialisation is the scepticism with which soldiers, confronted by the deadly risks they and their comrades face on the front-line, may view IHL principles, particularly if taught in too abstract a way. Maintaining military adherence to IHL in the face of consistent violations by the opposing side also remains a major challenge to the observance of such principles on the battlefield. For those tasked with teaching IHL, fostering incentives and ownership is a possible way to overcome some of these obstacles.

Emphasising the identity-based nature of respecting IHL could help encourage compliance in cases where soldiers question why they should respect IHL when their enemies do not. This can be achieved by framing the training in a way that combines legal norms with the values underpinning them, seeking to connect these values with local norms that speak to the audience, be they legal, social, cultural or religious. Appealing to the identity, ethos and sense of honour of the trained local forces will facilitate the internalisation of

¹⁵⁶ The Roots of Restraint in War, ICRC, 2018.

¹⁵⁷ Ibid.

humanitarian principles and respect for IHL beyond ‘it is against the law’ to ‘it is not who we are’.

IHL should always be presented accurately and no compromises must be made on legal principles and rules; yet connecting them with the specific cultural, religious and social context will render the training more effective, persuasive and durable. It is often the case that IHL and other legal principles are mirrored in local cultural, religious, or social norms and traditions, for example regarding the protection of civilians and the prohibition of the use of certain means and methods of warfare.¹⁵⁸ In Burundi, for example, the ‘*Règlement N°98 sur le Droit International Humanitaire*’ draws a parallel between the IHL principle of humanity and the concept of ‘Ubuntu’.^{159,160}

For Muslim soldiers, principles of Islamic law may resonate much more strongly than IHL.¹⁶¹ To mitigate the potential for conflict between these two influences, trainers¹⁶² can emphasise the correlation between IHL and Islamic principles regarding restraint towards civilians and the prohibition of the use of certain means and methods of warfare. Carefully taking into consideration local sensitivities and acknowledging that Islamic law and IHL have different scopes, evolutions and origins as legal traditions, trainers could try to identify and refer to shared principles between the Islamic laws of war and IHL and use language and references of Islamic law to enhance and support respect for relevant IHL rules in context.¹⁶³

¹⁵⁸ Ibid. p. 34.

¹⁵⁹ Ubuntu is a South African term that resonates throughout Africa and means ‘I am, because you are’ or humanity; it is the recognition that humans are all bound together, there is a oneness to humanity. See <https://www.oxfordlearnersdictionaries.com/definition/english/ubuntu>.

¹⁶⁰ Règlement n° 98 sur le droit international humanitaire, Ministère de la Défense Nationale et des Anciens Combattants, Projet ‘Moralisation’ (BDI/B-05), August 2007, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule139_sectiona.

¹⁶¹ Evidence from studies shows that religious identification can be an alternative focus for combatants: see *The Roots of Restraint in War*, ICRC, 2018, p. 34.

¹⁶² In the author’s view, experts on Islamic law and the laws of war would be best placed to engage in a discussion on the complementarities and overlap between IHL and Islamic law, with all the weight and credibility that an exercise of this caliber requires.

¹⁶³ See <https://www.icrc.org/en/document/islamic-law-and-international-humanitarian-law>; Ahmed Al-Dawoody in *International Review of the Red Cross* n° 906, Dec. 2017: <https://international-review.icrc.org/articles/islamic-law-and-international-humanitarian-law-introduction-main-principles>; Expert workshop on IHL and Islamic law, Geneva, 29-30 October 2018: *IHL And Islamic Law In Contemporary Armed Conflicts - Experts’ Workshop Geneva, 29–30 October 2018* (icrc.org).

Finally, incorporating historical, contemporary and even local examples of compliance with IHL can also resonate and contribute to adding credibility and relevance to the training.¹⁶⁴

2.3.6 Methods and materials

IHL training must go beyond academic and theoretical lectures. After IHL concepts have been explained to trainees and connected to their environment, they must be practised to ensure their uptake in the operational reality of the trainees. This allows for their better assimilation.

- **Mixed training methods**

Mixed training methods combining IHL briefings, classroom discussions, case-study reviews and practical field exercises have been shown to be the most effective in inculcating IHL and other norms of restraint in combatants.¹⁶⁵

Other training programmes conducted in the SFA mission such as training in the planning and conduct of operations, fire practice, etc. may also offer opportunities to reinforce the integration of IHL rules in concrete activities subsection 2.3.2).

- **Adherence tested under duress**

Delivering practical training that includes intense, realistic and fast-paced exercises based on the applicable ROE allows trainees to operationalise IHL training, linking it to field realities and challenges.

¹⁶⁴ The Roots of Restraint in War, ICRC, 2018, p. 65.

¹⁶⁵ Based on empirical research undertaken with the Australian and Philippine armies by Andrew Bell. See The Roots of Restraint in War for further details.

An IHL training programme that incorporates training while under duress is likely to significantly enhance the adoption of these norms by trainees. Indeed, it has also been found that fatigue and stress can lead to ethical breakdown:

Testing ethical compliance under duress

'A military training centre discovered the importance of testing ethical compliance under duress: during a week-long training exercise in which trainees were sleep- and food-deprived, instructors tried to enlist the trainees in simulated unethical and unlawful behaviour. Many acquiesced, demonstrating how fatigue and stress can lead to ethical breakdown. The trainees themselves were shocked when anonymized recordings of their actions were played back to them in the classroom and said that the experience had taught them more than any other of the need to develop a strong moral compass before facing the stress of the battlefield. Based on this experience, the training centre has since instituted an intensive, model ethics training programme that incorporates training while under duress, which has been found to significantly enhance the adoption of norms of restraint by trainees'.¹

¹ The Roots of Restraint in War, ICRC, 2018.

• **Language, education and other characteristics**

To be effective, training should be adapted to the language, education and other characteristics of the target audience. In addition to addressing trainees in a language they speak comfortably, trainers should adapt their level of language to the audience, for example by favouring less technical language. At times, it may be necessary to translate the lecture and training materials into more than one national languages spoken among the local forces. In some contexts, training materials may need to be adapted to the literacy rates of partner forces, by using audio-visual tools or acting out practical scenarios rather than relying on written texts.¹⁶⁶

• **IHL Manual**

Complementary to the training itself, a way to foster ownership of IHL norms is to support the local force in the drafting of their own IHL manual for operations. The ICRC has supported local forces with such initiatives in various contexts in Asia and Africa. In the Sahel, for example, the ICRC

¹⁶⁶ See Emory Law and USIP, Law of War Training, 2013, accessible at: http://law.emory.edu/_includes/documents/sections/clinics/law-of-war-training-manual-01.pdf, p. 9.

engaged in a project in which ten officers of a local national army were selected by their leadership to be trained by the ICRC on IHL and participated in the drafting of an IHL manual designed for the local forces.

2.3.7 Timing and frequency

Training and instruction should be repeated at regular intervals, both to ensure continuity between rotating personnel and units and to refresh the knowledge of those already trained. Repeating training sessions at regular intervals helps anchor respect for IHL as a reflex action.

The periodicity of the instruction will need to be determined given the operational requirements of the training audience, although as a general rule, personnel should receive training at least once per year, even in operational settings. Research on the armed forces suggests that military units led by officers with more intensive training in norms of restraint engaged in less violence against civilians.¹⁶⁷

Research shows that key moments to reinforce IHL and other norms of restraint include during immediate pre-deployment briefings (possibly less relevant to an SFA mission training local forces) and most importantly in the wake of an incident in which a unit member has been injured or killed.¹⁶⁸

2.3.8 Audience

All those who are instrumental in the application of IHL should be educated in its rules and the sanctions applicable to violations. That includes:

- All armed forces personnel throughout the chain of command;
- Legal officers or advisors; and
- Civilian personnel who perform relevant functions, such as medical personnel.

Leadership is an important factor in creating a culture of respect for IHL. Hence, the meaningful participation of local senior leaders and commanders in training sessions reinforces their importance to other trainees.

¹⁶⁷ Andrew Bell, 'Measuring the effect of norm socialisation on the treatment of civilians: An analysis of U.S. army conduct in Iraq and Afghanistan'.

¹⁶⁸ The Roots of Restraint in War, ICRC, 2018, p. 29, ref. to interview with military expert David Kilcullen, Geneva, 29 November 2017.

Conversely, research shows that the example set by junior Non-Commissioned Officers (NCOs) has the greatest influence on junior soldiers' thoughts and behaviour.¹⁶⁹ NCOs should therefore be central to efforts to promote and transmit IHL norms among junior soldiers within small operational units. In many ways, the junior NCO must become as much a partner in IHL training as the senior battalion commander, for it is only when officers at those levels adopt IHL principles that soldiers will experience formal and informal socialisation.

Due to the limitations of dedicated training resources, selection of participants may have to be carried out. Selection should be appropriate and aimed at bringing to courses, as a priority, commanders, planners and operators likely to conduct, plan and execute kinetic operations.

Training courses provided abroad are to be considered carefully as they can be under-attended (lack of candidates), or those selected may not be appropriate for the objectives of the course or, worse, the local selection process may present risks of being corrupt.

2.3.9 Trainers

The choice and profile of the trainer can also make a difference in integrating IHL norms. Understanding the context and the audience of the training will help identify the most effective IHL training providers for that audience. Often, soldiers give more credibility to IHL instructors with operational experience, i.e. to (former) military peers who can draw on the dilemmas they faced and explain the choices they made. However, there may also be contexts where audiences will give greater credence to trainers with no combat experience but recognised IHL expertise, including civilian lawyers.

Training may also be more effective when developed or delivered in conjunction with local authorities and civil society including Red Cross and Red Crescent Societies, legal professionals, or non-government organisations. Such partners may be best positioned to appeal to local values, use familiar pedagogical approaches and 'translate' concepts more effectively. Such collaboration can also have a positive effect on civil-military relations and

¹⁶⁹ The Roots of Restraint in War, ICRC, 2018, p. 34.

develop trust, thus creating a conducive environment for continued engagement between these different actors.

As with the selection of trainers, they should be qualified and experienced in the relevant area of operation. Before their deployment, trainers should be specifically trained and prepared.

2.3.10 Train-the-trainers

It may be pertinent to develop the capacity of assisted local forces to conduct their own IHL training. This can present the following advantages:

- It can facilitate internalisation and ownership of the IHL rules by the final recipients of the training when provided by one of their peers.
- Depending on local leadership and rapport, training may be most effective when conducted by the direct, close hierarchical superior of the trainees, who will be seen as supporting the principles and ideas of IHL being conveyed and practised.
- It can ensure the sustainability of the training and its impact beyond the life of the relationship with the SFA provider.
- It has a multiplying effect that allows to reach out to multiple units.

A train-the-trainer programme should be seen as a long-term initiative executed throughout an SFA mission. It will also be relevant as part of a comprehensive exit strategy established before the beginning of the mission and adjusted throughout its life, whereby the SFA mission plans for the eventuality that local forces will at some point need to sustain that training activity themselves.

However, in adding another layer between the SFA provider and the final recipient of the IHL training, train-the-trainer programmes add a level of uncertainty, that should be mitigated by accompanying and monitoring measures aimed at:

- Tracking new local trainers and verifying that new training capacity materialises in effective IHL training for troops: have they developed sufficient capacity? have they received enough support back in their units to conduct an IHL training?
- Monitoring outcomes of these training sessions (see section 2.5).

2.4 Mentoring

IHL training of local forces can be complemented by accompanying and mentoring those same trainees in operations, outside of training camps or institutions.

Through mentors, IHL rules and principles can be reinforced continually during the preparation and conduct of specific missions and operations, for example by coaching local forces in taking precautions before an attack. Mentors can provide technical guidance tailored to the ‘day-to-day’ operational activities of the assisted local force. By accompanying the local forces, they can assess the efficacy of the training delivered (in terms of outcomes – subsection 2.5.1), the further needs of the force and adjust the training regime accordingly. Mentors can also identify lessons that inform the regular assessments of the relationship and training programme and the pre-deployment training of incoming SFA personnel from their own organisation or other partners.

The sole presence of mentors may also have an immediate positive effect as the accompanied force is unlikely to commit violations in their presence. The mentor being usually outside the local force’s hierarchy can also foster a climate where open dialogue can take place.

To be effective, mentoring requires continuity of personnel over a sustained period and should be undertaken by personnel with the ability to exert a positive influence regarding the operationalisation of IHL and the protection of civilians.

2.5 Evaluation and adaptation

Training will not be effective unless its impact is closely monitored, frequently assessed and its programme adapted accordingly. Practical measures to provide training and mentoring to local forces must therefore be complemented by robust mechanisms – and resources – to evaluate their effectiveness against the previously determined training objectives. Feedback loops throughout the lifecycle of the programme will ensure that observations are fed into the design and implementation of further training or mentoring.

2.5.1 Outcomes rather than outputs

Due to mission imperatives or resource limitations, there may be a temptation to rely on outputs to evaluate training programmes, i.e. to present the number of training sessions carried out or the number of soldiers trained, rather than concrete outcomes. Whilst outputs are important indicators that may capture programmatic successes, they provide little information on the real impact of the training. An outcome-oriented approach will instead require qualitative analysis to answer questions related to the local forces' change of behaviour towards better respect for IHL and greater protection of the civilian population.

Yet even some of the most advanced military organisations do not seem to have a system for monitoring and evaluating the efficacy of their training on human rights or IHL.¹⁷⁰ This is a serious gap that needs to be addressed to effectively monitor and evaluate the effect of this training on partners.

2.5.2 Methods of evaluation

The multidisciplinary Kirkpatrick model for training evaluation,¹⁷¹ the most popular and widely-used training evaluation model,¹⁷² provides the following indicators that may prove useful in evaluating the outcome of an IHL training programme:

- The learning or, in the case of an IHL training, the extent to which local forces have acquired basic norms and principles of IHL at the end of Haver participation in the training;
- The behaviour or, in the case of an IHL training, the extent to which local forces apply what they have learned during training when they are back in operations;
- The results, or the extent to which training contributes to targeted outcomes (e.g. IHL violations decrease, the population feels safer, stability increases, etc.).

Concrete measures to track and verify these indicators could include:

¹⁷⁰ GAO, 'Security Assistance: US Agencies Should Improve Oversight of Human Rights Training for Foreign Security Forces,' August 2019: <https://www.gao.gov/assets/710/700863.pdf>.

¹⁷¹ See <https://www.kirkpatrickpartners.com/Our-Philosophy/The-Kirkpatrick-Model>.

¹⁷² IOSR Journal of Business and Management (IOSR-JBM) ISSN: 2278-487X. Volume 5, Issue 2 (Sep-Oct. 2012), P 19.

- Testing the training under duress, with peer-judged and collectively debriefed exercises;
- On the ground monitoring of troops for a period following the training to observe and assess the integration of IHL norms;
- The use of mentors can support a process of measuring outcomes rather than outputs, as mentors would be able to make a qualitative judgement of the behaviour of trained forces;
- Extensive debriefings with local forces and with other partners engaging with the trained forces, feeding in after-action-reviews that can identify positive or negative lessons regarding their respect for IHL; and
- Interviews conducted with the local population.

2.6 Monitoring of Trained Forces

On the ground monitoring of trained troops requires resources and capacities that should be planned for. It requires renewed access to trained forces following a transition period (three to six months) after the training, allowing change to take place. In the view of the author, one-off assessments are insufficient. As circumstances change over time, longer-term monitoring of trained forces is important to determine linkages between the training provided and their behaviour and whether training content matches operational needs.

As recently highlighted by field research from Niger,¹⁷³ such a process, that requires time to achieve a deeper and more sustainable effect, is often contrasted with decision-makers who need (immediate) results to validate operations and spending. As both realities must be taken into consideration, there may be a need for SFA staff in the field to work simultaneously on the long-term for the recipients and the short term for decision-makers. According to researchers, this is possible but requires an understanding and supportive hierarchy.

¹⁷³ Nina Wilén & Pierre Dehaene, 'Challenges with Security Force Assistance in Niger: Understanding Local Context and Aligning Interests', p.9, published in 'Observatoire Boutros-Ghali du maintien de la paix – Juillet 2020'.

Key to effective monitoring is the need for different sources of information. Triangulated reporting based on information provided by the widest possible range of external monitoring bodies helps to ensure that the monitoring is reliable.¹⁷⁴

The population affected by an armed conflict is a first-hand source of information. Yet, outreach by SFA staff may prove challenging in situations where the population does not have access to the means and avenues to report and share allegations of violations of IHL. In addition, ‘do no harm’ safeguards should be put in place to preserve the anonymity of sources and prevent retribution if complaints are shared with local forces.

Even where an SFA mission does not have an extensive physical presence, there are different ways to ensure some level of monitoring. Potential sources of information include:

- Internal reports from partnered operations with local forces;
- Reports from personnel embedded with local forces;
- Other actors who are present, like other armed forces;
- Other ministries, departments or agencies of either the host nation or the supporting actor;
- Impartial and independent external monitoring bodies;
- A periodic reporting mechanism by the supported actor itself;
- External data, such as satellite imageries, social media information, or public reporting by UN human rights units or credible media, non-governmental human rights organisations and national human rights institutions/commissions.

2.6.1 Outcomes & lessons learned

The mechanisms for monitoring and evaluation should also feed into SFA lessons learned processes, so that issues identified through those mechanisms can be incorporated into analyses and, where appropriate, systemic adjustments to the training made to prevent those issues from recurring. The protection of

¹⁷⁴ Ibid.

civilians and victims of armed conflict should be considered as a yardstick to evaluate the success of the training mission against which lessons should be drawn.

3. Conclusions

In the last decade, the ICRC has seen IHL training programmes gaining prominence in the way military campaigns and security and defence-related foreign policy instruments have been designed. Through its dialogue with various stakeholders involved in IHL training (trainers, military audience, training experts), and through its own experience, the ICRC has further identified observations and lessons regarding the most effective teaching methods, adaptive style of instruction, coping with extreme learning environments or evaluation methodologies.

The main takeaways are that well-tailored and contextualised IHL training can be effective in shaping the behaviour of assisted local forces towards civilians, though it cannot be an isolated means to bring about positive and sustainable change in terms of respect for IHL; training effectiveness will be maximised when adapted to the audience's needs, taught with intensity, tested under duress and evaluated based on concrete outcomes; and a combination of law and values, through formal and informal socialisation mechanisms, will provide a broader basis on which to promote respect for IHL.

The dialogue between relevant stakeholders involved in SFA activities and civil society, including independent humanitarian organisations such as the ICRC, must continue as it will contribute to identify and develop tools and measures that may deliver positive change and foster better respect for IHL norms by the supported forces.

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CHAPTER 4

Disarmament, Demobilization and Reintegration (DDR):

Basic Concepts, Legal and Judicial Aspects

Marc Schibli

Abstract

This chapter will explain the relationship between Disarmament, Demobilization and Reintegration (DDR) and the rule of law, accountability and other legal frameworks, to sensitise the reader on the importance of the legal environment for operational activities. At first glance, DDR may appear to be the odd one out in any discussions on SFA, rule of law and good governance. Although DDR is a non-military tool to manage and ultimately disband armed actors, especially non-state entities, it is an important element in the operational theatres where the SFA concept is applied, most notably in unstable environments where non-state armed group activity is a source of threat to an entire region, the state and communities. The successful implementation of DDR in such environments strengthens the nexus between security, good governance and development. For readers unfamiliar with DDR, this chapter will introduce basic concepts and explain how DDR policy and training is developed in cooperation with partners. It will also provide an analysis of legal aspects that are relevant for practitioners and discuss the relationship between DDR and transitional justice.

Keywords: *DDR, arms control, transitional justice, community violence reduction (CVR), integrated DDR standards (IDDRS).*

1. Introduction

Initially used as a post-conflict programme, Disarmament, Demobilization and Reintegration (DDR) has constantly adapted to the changing nature of conflict and its challenges in being implemented in different contexts. UN

peacekeeping, as a tool of international crisis response, has been deployed to environments with active conflict which presented new challenges for implementing UN Security Council mandates. Operating in dangerous and asymmetric settings in which preconditions for structured and orderly planning and implementation of DDR programmes (such as minimum security or a universally signed peace accord) are scarce forced peacekeeping operations and DDR approaches to adapt to the realities on the ground. Recent options in the DDR process typically include a combination of programmes, related tools and reintegration support that have been identified as the most appropriate thorough analysis of the particular context and provides flexible approaches of engaging armed groups before, during and after an armed conflict. They are linked through a common strategic objective of positively affecting the security and stability in conflict and post-conflict environments by eliminating risks posed by non-state armed actors by encouraging their members to voluntarily lay down weapons and reintegrate into society.

DDR processes are firmly anchored in the political, economic and social realities of the country of intervention, but, also in its domestic and international legal environment. DDR practitioners must adhere to a set of national, regional and international legal and policy frameworks, which contain rights and obligations that may be of relevance for the implementation of DDR tasks.¹⁷⁵ Legal frameworks that guide United Nations work worldwide are particularly significant in countries in (or emerging from) conflicts where national legislation may have been eroded and where traditional laws and justice mechanisms have increased in relevance and international instruments have been forgotten. It will further touch on issues of international counter-terrorism instruments, arms control frameworks and finally identify common ground between DDR and transitional justice.

This contribution is a product of the DDR Section in the Office of Rule of Law and Security Institutions, United Nations Department of Peace Operations (DPO) and is based on the Integrated DDR Standards (IDDRS).

¹⁷⁵ The UN Approach to DDR, <https://www.unddr.org/modules/IDDRS-2.10-The-UN%20Approach-to-DDR.pdf>.

2. UN Approach to DDR

2.1 Changing nature of peacekeeping

Since the United Nations Observer Group in Central America (ONUCA) became the first peacekeeping mission mandated to assist in DDR in 1990,¹⁷⁶ support to DDR has been provided in over a dozen peace operations and non-mission settings. Initially developed and used as a post-conflict tool involving the organised cantoning and decommissioning of combatants to break their command and control, DDR has further developed its approach and tools to face new realities of armed conflict.¹⁷⁷ Being at the heart of peacebuilding, DDR is a process through which members of armed forces and groups are supported to lay down their weapons and return to civilian life and aims to contribute to long-term security and stability.¹⁷⁸ The three components of a traditional DDR programme are defined as follows:¹⁷⁹

- Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programmes.
- Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilization, reinsertion, encompasses the support package provided to the demobilized. Reinsertion is the short-term transitional assistance offered to ex-combatants during demobilization and can last up to one year. The reinsertion package helps cover the basic needs of ex-combatants and their families and can include transitional safety allowances, food,

¹⁷⁶ United Nations Security Council (UNSC) Res 650 (1990), operative para. 2.

¹⁷⁷ Muggah, R and O'Donnell, C (2015). Next generation disarmament, demobilization and reintegration. *Stability: International Journal of Security & Development* 4(1)DOI Art. 30, p.2. <http://dx.doi.org/10.5334/sta.fs>.

¹⁷⁸ Petcu, Cristina. *Disarmament, Demobilization and Reintegration Programming With Colombia's Youth*. Report. Stimson Center, 2020. <http://www.jstor.org/stable/resrep25152.10>.

¹⁷⁹ IDDRS Module 2.10, <https://www.unddr.org/modules/IDDRS-2.10-The-UN%20Approach-to-DDR.pdf>.

clothes, shelter, medical services, short-term education, training, employment and tools.

- Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility and often necessitates long-term external assistance.

Unless a conflict ended in a clear victory of one of the parties forcing others to accept DDR on terms imposed by the victor, participation in DDR requires a serious commitment and political will of all parties involved. Consequently, traditional DDR programmes depend on various prerequisites to be successful. These prerequisites – including the signing of a peace agreement, trust in the peace process, political will to engage in DDR and a security situation that allows for the implementation of a DDR programme – are often not present in contemporary armed conflicts. In many settings, traditionally sequenced DDR programmes have proved to be inadequate. New asymmetric armed conflicts are often characterised by the absence of a peace agreement, the involvement of a multitude of different armed actors with various interests, alternating feuds and alliances between factions and changing structures and tactics of armed groups. Due to the changing nature of conflicts to which UN peacekeeping must adapt, DDR has been re-focused to fit new political, operational and programmatic challenges. Conflicts are becoming more urban and localised, with the roles of communities growing in importance. Moreover, complex interlinkages have been created among armed groups, their political proxies, organised criminal networks and extremist organisations, leading to high levels of insecurity and further complicating the task of peace operations, as the examples of Mali and the Democratic Republic of the Congo show. The complex nature of contemporary armed conflicts is not only a challenge for peacekeeping forces deployed in war-torn zones, but also for DDR practitioners who find themselves performing their tasks under difficult circumstances.

2.2 DDR process

Since many current crisis settings can be characterised by political instability, the design of viable DDR programmes might not be possible. In response, the

UN has developed a set of DDR-related tools aiming to provide immediate and targeted responses and thus to have a degree of positive effect on the ground. Where the preconditions are not in place, its related tools provide more flexibility in engaging armed group actors as they can be applied before or during a programme as complementary measures, or indeed instead of a DDR programme under certain conditions. While, in principle, it remains the objective of the DDR community on the ground to achieve the conditions under which a DDR programme can be implemented, a larger toolbox allows more flexibility, interventions at various stages of armed groups life cycle (e.g. in preventing the conflicts) and new possibilities in creating space for other processes to intervene.

One of such DDR-related tools is the Community Violence Reduction (CVR). CVR projects, such as vocational/skills training, labour-intensive short-term employment or infrastructure improvement, are identified and implemented at the community level and aim to bring together children and youth at risk of recruitment, women, community members, ex-combatants and persons formerly associated with armed forces and groups (i.e. individuals who have not served in combat roles). CVR's quick, flexible and bottom-up approach targets local drivers of violence, builds social cohesion and creates space for dialogue and political processes.

CVR in Haiti

CVR was first launched in Haiti in 2006 to address organised gang violence in notorious neighbourhoods of Port-au-Prince with the aim of strengthening local governance and the rule of law and providing employment opportunities to former gang members and at-risk youth. In Haiti, there was no official armed conflict or peace agreement and no formed military or rebel units to disarm, demobilize and reintegrate. The conventional DDR programme approach showed its limitations. CVR offered a flexible and low-cost alternative in engaging unemployed youth by offering cash and food for work and skills and vocational training and thus prevent and reduce the destabilising effects of unemployment, criminality and armed violence. Offering direct dialogue, engagement, implementation and outreach at the community level and being remarkably adaptable to different needs and contexts, CVR projects were subsequently implemented in various hotspots across Haiti before being incorporated in other peacekeeping mandates and missions across Africa.

Another DDR-related tool is transitional Weapons and Ammunition Management (WAM) which aims to reduce the capacity of individuals and groups to engage in armed conflict and to reduce accidents and save lives by addressing immediate threats related to the illicit possession of weapons, ammunition and explosives.¹⁸⁰ WAM measures may involve activities related to collecting, registering, storing, transporting, managing or destroying weapons and ammunition. For example, the DDR programme supported by the United Nations Mission in South Sudan from 2011 to 2013 had a dedicated capacity supporting national authorities in marking and storing weapons retrieved from ex-combatants. Transitional WAM activities might also be part of a CVR programme (such as in the Central African Republic) or integrated into pre-DDR, a local level transitional stabilisation measure that includes different activities and aims to prepare those who are eligible for a national DDR programme for civilian life. The successful return to civilian life and the sustainable economic, social and political reintegration into communities of those leaving armed groups is crucial for sustaining peace and contributes to preventing (re)-recruitment. In South Sudan between 2011 and 2013, CVR projects were designed to get buy-in from the communities in which DDR camp sites were located; in 2015-17 pre-DDR in the Central African Republic (CAR) was initially designed to contribute to a secure environment during the electoral process while sending armed groups a message of the UN commitment to the national DDR programme.

¹⁸⁰ de Tessières, S (2021). Effective Weapons and Ammunition Management in a Changing Disarmament, Demobilization and Reintegration Context - A Handbook for United Nations DDR Practitioners, 2nd Edition. <https://www.un.org/disarmament/publications/more/ddr-handbook/>.

Pre-DDR in the Central African Republic

An Agreement on Principles of DDR was signed between the Government of the Central African Republic and 14 armed groups recognised as officially participating in the political process in Bangui in May 2015 as the Central African Republic was entering the pre-electoral period to end the political instability created by the armed conflict that ousted the then President Bozizé in 2013. With the election slated to early 2016, the formal DDR programme would not have the time to start and so the United Nations Multidimensional Integrated Stabilisation Mission to the Central African Republic (MINUSCA) jointly with the United Nations Office for Project Services (UNOPS) and the International Organisation for Migration (IOM) designed an innovative project that would precede DDR, ensure a degree of stability during the electoral process and eventually contribute to broader objectives of social cohesion, community reconciliation and economic revitalisation. Targeting eight hot-spot locations throughout the country and employing a mix of emergency employment and income generating projects, pre-DDR eventually supported during slightly over one year of its existence 4,324 participants, including 737 female, collecting through its weapon collection component over 2,500 weapons, grenades and over 12,000 pieces of munitions. A pre-DDR approach should be considered in areas where a DDR programme encounters serious pre-launch delays.

Coordination with and integration of all national and international DDR practitioners is essential to guarantee synergies, common purpose, streamlined strategy and ultimately for the success of DDR processes. A good example of an instrument serving such a purpose is the *Commission technique de sécurité* in Mali which brings together all key national and international actors involved in the planning of the DDR and integration process. Other DDR-related tools include initiatives to prevent individuals from joining Armed Groups Designated as Terrorist Organisations (AGDTO) and support programmes for those leaving AGDTOs, DDR support to transitional security arrangements and DDR support to mediation. Elements of such programming are scattered throughout the peacekeeping and peacebuilding spectrum from Darfur (UNAMID) to Somalia (UNSOM) to Mali (MINUSMA).

2.3 DDR guiding principles

DDR follows a set of principles that guide all operations. DDR processes are voluntary, people-centred, gender-responsive and inclusive, conflict-sensitive, context-specific, nationally and locally owned, regionally supported, flexible, accountable, transparent, integrated and well planned.¹⁸¹ DDR processes are including the following categories of people as participants and beneficiaries:

- Members of armed forces and armed groups who served in combat and/or support roles;
- Abductees and victims;
- Dependents and families;
- Civilian returnees and ‘self-demobilized’; and
- Community members.

DDR activities might be conducted in mission and non-mission settings. Mission settings are characterised by the presence of peacekeeping operations (including military and police contingents), Special Political Missions (SPM) and good offices engagements. In peace operations, DDR is mandated through a UN Security Council Resolution and may include the implementation of specific DDR-related tools to support the conditions of a future DDR programme. In SPM and good offices engagements, DDR implementation structures and partnerships may need to be adjusted to the mission’s composition as the mandate evolves.¹⁸² Where peacekeeping, SPM and good offices mechanisms are absent, i.e., in non-mission settings, DDR support will only be provided if a national government and/or UN Resident Coordinator requests assistance. The disarmament and demobilization components will be undertaken by national institutions with advice and technical support from relevant UN entities and other regional stakeholders and bilateral actors.

2.4 Integrated DDR

Over the past decades, DDR has become increasingly multidimensional and rather complex, adjusting in shape and form to the diverse taxonomies of armed groups present in a specific context. DDR remains critical as one of the few

¹⁸¹ IDDRS module 2.10, <https://www.unddr.org/modules/IDDRS-2.10-The-UN%20Approach-to-DDR.pdf>.

¹⁸² Ibid.

non-military means for the UN to engage directly with armed groups. DDR is implemented in partnership with the host country and draws on the expertise of a wide range of stakeholders, such as governments, political parties, armed forces, law enforcement entities, signatory and non-signatory armed groups, Non-Governmental Organisations (NGOs), civil society organisations, the media and international actors.

No single entity can implement DDR by itself. The multi-faceted challenges, often touching upon the political, security, social, economic and humanitarian realms, require collaboration towards a common objective. As DDR processes are implemented in contexts where a multitude of other actors, including bilateral military support, exist, this is where the opportunity to ensure complementarity with SFA emerges. ‘The SFA’s aim is to develop the capability to train and develop local forces in crisis zones, so that the local authorities are able, as quickly as possible, to maintain security without international assistance’.¹⁸³ As part of this overall aim, DDR processes contribute to efforts to demilitarise and consolidate stability and are closely linked with the SFA process in supporting SSR.¹⁸⁴ Military personnel possess a wide range of skills and capacities. The provision of a secure environment, armed escorts to DDR staff in the field and logistical support are military capabilities that can be of crucial benefit to DDR operations. Specialised military skills relevant to DDR include security situation assessments, mapping of armed groups and dynamics, technical support to disarmament, transitional WAM and the establishment and maintenance of transitional security arrangements. SFA operators and advisers should be aware of the possibility that ex-combatants, as part of a DDR programme or DDR-related tools, might have integrated or joined local forces and might have gained higher military rank. This could affect the military knowledge, discipline and atmosphere within local forces, which again could have an impact on SFA operators dealing with local forces.

3. Partnerships

DDR requires the inter-play of different actors in the security, political, developmental and humanitarian fields. Consequently, a broad network has

¹⁸³ Projecting Stability: Hybrid warfare and cooperation with the EU, <http://www.atahq.org/2018/02/projecting-stability-hybrid-warfare-cooperation-eu/>.

¹⁸⁴ AJP-3.16, Allied Joint Doctrine for Security Force Assistance (SFA), Edition A Version 1, May 2016, 3. f.

emerged comprising United Nations entities, regional organisations, national institutions, UN member states, academia and research centres. Within the first decade of implementation of DDR processes in the 1990s, to improve the UN's performance in DDR, enhancing the effectiveness and efficiency of DDR processes worldwide, the Inter-Agency Working Group (IAWG) on DDR was established and presently includes 26 members and observers representing UN and non-UN entities.¹⁸⁵ Among its main achievements is a comprehensive set of DDR policies and guidance – the IDDRS – which is currently undergoing a major revision to adjust to the changing nature of conflict.¹⁸⁶

Inclusive national ownership is key for DDR programming meaning a significant involvement of national administration actors through a changing set-up of a national institutional framework. Community-based initiatives and programmes supported by the United Nations often collaborate with national NGOs and civil society organisations. Through a participatory community-based approach, CVR partners directly interact with communities and beneficiaries, by including them in programme design and implementation. DDR and CVR programming involve a wide range of UN entities. Piloting initiatives together with UN entities provide a platform for them to establish a footprint and expand their initiatives through DDR and CVR-funded activities.

To ensure political support to DDR across the United Nations, the Group of Friends of DDR is composed of sixteen member states and meets regularly to discuss key development and challenges on how to support DDR. Regional organisations such as the African Union or the European Union have developed their own DDR capacities that politically and operationally amplify the United Nations-supported DDR, and the African Union is steadily developing its capacity to implement stand-alone DDR programmes.

4. DDR training

Another important partnership is related to training, which is a critical element of capacity building in the area of DDR. The IAWG on DDR has partnered up with a network of training and research institutions, a partnership called the

¹⁸⁵ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, CTC, DPO, DPPA, UNODA, OHCHR, ILO, IOM, UN Women, UNAIDS, OSAA, PBSO, UNFPA, UNHCR, UNDP, UNEP, UNITAR, UNODC, UNICEF, UNIDIR, WHO, DGC, UNOPS, WFP, UNOCT, The World Bank.

¹⁸⁶ <https://www.unddr.org/the-iddrs/>.

Integrated DDR Training Group (IDDRTG).¹⁸⁷ The IDDRTG is composed of seventeen international organisations and training institutes with a common goal of developing and sharing training materials based on the IDDRS. The IDDRTG develops training for DDR practitioners from across UN peace operations, agencies, funds and programmes, international and regional organisations, military, police, NGOs etc. A ‘foundation’ DDR course on average encompasses two weeks and covers basic DDR knowledge and experience, gradually introducing also more advanced concepts. Most other courses offered by the IDDRTG focus on specialised areas. An example is the annual DDR Planning Course delivered by Swedish Armed Forces International Centre (SWEDINT).¹⁸⁸ Some courses (e.g. Children, Youth and DDR; KAIPTC Advanced Reintegration course; DDR and Gender; Monitoring and Evaluation) are being offered on demand. In some cases, the IDDRTG has supported the delivery of in-theatre training, e.g. a DDR Simulation Exercise in Darfur (SIMEX, 2009) or the training for all DDR stakeholders in Côte d’Ivoire (2011).

Training does not replace policy or guidance but can lay the foundation for its development. As work was starting on the development of an IDDRS module on the AGDTC in 2018, the DDR community already had three years of experience training on issues related to DDR and violent extremism. Other topics such as DDR and SSR, DDR and Transitional Justice, or Legal Aspects of DDR, are covered in separate IDDRS modules and have been incorporated in various DDR training courses. While the areas of SFA, rule of law and good governance do not directly relate to DDR, there is a significant overlap among those areas that deserves a more thorough analysis and, indeed, a dedicated training module.

5. Legal Aspects of DDR

DDR objectives only indirectly contribute to the strengthening of rule of law and good governance, mostly through laying the security foundations in environments where the extension of state authority and consequently the rebuilding of the rule of law and good governance will eventually occur. However, as many DDR contexts are emerging from an autocratic or military regime of sorts, DDR itself must lead by example through subordinating itself

¹⁸⁷ <http://www.iddrtg.org/>.

¹⁸⁸ <https://www.forsvarsmakten.se/en/swedint/>.

to well-defined and established laws (in other words to follow the principles of the rule of law) and through meeting the requirements of good governance such as the participatory nature, transparency and accountability, effectiveness and efficiency. DDR practitioners must adhere to a set of national, regional and international legal and policy frameworks, which contain rights and obligations that may be of relevance for the implementation of DDR tasks. DDR processes must be conducted in compliance with the mandate and relevant international legal framework, which includes International Humanitarian Law, International Human Rights Law, International Refugee Law and International Criminal Law. Since DDR is dealing with armed groups and armed forces, the international counter-terrorism instruments and the international and regional arms control framework are also relevant to DDR processes.

5.1 Mandate

While national governments lead on implementing DDR processes within their own territory, UN DDR support to non-mission settings can be provided at the request of concerned governments or UN Resident Coordinators. DDR processes supported by peace operations are implemented within national contexts based on a mandate. The primary source of all mandates of the UN is the Charter of the United Nations (the Charter).¹⁸⁹ As the organisation's principal organs, the General Assembly and the Security Council both have the competency to provide DDR mandates as measures related to the maintenance of international peace and security. Since UN peace operations are subsidiary organs of the Security Council, the mandate for DDR is usually found in the country-specific Security Council Resolution, which may define when and how DDR processes can be supported or implemented and may sometimes also describe what shape they should take. A good example of a descriptive DDR mandate can be found in Security Council Resolution 1528 (2004) on the situation in Côte d'Ivoire.¹⁹⁰ In Mali, the Security Council reiterated MINUSMA's mandate to support 'the cantonment, DDR of armed groups' and '*the continued implementation of a CVR programme [...] taking into account the particular needs of women and children*'.¹⁹¹ In addition to the clarity of

¹⁸⁹ <https://www.un.org/en/charter-united-nations/index.html>.

¹⁹⁰ [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1528\(2004\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1528(2004)).

¹⁹¹ <https://www.un.org/press/en/2018/sc13400.doc.htm>.

mandated tasks, the Council also set clear benchmarks and the expected scope of activities according to geographical areas in the country.

While the mandate provides the legal basis for the UN to undertake DDR activities in a country and includes assistance to national authorities in the development and implementation of the DDR process, a comprehensive peace agreement may guide roles and responsibilities, basic principles, strategic approach, mechanisms, timeframes and eligibility criteria. Instead, a technical agreement with the host state on logistical and operational coordination and cooperation is usually to be concluded. In addition to the mandate and a potential comprehensive peace agreement, the implementation of DDR processes is further governed by national legislation and internal rules, policies and procedures and within the context of a broader international legal framework.

5.2 International Humanitarian Law

International Humanitarian Law (IHL) is relevant to DDR activities since the assistance provided to host states concerns the development of eligibility criteria for DDR, mindful of possible perpetration of war crimes, crimes against humanity and genocide and the prosecution of suspects. IHL applies to situations of international and non-international armed conflict and seeks to limit its negative effects by regulating the conduct of armed forces and non-state armed groups.¹⁹² It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. International humanitarian law obliges parties to armed conflicts to protect civilians, injured and sick persons and persons deprived of their liberty for reasons related to armed conflicts. Since participation in DDR is voluntary, rules regarding deprivation of liberty are not normally applicable to activities undertaken as part of DDR processes.

Even though the UN is not a party to the international legal instruments comprising IHL, the Secretary-General has confirmed that certain fundamental principles and rules of IHL apply to UN forces when they are actively engaged as combatants in situations of armed conflict, to the extent and for the duration of their engagement.¹⁹³ Government armed forces and non-state armed groups, however, must comply with the rules set by IHL.

¹⁹² https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

¹⁹³ ST/SGB/1999/13, sect. 1.1.

5.3 International Human Rights Law

Human rights that are particularly relevant within the DDR context include the right to life, the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person, which includes the prohibition of arbitrary arrest or detention, the right to a fair trial and the right to be free from discrimination. Concerning children associated with armed forces or groups, the rights of the child, including the best interests of the child and protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, are particularly important. The immediate and unconditional release of children under the age of eighteen associated with armed forces and groups remains a priority.¹⁹⁴

UN DDR practitioners have a responsibility to promote and respect the human rights of all DDR participants and beneficiaries. Due to the voluntary nature of DDR processes, persons enrolled in DDR processes shall not be held against their will, which applies specifically in cantonment situations, or subjected to other deprivations of their liberty and security of their persons. Concerns were raised in the past, e.g. in situations when DDR supported combatants disengaging from violent extremist armed groups, for example in Somalia, were brought to transitional centres where their movement in and out of the centre was restricted for prolonged periods, to protect them from retaliation by armed groups they had previously defected.¹⁹⁵

Special attention should be given to members of certain groups with specific needs from a human rights perspective, including women, children and persons with disabilities. Specific needs may include, among other things, separate accommodation and sanitary installations for female beneficiaries and participants, the reunion of family members, medical assistance and psychological support. All actors involved in negotiating and implementing peace agreements should adopt a gender perspective and address the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction, while those involved in the planning of DDR should consider the different needs of female and male ex-combatants and associated persons and take into account the needs of their

¹⁹⁴ United Nations Security Council (UNSC) Res 2225 (2015), operative para. 5,9.

¹⁹⁵ Muggah, R and O'Donnell, C (2015), p.5. <http://dx.doi.org/10.5334/sta.fs>.

dependents.¹⁹⁶ While the primary target group (i.e. combatants) remains male-dominated, DDR processes have now been increasingly gender-responsive and the mechanics of allowing females both access and participation (e.g. in societies where being a combatant or a person associated with armed groups may cause social stigma).

In Democratic Republic of the Congo (DRC), CAR, Mali and Sudan, the implementation of CVR projects has served to increase women's participation in DDR processes. For instance, by establishing minimum gender quotas, women's representation as direct CVR beneficiaries varied from 18.5 per cent to 53.1 per cent in 2019/20. DDR components have engaged women throughout all stages of the DDR process, including early assessments, project design and planning and implementation and monitoring of activities. In 2019, the International Organisation for Migration (IOM) launched a Peacebuilding Fund (PBF)-funded project in collaboration with UNSOM aimed at rehabilitating female Al-Shabaab members, thus addressing a critical operational gap. In addition to engaging community members and women-led organisations as part of a comprehensive approach, this initiative was catalytic in mobilising additional resources which led to the construction of two new female rehabilitation centres.

5.4 International Refugee Law

International Refugee Law may be of relevance in contexts where foreign combatants and their dependents and families are eligible to enter a DDR programme that includes repatriation. The repatriation and resettlement programme of the UN peacekeeping operation in the DRC (MONUSCO) helped reduce the numbers of combatants of the '*Forces Démocratiques de Libération du Rwanda*' (FDLR) in the DRC from an estimated 25,000 to a few thousand between 2000 and 2010.¹⁹⁷ The mandate for DDR in the CAR also contains provisions related to the repatriation of foreign fighters, should such be identified.

¹⁹⁶ <https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1325-2000-on-women-and-peace-and-security/>.

¹⁹⁷ Ibid article 30, p.4.

The International Refugee Law has different aspects that are relevant to DDR operations. For example, active combatants cannot be asylum seekers or refugees. Seeking the status of refugee is also denied to:

*‘[...] anyone who is reasonably suspected of having committed a crime against peace, a war crime or a crime against humanity, or has committed a serious non-political crime outside the country of refuge prior to the person’s admission to that country as a refugee, or has been guilty of acts contrary to the purposes and principles of the UN’.*¹⁹⁸

With regard to the principle of non-refoulement, which guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment, an ex-combatant who has renounced military activity and has been admitted to the asylum procedure is protected. However:

*‘[...] the principle of non-refoulement cannot be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he or she is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country’.*¹⁹⁹

Since the principle of non-refoulement has become an integral part of international human rights law, it not only applies to refugees, but also to active combatants.

Refugee camps and settlements must be demilitarised and protected from the presence of active combatants. There are different reasons why active combatants might mix with refugee flows. Individuals who have been identified as combatants must be separated from refugees and Internally Displaced Persons (IDPs) and may be admitted to a DDR process, if available.²⁰⁰ Ex-combatants who have been verified through a process may seek asylum. Participation in a DDR programme or other types of DDR

¹⁹⁸ The 1951 Refugee Convention, article 1F.

¹⁹⁹ Ibid, article 33(2).

²⁰⁰ The Guiding Principles on Internal Displacement address the specific needs of IDPs worldwide, identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement and during return or reintegration.

processes provides a verifiable process through which the former combatant genuinely and permanently renounces all forms of armed activities. Civilian family members of participants in DDR processes may be refugees or asylum seekers and efforts must be in place to consider family unity during, for example, repatriation.

5.5 International counter-terrorism instruments

DDR operations are being increasingly conducted in places where violent extremist groups and terrorist organisations are active. There is no universally agreed definition of violent extremism or terrorism. However, several instruments define certain terrorist acts and offences.²⁰¹ The international counter-terrorism framework consists of Security Council Resolutions and nineteen international counter-terrorism instruments, which have been widely ratified by UN member states.²⁰² The Security Council Committee concerning ISIL (Da'esh), Al-Qaida and associated groups is the only sanctions committee of the Security Council that lists individuals and groups for their association with terrorism.²⁰³ Under the Security Council Resolutions, member states are required to ensure that individuals involved in the preparation for or perpetration of or in supporting terrorist acts are brought to justice. Such terrorist acts must further be established as serious criminal offences in domestic laws and regulations and the punishment duly reflect the seriousness of such terrorist acts.²⁰⁴

Individuals associated with AGDTO by the UN Security Council and perpetrators or suspected perpetrators of terrorist acts are not eligible to enter a DDR programme. However, DDR initiatives to prevent individuals from joining and support programmes for those leaving such groups may be provided as part of DDR-related tools and reintegration support. In these contexts, DDR-related tools and reintegration support should be based on a national legal framework and practitioners should be guided by a national policy framework. Besides screening out former members of an armed force or group, including combatants, commanders and members in non-combat roles

²⁰¹ <https://www.un.org/counterterrorism/international-legal-instruments>.

²⁰² <https://www.un.org/sc/ctc/resources/international-legal-instruments/> and <http://www.un.org/en/counterterrorism/legal-instruments.shtml>.

²⁰³ United Nations Security Council (UNSC) Res 1373 (2001), operative para. 2(e); and United Nations Security Council (UNSC) Res 2396 (2017), operative paras. 17 and 19.

²⁰⁴ Established pursuant United Nations Security Council (UNSC) Res 1267 (1999), 1989 (2011) and 2253 (2015).

for suspected war crimes, crimes against humanity or genocide, specific criteria as appropriate to the context should be incorporated to identify and disqualify persons who have committed or are reasonably believed to have committed a terrorist act. The screening process should address the question of whether a person is eligible for a DDR process.

5.6 Arms control framework

To ensure consistency in guidance on DDR and WAM across UN standards, WAM activities as part of DDR processes need to be undertaken in compliance with the applicable international and regional arms control framework set out in various legally and politically binding instruments. These instruments cover a wide spectrum of arms control measures including transfers, manufacture, physical security and stockpile management, tracing and disposal of weapons and ammunition. At the global level, two legally binding arms control instruments have been adopted. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol)²⁰⁵ was adopted for crime prevention and law enforcement. The second is the Arms Trade Treaty²⁰⁶ which regulates the international legal trade in conventional arms and seeks to prevent and eradicate their diversion to the illicit market by establishing international standards governing arms transfers. The Treaty addresses the relationship between conventional arms transfers and the commission of gender-based violence.

Other binding instruments at the global level may be relevant, including the Anti-Personnel Mine Ban Convention,²⁰⁷ the Convention on Certain Conventional Weapons²⁰⁸ and the Convention on Cluster Munitions.²⁰⁹ Relevant politically binding instruments include the UN Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.²¹⁰ In the framework of the PoA, in 2005 UN member states adopted the International Tracing Instrument which promotes

²⁰⁵ <https://www.unodc.org/unodc/en/firearms-protocol/the-firearms-protocol.html>.

²⁰⁶ https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253.

²⁰⁷ https://legal.un.org/avl/pdf/ha/cpusptam/cpusptam_e.pdf.

²⁰⁸ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-2&chapter=26&lang=en.

²⁰⁹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-6&chapter=26&clang=en.

²¹⁰ <https://www.un.org/events/smallarms2006/pdf/PoA.pdf>.

the development of marking, record-keeping and tracing measures for small arms and light weapons.

In addition to the global instruments, regional and sub-regional legally binding agreements have been adopted in Europe, Latin America and Africa to support the implementation of PoA. DDR-related WAM activities conducted in countries that have ratified legally binding instruments aimed at preventing and combating the illicit trade of arms, ammunition and related components need to comply with any such instruments. To be effective, safe and secure, WAM as part of DDR processes also needs to be in line with existing international standards and guidelines, namely the Modular small-arms-control Implementation Compendium (MOSAIC)²¹¹ and International Ammunition Technical Guidelines (IATG).²¹²

Weapons and ammunition control measures can be part of a DDR programme where they would be implemented alongside, or replacing, traditional disarmament, e.g., in societies where the possession of weapons is a social norm but can also be embedded in DDR-related tools. For example, in the CAR, a mix of disarmament and weapon control schemes is present in the DDR programme.

5.7 Accountability

Under international criminal law, every state must exercise its criminal jurisdiction over those responsible for international crimes.²¹³ Member states' international obligations are usually translated into domestic legislation. If national authorities seek to take into custody individuals enrolled in DDR processes for criminal prosecution, they must respect their commitments under International Humanitarian Law, international human rights law and refugee law, where applicable. A DDR participant will benefit from the rights in the specific host state. Legal aspects that might affect ex-combatants and associated persons and that are typically addressed in national constitutions and penal procedure codes include the length of pre-trial detention, due process rights, procedures to investigate alleged crimes and criminal penalties. For DDR operations, it is important to be aware of a host state's international obligations

²¹¹ <https://www.un.org/disarmament/convarms/mosaic/>.

²¹² <https://www.un.org/disarmament/convarms/ammunition/iatg/>.

²¹³ Preamble of the Rome Statute of the ICC, sixth recital. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

and international conventions it has ratified and therefore is bound by, and domestic legislation that may address rights of DDR participants and beneficiaries, especially the penal code, criminal procedure and counter-terrorism legislation. Those rights must be clearly communicated to the DDR beneficiaries well in advance of their enrolment to avoid any misunderstandings and potential disenfranchisement later.

6. Transitional Justice and DDR

In post-conflict settings, stability and justice, including transitional justice, are two key long-term objectives that, while mutually reinforcing, are often perceived as diametrically opposite and contradicting.²¹⁴

Transitional justice deals with severe violations of international human rights law and of International Humanitarian Law and comprises the full range of processes and measures associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation.²¹⁵ Transitional justice initiatives aim to rebuild trust between victims, society and the state through approaches that provide acknowledgement from the state that citizens' rights have been violated and that they deserve justice, truth and reparation. Approaches to transitional justice include prosecution, reparations, truth commissions, institutional reform and, having received particular attention in recent years, guarantees of non-recurrence.²¹⁶

While DDR requires the cooperation of ex-combatants and their leaders, transitional justice measures seek to hold accountable those responsible for serious crimes under international law. While DDR processes might already be initiated during an ongoing conflict, transitional justice initiatives typically need legislative approval. However, both processes should be understood as integral elements of a comprehensive peace-sustaining approach. DDR and transitional justice can be mutually beneficial, and DDR may lay the ground

²¹⁴ IDDRS Module 6.20, <https://www.unddr.org/modules/IDDRS-6.20-DDR-and-TJ.pdf>.

²¹⁵ Guidance note of the secretary-general united nations approach to transitional justice, https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

²¹⁶ Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, A/HRC/30/42 (2015); Joint study of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide, A/HRC/37/65 (2018).

for the stability that is necessary to implement transitional justice initiatives. By addressing accountability, truth, redress and institutional reform, those measures might strengthen the legitimacy of a DDR process, address the imbalance between the benefits provided to ex-combatants and victims and contribute to the willingness of communities to accept their reintegration.

While United Nations-endorsed peace agreements may never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights, friction between achieving peace and ensuring justice and accountability might be perceived, especially where amnesties or assurances of non-prosecution are issued in exchange for participation in DDR processes.²¹⁷ By understanding DDR and transitional justice not as separate fields that compete with each other, they can jointly contribute to more effective prevention of the recurrence of conflict and atrocities. In this regard, two major schools of thought are to either make those who are suspected of grave violations ineligible for DDR, or to separate the two processes while making clear to combatants that by participating in DDR, they do not acquire immunity from prosecution if found guilty of such violations. Some mechanisms of transitional justice like truth commissions can be embedded in a DDR programme.

In Colombia, national authorities have developed transitional justice frameworks based on institutional capacities, public interest and compliance with international instruments. During the DDR process with paramilitary groups, former commanders were deemed responsible for the crimes committed by the group and, therefore, received sentences ranging from five to eight years in special prison settings. In the recent DDR process with *Fuerzas Armadas Revolucionarias de Colombia* (FARC), national authorities opted for a different approach, deferring the sentencing of former FARC commanders. In both cases, the implementation of the DDR process was regarded as a guarantee of no-repetition within the transitional justice framework and as a means to end the conflict. In this sense, former members were invited to confirm their voluntary participation in the process and to voluntarily inform authorities of serious crimes, if any, to be granted legal benefits such as reduced sentences. Under the Colombian transitional justice framework, participation in the DDR programmes is also conditional on a contribution to reparation

²¹⁷ United Nations Security Council (UNSC) Res 616 (2004).

efforts, the truth commission and commitment to reintegration (e.g. formal education; vocational training; business development).

DDR and transitional justice can constructively interact in different ways. A well-designed transitional justice strategy can foster exits from and discourage entry or re-entry into armed groups. Conditional amnesties that are tied to the participation in DDR and are complemented by a credible prosecution threat can positively reinforce the goals of a DDR process. Information that was gathered through DDR processes on the structures of armed groups and on areas of operation may be useful for human rights organisations tracking those bearing the greatest degree of responsibility for crimes committed. However, context-specific sensitivities would need to be applied to avoid endangering the DDR process or DDR practitioners. DDR beneficiaries might be asked to sign declarations that they have not been involved in gross human rights violations and that a false statement may, among other consequences, result in their immediate exclusion from the DDR process. Prosecutions can have a positive impact on DDR operations if a comprehensive screening process is established to identify perpetrators of serious crimes under international law can be established.

7. Conclusions

Within the discussion on the interlinkages between rule of law, good governance and SFA, DDR is the missing piece, but one without which the puzzle will not be complete. Against the backdrop of the constantly changing nature of contemporary conflicts and based on the evolving concepts of peace and security interventions, DDR is best understood by looking at its strategic objective as a non-military means to manage armed groups, mitigate the risks related to their presence and ultimately to ensure their organised disbandment and transition of their elements towards non-violent livelihoods. The various chapters of this publication on SFA, dealing with fragile states, peacebuilding approaches, protection of civilians or security and defence sector reform, have in common that each has clear linkages to DDR and related contexts where armed groups are present. Similarly, DDR does not exist in a vacuum; multiple actors and processes are required to sustain it. Nor is it a panacea for deep-rooted security, political, social or economic issues that, if left unaddressed, will flare up on occasion and inevitably escalate into a full-

blown crisis. Being just one among many other instruments in the toolbox of peace sustainment practitioners, DDR can be a flexible and effective tool to complement the peacebuilding landscape. With practices constantly evolving as part of the lessons learned from past DDR interventions and despite recent spites of criticism often based on unrealistic expectations, DDR remains a powerful arrow in the quiver of many international peace mediators and security sector stakeholders.

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CHAPTER 5

Protection of Civilians: A NATO Perspective

Marianna Tonutti

Abstract

This chapter outlines the relevance of Protection of Civilians (PoC) for NATO and highlights how integrating PoC into the planning and conduct of NATO's *modus operandi* will contribute to the success of any operation and mission. Armed conflicts continue to have a disproportionate effect on the civilian population with consequent long-term impact on durable peace, reconciliation and development. The chapter also explores the structured approach on PoC developed by NATO which comprises key elements such as the adoption of the NATO Policy for the Protection of Civilians (henceforth the Policy); the related Action Plan aimed at implementing the Policy (henceforth the Action Plan); the Concept for the Protection of Civilians (henceforth the Concept); and the Protection of Civilians Allied Command Operations (ACO) Handbook (henceforth the Handbook).

Keywords: *protection of civilians, doctrine, training, policy, armed conflicts.*

1. Introduction

Although the concept of Protection of Civilians (PoC) is nothing new, the last decades have seen enormous steps forward from the international community in developing a consistent and integrated approach for the protection of the civilian population during armed conflict. The efforts by NATO to advance the PoC agenda go in this direction as the integration of PoC in contemporary military operations and missions has become an increasingly important topic within the Alliance. Understanding the threats and effects of armed conflicts on the civilian population is an imperative for any military mission that wishes to be successful in implementing its mandate and contribute to long-term security and stability. This is particularly true in modern contexts where armed conflicts are becoming more and more protracted, urban and hybrid in nature

with devastating effects on the civilian population. The 2020 report of the UN Secretary-General on the Protection of Civilians highlights that civilians continue to be the ones paying the highest price in armed conflicts. In 2019 alone, more than 20,000 civilians were killed or injured as a consequence of attacks perpetrated in the ten countries considered by the report.

The purpose of this assessment is to outline the relevance of PoC for NATO operations and missions while also describing the achievements by the Alliance since the adoption of the policy during the 2016 Warsaw Summit. This capstone document, whose aim is to provide robust direction and guidance on PoC, was followed in 2017 by the Action Plan developed to implement the policy across the Alliance. The need to provide a definite understanding of what PoC means for NATO was met in 2018 with the approval of the conceptual framework to better assist the integration of the topic within NATO and in its operations. In 2020 a handbook was finalised and it was published in 2021.²¹⁸ This comprehensive publication assists further the integration of PoC in the planning and conduct of NATO operations and missions and has the overall aim of creating a PoC mindset within the Alliance.

2. Why protection of civilians matters

2.1 Setting the scene

The need to protect civilians during armed conflict is not new. In 1863 during the US Civil War, President Abraham Lincoln signed the Lieber Code (also known as General Order Number 100), ordering the humane, ethical treatment of populations in occupied territory. A year later, in 1864,²¹⁹ the first Geneva Convention governing the sick and wounded members of armed forces was signed following Henry Dunant's documentation of the lack of care for wounded soldiers in the Battle of Solferino in 1859.

Nevertheless, recent decades have seen an increasing interest in a structured and coherent approach to the protection of civilians during armed conflicts, in particular for the military and peacekeeping communities. 1999 is widely considered a pivotal year for the PoC agenda. In that year, two crucial United Nations (UN) Resolutions were passed by the UN Security Council (UNSC):

²¹⁸ Protection of Civilians – ACO Handbook (2021) <https://shape.nato.int/resources/3/website/ACO-Protection-of-Civilians-Handbook.pdf>.

²¹⁹ International Committee of the Red Cross <https://ihl-databases.icrc.org/ihl/INTRO/120>.

UNSC Resolution 1265 and UNSC Resolution 1270. In September 1999, the UNSC adopted Resolution 1265, the first UNSC Resolution on the protection of civilians during armed conflict. This UNSCR condemns the deliberate targeting of civilians and calls for parties involved in armed conflicts to comply with the obligations outlined in International Humanitarian Law (IHL), International Human Rights Law (IHRL) and Refugee Law. The Resolution also emphasises the need for accountability with regards to violations of IHL and stresses the importance of including provisions for the special protection and assistance of vulnerable groups in the mandates of UN operations. It also states the willingness of the UN to respond to situations ‘where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed’.²²⁰ In October of the same year, the UNSC unanimously passed Resolution 1270, which established the United Nations Mission in Sierra Leone (UNAMSIL) and for the first time gave an explicit mandate to ‘afford protection to civilians under imminent threat of physical violence’.²²¹ Both Resolutions recognise the disproportionate effect that armed conflicts have on the civilian population and the consequent effect that this, in turn, has on durable peace, reconciliation and development.

The 2020 report of the UN Secretary-General on the Protection of Civilians highlights that civilians continue to be the most affected during armed conflicts. In 2019 more than 20,000 civilians were killed or injured as a consequence of attacks perpetrated in the ten countries considered by the report, namely Afghanistan, Central African Republic, Iraq, Libya, Syrian Arab Republic, Nigeria, Somalia, South Sudan, Yemen and Ukraine. This number is in all probability underestimated and does not include the civilian casualties in crisis countries like Myanmar, Sudan, the occupied Palestinian territory, Cameroon, Chad, the Democratic Republic of the Congo, Mali and Niger.

In addition to the civilian casualties resulting from armed conflict, 2020 will also have to count the effects of the global pandemic. The COVID-19 health crisis exacerbated the existing vulnerabilities present in conflict areas by heavily affecting the already weak healthcare systems. Needless to say, the

²²⁰ United Nations Security Council, Resolution 1265, September 1999. Consulted at the website <http://unscr.com/files/1999/01265.pdf>.

²²¹ United Nations Security Council, Resolution 1270, October 1999. Consulted at the website <http://unscr.com/files/1999/01270.pdf>.

most vulnerable persons are the ones paying the highest price. The COVID-19 crisis may also aggravate the challenges in protecting the civilian population as the diverted attention of the government towards the pandemic can encourage armed groups to conduct attacks that can result in civilian casualties.

2.2 Relevance of the PoC for the military

The NATO approach to PoC is based on political, moral and legal imperatives. The legal framework will vary depending on whether the operation is conducted during peace, crisis or conflict. While during peacetime the legal framework is usually comprised of domestic law and IHRL, in crisis it might happen that for certain activities the derogation of domestic law and applicable IHRL is authorised. In times of armed conflict, the legal framework is constituted by the IHL, customary international law and the IHRL, as applicable. It is of particular importance to highlight that civilians are protected by the law at all times. They will, however, lose their protected status only and for such time as they take a direct part in hostilities during an armed conflict.²²²

NATO forces need to be prepared to act in the contemporary environment in which armed conflicts are becoming more protracted, urban and hybrid. These characteristics are all detrimental factors for the protection of the civilian population.

The urban nature of modern conflict brings with it the issue of the use of Explosive Weapons in Populated Areas (EWIPA) which was responsible for 17,904 civilian casualties in 2019, accounting for 90 per cent of the overall civilian casualties for the ninth consecutive year.²²³ NATO forces need to understand the complexities of such an environment and be prepared to act, taking into account its multiple dimensions. Of particular importance is the understanding by the military of the interconnectivity of the various systems present in a highly populated urban environment and the reverberating effects that the destruction of one of those systems will have on the others with likely detrimental short- and long-term effects on the civilian population. For example, in Laos, the remnants of weapons from the Vietnam War (1964 to

²²² Protection of Civilians – ACO Handbook (2021).

²²³ Data from the United Nations Security Council, Protection of Civilians in Armed Conflict Report, Report of the Secretary-General, May 2020. Consulted at the website: https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_366.pdf.

1973) still contaminate a third of all land and directly affect local farmers.²²⁴ Access to basic needs is usually a particularly affected area by conflict conducted in highly populated areas. In 2012, shelling caused a power cut in a hospital in the city of Homs in Syria; this resulted in eighteen premature babies dying because of the failure of their incubators.²²⁵ Hence, to ensure the protection of the civilian population during urban warfare, PoC needs to be integrated into the planning and conduct of NATO operations and missions at every stage of crisis or conflict.

The continuation of armed conflicts over time hits the civilian population hardest and its ability to service basic needs. Although the humanitarian needs arise early in the crisis, they deteriorate and become more visible over time. While critical civilian infrastructure is likely to be damaged during a conflict, the protraction of the hostilities may pose an additional challenge and impede their restoration. This vicious circle will cause the degradation of basic services essential for the life of the civilian population. Such elements will weaken the long-term stability of the country and consequently the success of any military mission.

Failure to protect the civilian population is also likely to generate immediate negative effects at both international and local levels with a number of reverberating consequences. At the local level, the lack of PoC by military forces can cause a negative perception among the local population with a direct effect on force protection. At the international level, the failure to properly protect the civilian population will affect the credibility and legitimacy of the mission at the political level and through the eyes of the public opinion. Hence, PoC is a central element for the success of any NATO mission.

Understanding the threats and effects of armed conflicts on the civilian population is an imperative for any military mission that wishes to be successful in implementing its mandate. This is particularly true in contemporary conflicts which are becoming more and more protracted, urban and hybrid in nature with devastating effects on the civilian population.

²²⁴ UNIDIR, *The Implications of the Reverberating Effects of Explosive Weapons Use in Populated Areas for Implementing the Sustainable Development Goals*. Consulted at the website <https://www.unidir.org/files/publications/pdfs/ewipa-and-the-sdgs-en-651.pdf>.

²²⁵ Ibid.

3. Protection of civilians in NATO

3.1 A cornerstone document: The NATO policy for the PoC

Conflict continues to exact its worst toll on civilian populations and recognition of that reality is the driving force behind the commitment of NATO and its partner nations to ensure the protection of the civilian population. The PoC approach in NATO is underpinned by a body of policy and guidance, which seeks to ensure that the protection of civilian populations is an integral part of both the planning and conduct of NATO operations and missions. A crucial step for the development of a structured NATO approach to PoC was undoubtedly the policy that was adopted by NATO heads of state and government during the 2016 Warsaw Summit.²²⁶ This capstone document, which had been keenly sought by NATO member states, aims to create a coherent, consistent and integrated approach to PoC during NATO and NATO-led operations, missions and other Council-mandated activities. Within the policy, the term PoC refers to the protection of persons, objects and services and encompasses all actions required to avoid, minimise and mitigate the adverse effects on the civilian populations arising from NATO and NATO-led military operations. Concurrently, the policy aims to protect civilians from conflict-related physical violence or threats of physical violence by other actors, including through the establishment of a safe and secure environment.²²⁷

The policy is overarching in nature. This means that it brings together policies and guidelines developed in PoC-related areas such as Children and Armed Conflict (CAAC), Women Peace and Security (WPS), Conflict-Related Sexual and Gender-Based Violence (CR-SGBV).²²⁸ There are additional topics, such as Building Integrity (BI) and Cultural Property Protection (CPP) that, although not specifically mentioned in the policy, are interlinked and contribute to its implementation. All of these related policy areas are interconnected and need to be as a whole during the planning and execution of any operation.

²²⁶ NATO Warsaw Summit 2016 Communiqué,
https://www.nato.int/cps/en/natohq/official_texts_133169.htm.

²²⁷ Hill, S., & Manea, A. (2018). Protection of Civilians: A NATO Perspective. *Utrecht Journal of International and European Law*, 34(2), 146–160. DOI: <http://doi.org/10.5334/ujel.461>.

²²⁸ NATO Policy for the Protection of Civilians,
https://www.nato.int/cps/en/natohq/official_texts_133945.htm.

NATO Allies recognised that the policy required a clear document to aid the implementation process and thus member states endorsed the Action Plan which directs the key activities to be completed across NATO to achieve the objectives specified in the policy. Since adopting the Action Plan, NATO Headquarters, the Strategic Headquarters Allied Powers Europe (SHAPE) and the Headquarters Supreme Allied Commander Transformation (HQ SACT) have been working together to fulfil the actions detailed in the programmatic document and by doing so, helping to foster a common mindset that understands PoC and recognises its critical importance to the Alliance.

The policy applies to persons, objects and services, therefore, it is widely understood that cultural property falls within its definition. Such an understanding allowed the inclusion of a specific activity related to cultural property within the Action Plan. The link between PoC and CPP enables important alignment with IHL, which itself contains specific provisions for the protection of cultural property in the event of an armed conflict.²²⁹

The activities conducted by the Strategic Commands since the approval of the Action Plan are numerous and touch a number of different areas simultaneously to address PoC from various angles in a concerted manner. This proved to be the most efficient way to integrate the topic into the planning and execution of NATO operations and missions. In addition to the development of a dedicated concept for the protection of civilians, the following key actions that have been developed at the strategic level:

- Doctrine: Integration of the PoC into relevant NATO doctrine, to include Allied Joint Publication (AJP) 3.9 Joint Targeting, AJP-3.2 Land Operations, AJP-3.19 Civil-Military Cooperation, AJP-3.4.3 Military Contribution to Humanitarian Assistance, AJP-3.14 Force Protection, AJP-3.3.2. Close Air Support and Air Interdiction, NATO Comprehensive Operations Planning Directive (COPD). The inclusion of PoC respects the doctrine revision cycle; hence this is a continuous endeavour that will be carried on in the years to come. In addition, the Bi Strategic Directive 086-005 'Implementing CPP in NATO operations and missions' has been developed.

²²⁹ Customary IHL, Rule 38. Consulted at the website: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule38.

- Training: A joint NATO-UN course named ‘Approaches to Protection of Civilians in NATO and UN Peace Operations’ has been developed and is currently conducted annually at the Finnish Defence Forces International Centre (FINCENT). An Immersive Training Environment (ITE) tool has been developed to provide awareness training to PoC and CPP.
- Exercise: PoC has been included in the SACEUR Strategic Guidance on Education, Training, Exercises and Evaluation (SAGE) and has been incorporated in a number of exercises, including Trident Jupiter (TRJU) 19, Trident Jackal (TRJA) 19, Double River (DOOR) 19, Noble Jump (NOJP) 19, Steadfast Jupiter and Jackal (STJUJA) 20.²³⁰

3.2 Translating the policy: the concept for PoC

In June 2018, following the direction of the Action Plan, the Concept was approved by the North Atlantic Council (NAC). The document seeks to define the meaning of PoC for NATO and to translate the provisions of the policy into military actions and considerations and thus operationalise it. Ultimately, the concept seeks to enable military commanders and their staffs to integrate PoC perspectives, dilemmas and considerations into both the planning and conduct of NATO operations and missions.

The NATO comprehensive approach recognises the value of civilian-military interaction and directs the Alliance to liaise and collaborate with non-military actors to contribute to the efforts of the international community for maintaining peace, security and stability.²³¹ This was also at the foundation of the Concept, which was developed by the Strategic Commands and in collaboration with several relevant stakeholders such as the ICRC, the United Nations World Food Programme (WFP), the United Nations High Commissioner for Refugees (UNHCR), the Center for Civilians in Conflict (CIVIC), PAX for PEACE and Protect the People (PtP).

²³⁰ More information on NATO Exercises can be found at the website: <https://shape.nato.int/exercises>.

²³¹ NATO Encyclopaedia 2019, https://www.nato.int/nato_static_fl2014/assets/pdf/2020/1/pdf/2019-nato-encyclopedia-eng.pdf.

The key element of the Concept is the PoC Framework (shown below) which has been designed to guide the integration of PoC considerations and perspectives in the planning and execution of NATO operations and missions. The framework is composed of four distinct, but interrelated elements, also called thematic lenses:

Protection of Civilians Framework

- **Understanding the Human Environment (UHE)**, focused the need for a comprehensive and continuous assessment process aimed at generating sufficient awareness across all domains;
- **Mitigate Harm (MH)**, focused on perpetrators of violence and their victims;
- **Facilitate Access to Basic Needs (FABN)**, focused on civilians, civil society and aid providers;
- **Contribute to a Safe and Secure Environment (C-SASE)**, focused on the local government and institutions.¹

¹ Understanding the Operational Environment: the Human Dimension:
<https://global-strategy.org/understanding-the-operational-environment-the-human-dimension/>.

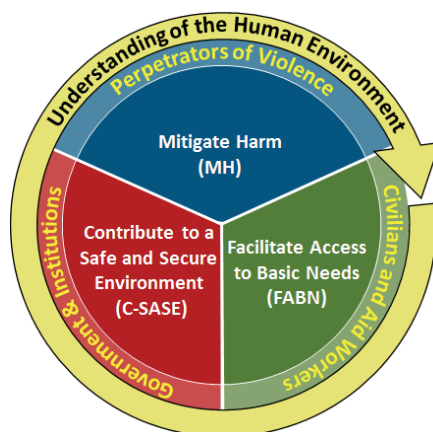


Figure 1. PoC Framework

The UHE lens is enabled by the other three elements and is a ‘population-centric’ perspective of the crisis area intended to provide decision-makers with the context, insight and awareness required to support the planning and conduct of operations. UHE complements the military picture by adding the civilian perspective that is compiled using the detailed analysis of the other three thematic lenses.

The MH lens, as an analytical tool supporting UHE, focuses on understanding the motivation, capabilities and threats to the population posed by belligerents, who harm civilians through errors in action, careless, reckless disregard for collateral damage or deliberate targeting. It is important to notice that belligerents are defined from the perspective of the civilian population being harmed. Thus, a broad spectrum of actors can be included within the definition, for example, combatants, local authorities, criminal groups, individuals participating in the hostilities, or elements of the local population.²³² Defining belligerents from the civilian perspective can result in an actor friendly to NATO falling within this definition because their intended or unintended actions (or inactions) have harmful consequences for the civilian population.

As a line of effort, the MH’s emphasis is on protecting civilians from physical violence during hostilities. It is therefore the element in which the military is more likely to have a leading role and a direct impact. The two principal considerations within this framework address actions conducted by NATO forces and those conducted by other actors. Actions by NATO forces refer to the awareness and precautionary measures necessary to ensure that military forces minimise the risk of harm to civilians and in the event of harm occurring, how best to mitigate the consequences. Actions undertaken by other actors refer to the use of military means within the mission mandate to prevent, deter, pre-empt and respond to situations where civilians are subject to unlawful violence or are under the threat of such violence from belligerents.

The FABN thematic lens focuses on the basic needs and services of the civilian population. While the host nation retains the primary responsibility to ensure that such needs are met and such services provided, conflict environments often prevent local authorities from fulfilling those obligations. In such cases, humanitarian actors and aid providers will likely assist the host nation to ensure

²³² Protection of Civilians – ACO Handbook (2021).

the provision of basic needs and services to the population. Within such a framework, NATO is expected to have a supporting role, if mandated.

FABN supports the UHE through the identification of the basic needs and services required by the civilian population. As a line of effort, it focuses on the reduction of harm that might result from the military presence in a given area. The environmental damage caused, for instance, by the disproportionate use of local sources of water by military installations provides a good example of the unintended harm that can be caused to the civilian population by military forces. FABN also considers the military requirement to support aid organisations, to provide humanitarian access and if requested and following the last resort principle, to provide direct humanitarian assistance.

Finally, the C-SASE lens helps to consider the long-term requirements across a broad range of areas such as security sector reform, conflict prevention, stabilisation, capacity building and development writ large. Like FABN, C-SASE is principally the responsibility of the host nation government and its local authorities; therefore, the military is expected to adopt mainly a supporting role.

As a thematic lens contributing to the overall UHE, C-SASE focuses on understanding the capacities and resilience of essential public services, to ensure the provision of security and the rule of law in a given area. As a line of effort contributing to the success of the mission, C-SASE includes all those actions and activities taken by NATO in support of the development and capacity building of local institutions. Such support includes the reinforcement or replacement of local forces to provide security and stability, together with advising, mentoring and training activities intended to improve and/or reform the legitimate local governmental authorities.

3.3 Developing a PoC mindset: The NATO PoC ACO Handbook

The NATO Policy and Concept are complemented with a third element: the Handbook, finalised in May 2020.²³³ The Handbook, developed by the Strategic Commands, has been designed to be used as a ‘one-stop-shop for PoC’ by staff elements across NATO functional areas within the strategic,

²³³ While the Unclassified version of the POC ACO Handbook was finalised in May 2020, the Handbook version for the public distribution can be found at the following link:
at <https://shape.nato.int/resources/3/website/ACO-Protection-of-Civilians-Handbook.pdf>.

operational and tactical levels of command. Although it is not a binding document, it has officially been approved and endorsed by SHAPE Command Group and widely distributed within NATO. It complements the PoC framework by supporting the development of collective knowledge on how to use and incorporate existing NATO PoC-related concepts, doctrine, tools and processes in the *modus operandi* of the Alliance. It also provides guidance to command staff on the application and implementation of the Policy and Concept in the planning and execution of NATO operations and missions.²³⁴

The Handbook has been developed around the PoC framework and focuses on relevant considerations, dilemmas and questions for every one of the four elements composing the framework. In addition, the various existing tools and processes relevant for PoC are outlined to guide the reader through the key procedures and elements that should be taken into particular consideration during the planning and conduct of an operation or mission. Particular emphasis is given to the development of a PoC mindset across NATO staff and the creation of a sound understanding of the impact of PoC, or the lack thereof, on any NATO operation and mission and its reverberating consequences on long-term security and stability. The Handbook defines the PoC mindset as a shift in focus from the traditional ‘enemy-centric’ perspective to one that is ‘population-centric’ and that therefore thoroughly considers the perceptions, views and needs of the affected population. Such a shift of emphasis is critical to avoid or minimise the harm caused to civilians and when harm does occur, to adopt the most appropriate and effective strategies to mitigate it. To support the creation of a PoC mindset, the Handbook outlines a number of practical examples for every lens of the analytical framework; these examples aim to show the positive and negative consequences stemming from the implementation or lack of implementation of PoC-related measures.²³⁵

In line with the *modus operandi* applied for the development of the Concept, the Handbook has also been created in close collaboration with key NATO stakeholders from the international community, to include the ICRC and CIVIC, to broaden the perspectives and considerations contained within the

²³⁴ Protection of Civilians – ACO Handbook (2021).

²³⁵ Ibid.

document and simultaneously reflect the added value represented by a transparent and frank dialogue between the military and civilian actors.

4. Conclusions

In recent years, NATO has developed a structured approach on PoC with a number of steps taken towards the direction of better integrating PoC into the planning and conduct of NATO operations and missions. In 2016, NATO member states affirmed their commitment to advance the PoC agenda by adopting the NATO *Policy for the Protection of Civilians* that was soon followed by a specific Action Plan aimed at implementing the Policy. In 2018 the *Concept for the Protection of Civilians* was approved to provide a definite understanding of what PoC means for NATO and offer a conceptual framework to better assist the integration of the topic within the Alliance and its operations. In 2020, the PoC ACO Handbook was finalised to provide a comprehensive publication where considerations and dilemmas on the issue are outlined to create a PoC mindset within the Alliance.

Building on the outcomes reached so far, NATO is now focusing on the next main steps to further advance the PoC agenda. The update of the Action Plan is certainly a pivotal task to provide NATO with a revised and comprehensive document to guide its future activities in this area of work. Of particular importance is also the creation of a dedicated NATO Centre of Excellence that could focus, among others, on PoC to support the various NATO entities to further advance the PoC agenda.

The steps forward made by NATO in recent years are undeniable and reflect the overall interest of the Alliance to strengthen its understanding and *modus operandi* vis-à-vis the protection of civilians. However, this momentum must be maintained to ensure that PoC is strongly integrated into the planning and conduct of NATO operations and missions.

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CHAPTER 6

Reinforcing Civilian Harm Mitigation in Security Force Assistance:

Best Practice, Lessons Learned and Suggestions for NATO and NATO Nations

Beatrice Godefroy, Sahr Muhammedally & Vianney Bisimwa

Abstract

This chapter analyses how Security Force Assistance (SFA) can affect the Protection of Civilians (POC). Effectively reducing harm to civilians relies on a proactive approach to Civilian Harm Mitigation (CHM).²³⁶ The Centre for Civilians in Conflict (CIVIC) suggests SFA focuses on strengthening partners' abilities to mitigate harm to civilians, as their operational effectiveness will correspond with their efficacy in reducing civilian harm. Assisting nations and their local forces might also lay the groundwork for the integration of CHM good practice. The authors propose that, to positively influence the behaviour of assisted forces to minimise civilian harm, a number of options should be explored to reinforce training programmes that develop a practical approach to risk reduction and harm mitigation to civilians and civilian objects and enable local forces to better factor-in the protection of civilians in their operations cycles. As patterns of civilian harm vary across different operational environments, the authors offer a comparative analysis of key issues posed by SFA activities in the Middle East and the Sahel and identify ways to address these challenges. Approaches to Protection of Civilians in SFA programmes need to be tailored to specific operational and human environments, being mindful that urban contexts versus open settings require different civilian harm mitigation measures. Several options have been explored in this chapter: 1) adopt stronger safeguards in the assessment, design, execution and monitoring of security partnerships; 2) reinforce training programmes that develop a practical

²³⁶ CIVIC defines civilian harm mitigation as all measures taken by armed actors to prevent, minimise and address civilian harm resulting from their own presence, activities and operations.

approach to risk reduction and harm mitigation to civilians and civilian objects; and 3) enable local assisted forces to better factor-in the protection of civilian in their operations cycles, including through policies and tactical guidance.

Keywords: *protection of civilians, Iraq, Sahel, civilian harm mitigation, partnership.*

1. Introduction

Over the past few years, working ‘by, with and through’ regional, national and local forces have become the preferred option for numerous countries grappling with multifaced security and defence challenges outside their borders, including NATO nations. This approach entails partnering directly with and providing security assistance to other governments, local forces, or non-state armed actors. These partnerships may take the form of bilateral assistance or multi-national coalitions, allowing local forces to benefit from enhanced capabilities, burden-sharing and international legitimacy. SFA includes a broad set of ‘*measures and activities that support and influence critical friendly assets through organising, training, advising, mentoring, or conducting combined operations*’.²³⁷

SFA poses varying risks to civilians that call for specific mitigation measures and adaptations. The authors propose that, to positively influence the behaviour of assisted forces to minimise civilian harm, a number of options should be explored to reinforce training programmes that develop a practical approach to risk reduction and harm mitigation to civilians and civilian objects and enable local forces to better factor-in the protection of civilians in their operations cycles. Such standards are consistent with the direction set by the NATO Policy for the Protection of Civilians (2016) and the recently issued PoC Allied

²³⁷ Please refer to the definition of Security Force Assistance in NATO Standardization Office, ‘AJP – 3.16 Allied Joint Doctrine for Security Force Assistance (SFA)’, Edition A Version 1 (May 2016), page VIII. For the purpose of this chapter, the authors focus on military assistance, which is one of the six concepts included in SFA, together with security sector reform, stabilisation and reconstruction, counter-insurgency, stability policing, disarmament, demobilisation and reintegration: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/637583/doctrine_nato_sfa_ajp_3_16.pdf.

Command Operations Handbook (ACO, 2021), to support the success of any operation and mission.^{238, 239}

In the Middle East, national and international military partners are undertaking operations in densely populated areas where military objectives are embedded in urban terrain among civilian populations, posing heightened risks to civilians and civilian objects. In such an environment, local forces need to be better prepared to consider population density and essential infrastructure when engaging military targets. In the Sahel, where operations are taking place in rural and less populated areas, civilians face threats from Armed Opposition Groups (AOGs), security forces and ethnic militias, which creates additional challenges in distinction.

In the case studies described in the chapter, CIVIC draws its learnings from engagement with a variety of security and defence forces, including from NATO. CIVIC's findings and suggestions therefore by no means represent an assessment of NATO's performance in integrating CHM in SFA, but rather the trends observed across various stakeholders and contexts.

2. Integrating civilian protection in SFA

This section introduces key POC concepts and how they relate to SFA, providing an overall analysis of risks to civilians arising from SFA activities and measures and exploring opportunities for better civilian protection.

2.1 The legal and strategic approach to Protection of Civilians

NATO defines PoC as including:

“... all efforts to avoid, minimise and mitigate the negative effects that might arise from NATO and NATO-led military operations on the civilian population and, when applicable, to protect civilians from conflict-related physical violence or

²³⁸ In its 'NATO Policy for the Protection of Civilians', endorsed by Heads of States and Government in 2016, NATO recognises 'that all feasible measures NATO must be taken to avoid, minimise and mitigate harm to civilians. When planning and implementing such measures, NATO should give consideration to those groups most vulnerable to violence within the local context'. See: NATO, 'NATO Policy for the Protection of Civilians', Press Release 135 (July 2016), Section 7, https://www.nato.int/cps/en/natohq/official_texts_133945.htm.

²³⁹ For more information about the NATO POC framework, including POC policy, Concept and Handbook, please refer to: S. Hill, A. Manea, 'Protection of Civilians: A NATO Perspective' in *Utrecht Journal of International and European Law*, 34(2), (2018) pp156-158, <https://www.utrechtjournal.org/articles/10.5334/ujiel.461/galley/210/download/> see at the following link: at <https://shape.nato.int/resources/3/website/ACO-Protection-of-Civilians-Handbook.pdf>.

*threats of physical violence by other actors, including through the establishment of a safe and secure environment.”*²⁴⁰

Protection of Civilians is rooted in International Humanitarian Law (IHL) and International Human Rights Law (IHRL). IHL is ‘the cornerstone for the protection and respect of human dignity in armed conflict,’²⁴¹ complemented by human rights law, national and regional legal frameworks, policies, good practices and tactics and techniques to operationalise obligations to reduce and minimise civilian harm. All parties to an armed conflict must abide by IHL and states must ensure it is respected²⁴² and prevent, investigate and prosecute violations.

Protecting civilians is an ethical and legal imperative that also establishes conditions for post-conflict stability.²⁴³ Nearly two decades of Western military operations and security partnerships in Afghanistan and the Middle East confirm that civilian harm has strategic consequences for military operations. Evidence from multiple studies shows that failure to protect civilians can perpetuate violence and create additional drivers of conflict that allow Armed Non-State Actors (ANSAs) to gather capabilities, intelligence and logistical support and drain support from local and foreign armed forces.²⁴⁴ Civilian harm can create a push factor that motivates affected populations to support the opponent, both at the tactical and strategic levels. Military forces with low levels of acceptance from local communities face serious risks in force

²⁴⁰ NATO, ‘NATO Policy for the Protection of Civilians’, Press Release 135 (July 2016), Section 9, https://www.nato.int/cps/en/natohq/official_texts_133945.htm.

²⁴¹ K. Dörmann, Address as Head of the Legal Division, International Committee of the Red Cross in London (July 9, 2009), <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-090709.htm>.

²⁴² The Common Article 1 of the Geneva Conventions actually obliges states to respect and ensure respect for the Geneva Conventions. See: ICRC, ‘Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)’ (12 August 1949), 75 UNTS 287, <https://www.refworld.org/docid/3ae6b36d2.html>.

²⁴³ ‘The minimum standards of Law of Armed Conflict, in particular with regards to the protection of civilians and civilian objects, should be observed during all military operations regardless of the nature of conflict/military engagement. [...] Different military disciplines, branches and command levels may have to consider deal with a variety of Cross-Cutting Topics (CCTs). CCTs have a significant impact on the mission. To date, cross-cutting topics are protection of civilians, children in armed conflict, women peace and security, cultural property protection and building integrity’. NATO Standardization Office, ‘AJP-3.19 Allied Joint Doctrine For Civil-Military Cooperation’, Edition A Version 1 (November 2018), pp 1-9 – 1-10. <https://www.handbook.cimic-coe.org/8.-annex/reference-docs/ajp-3.19-eda-v1-e.pdf>.

²⁴⁴ On Afghanistan: Open Society Foundations, ‘The Strategic Costs of Civilian Harm, Applying Lessons from Afghanistan to Current and Future Conflicts’ (June 2016), <https://www.opensocietyfoundations.org/publications/strategic-costs-civilian-harm>.

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protection, while also being exposed to a deterioration of their strategic and operational environment. All actors involved should thus act in a way that helps create trust with Host Nation (HN) populations. Without this focus, ‘without legitimacy, Security Force Assistance activities will be undermined’.²⁴⁵

Civilian Harm Mitigation (CHM) measures to prevent, minimise and address civilian harm resulting from operations should thus be central to the design and implementation of military action and security partnerships whose ultimate purpose is to bring a measure of peace and stability to a county or region.

2.2 POC risks and opportunities in SFA

Security partnerships are generally understood as a broad set of actions aimed at building the capacity of local, national and regional forces. CIVIC defines partnerships to include both lighter-form and in-depth operational partnerships, which largely fall into three categories: (1) support operations providing materiel, intelligence, training and other forms of support, which exclude on-the-ground presence; (2) train, advise and assist missions entailing limited presence on the ground with the consent of the assisted nation and providing intelligence, advice, training and other forms of technical assistance; and (3) mentoring and partnered military operations, where the assisting force is directly involved in planning and potentially in the use of force.²⁴⁶ Such categories would correspond to what NATO calls SFA.²⁴⁷

NATO nations are increasingly relying on local forces to gain political, economic and security advantages while minimising risks to their own soldiers and sharing the burden of costs, personnel and assets. Some of these NATO nations have robust IHL training, targeting procedures, precision-guided munitions and have developed good civilian harm mitigation practices. Host nation forces may not yet have developed a robust operational application of IHL, training on POC and CHM concepts,

²⁴⁵ NATO Standardization Office, ‘AJP – 3.16 Allied Joint Doctrine For Security Force Assistance (SFA)’, Edition A Version 1 (May 2016), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/637583/doctrine_nato_sfa_ajp_3_16.pdf.

²⁴⁶ For more on typologies of security force assistance activities, please refer to: CIVIC, CSIS & Interaction, ‘Civilians and “ By, With and Through “: Key Issues and Questions Related to Civilian Harm and Security Partnership’ (April 25, 2018), <https://www.csis.org/analysis/civilians-and-and-through>.

²⁴⁷ NATO Standardization Office, ‘AJP – 3.16 Allied Joint Doctrine For Security Force Assistance (SFA)’, Edition A Version 1 (May 2016), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/637583/doctrine_nato_sfa_ajp_3_16.pdf.

intelligence capabilities or appropriate weapons for specific terrain and may have limited domestic oversight.

SFA measures and activities, therefore, have real consequences for civilians, especially if partners have proficiency or capability limitations, a higher tolerance for risk, or lack sufficient safeguards to mitigate harm. Partnerships can provide legitimacy to local forces, in addition to more resources and capabilities that can escalate or prolong armed conflict, including long after NATO forces have withdrawn.^{248, 249}

According to CIVIC's observations in Africa, Europe, the Middle East and South Asia, failure to include CHM good practices and tools in SFA activities and measures has led to humanitarian consequences and protection gaps for affected populations. Some of CIVIC's observations on POC gaps include:

- 1) Political gaps. Frequently observed gaps include a lack of analysis of the objectives and desired outcomes of the partnership from both the assisting nation and local forces and potentially diverging incentives across nations. This can lead to different approaches to POC and insufficient prioritisation and resourcing of POC by the political and military leadership of both the assisting nation and local forces. Statements by host nation forces about adherence to IHL may also differ on how highly POC will be prioritised in the partnership, how civilian harm will be mitigated and who will be responsible for implementing mitigation measures.²⁵⁰
- 2) Strategic and operational gaps. How POC is integrated into support to local forces has a significant effect on mission success. A lack of clarity of how CHM measures should be integrated and operationalised in the planning and conduct of operations in hosting nations leads to insufficient focus on CHM in the planning and execution of operations.

²⁴⁸ As highlighted by the ICRC : 'If partnering proliferates, it may also prolong conflict'. C. Droege and D. Tuck, 'Fighting together : Obligations and opportunities in partnered warfare', (March 28, 2017), <https://blogs.icrc.org/law-and-policy/2017/03/28/fighting-together-obligations-opportunities-partnered-warfare/>.

²⁴⁹ Legitimacy, which a factor of mandate, manner, consent and expectations, is critical for the achievement of long-term stabilisation objectives, as mentioned in NATO Standardization Office, 'AJP – 3.16 Allied Joint Doctrine For Security Force Assistance (SFA)', Edition A Version 1 (May 2016), p1-5 & p1-7. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/637583/doctrine_nato_sfa_ajp_3_16.pdf.

²⁵⁰ Establishing upfront expectations that certain activities – such as training for specific units or other types of assistance – will be discontinued if items are misused or diverted is key.

- 3) Civilian harm incidents. CIVIC has frequently observed a lack of clear or defined responsibilities among host nations when it comes to assessing and responding to civilian harm. This includes a lack of interoperability or compatibility in approaches to civilian harm assessments and insufficient effort to build the capacity of local forces to track and assess civilian incidents to mitigate and avoid harm, make amends²⁵¹ for incidental harm and conduct robust legal investigations into violations.
- 4) Training gaps. While security assistance often includes Law of Armed Conflict (LOAC) training programmes, support for their operationalisation (i.e. how to effectively prevent, mitigate and respond to civilian harm in practice) often needs to be further developed. Meeting LOAC benchmarks should be prioritised through good practices on CHM in training, education and exercises to be effective and influence the behaviour of forces. Training also has limited effect in the absence of governance and accountability structures.
- 5) Issues related to intelligence. CIVIC has observed challenges in the use of intelligence by partner forces due to a lack of common methodology for the collection, interpretation, evaluation and dissemination of information and intelligence. Insufficient vetting of intelligence from partner forces and an over-reliance on this information has exposed assisting nations to errors resulting in civilian harm.²⁵²

In addition to the risks for civilians, failing to integrate POC systematically in local forces also entails political and reputational risks for assisting nations, especially as they are involved in training, assisting, advising and mentoring and might participate in partnered military operations. Even when compliance and legal risks are minimal or non-existent, it is politically impossible to establish a wall between the behaviour of local forces and assisting nations and organisations. Partnering with local forces who may be (or seen to be) responsible for civilian harm will have political and reputational consequences at the local level and with domestic audiences more broadly.

²⁵¹ CIVIC defines amends as the practice of armed actors recognising and/or providing assistance to civilians that they harmed within the lawful parameters of their presence, activities and operations. Amends can take the form of acknowledgements or culturally appropriate financial assistance as was developed by ISAF in Afghanistan.

²⁵² CIVIC, CSIS & Interaction, 'Civilians and "By, With and Through": Key Issues and Questions Related to Civilian Harm and Security Partnership' (April 25, 2018), <https://www.csis.org/analysis/civilians-and-and-through>.

3. Reducing civilian harm: Iraqi and the Sahel

Effectively reducing harm to civilians requires a candid assessment of the most likely sources of harm and the use of available options to address potential harm throughout the partnership. This section will present two case studies of Iraq and Sahel, which represent practical examples of the protection of civilians.

3.1 Iraq

Partnering, training and advising in high-intensity combat operations heighten the need for operational planning and partner risk assessments to effectively reduce civilian harm in adherence to IHL. Combat operations in urban areas pose significant challenges to militaries due to population density, urban terrain and critical infrastructure. The battle against the Islamic State of Iraq and Syria (ISIS) is an important case study on partnering and highlights the operational obstacles to dislodging an adversary embedded in the city of Mosul, while simultaneously protecting civilians.²⁵³

The US-led anti-ISIS coalition partnered with Iraqi Security Forces (ISF) – including the Iraqi army, air force, special operations forces, counterterrorism forces and police – through air support, Intelligence Surveillance and Reconnaissance (ISR) support and train, advise and assist elements. During the nine-month campaign, coalition advise and assist teams, joint forward observers and Joint Terminal Attack Controllers (JTAC) played critical roles in the planning, coordination and execution of operations with ISF against a determined and adaptive adversary. Other forces fought against ISIS in Mosul, including the Kurdish Peshmerga forces (also supported by the coalition, but involved in shaping operations and did not fight inside Mosul city) and the Popular Mobilisation Units (PMU), which, depending on the unit, had different levels of training, weapons and competencies.²⁵⁴

²⁵³ ISIS took control of Fallujah in January 2014 and continued its offensive capturing Nineveh, parts of Salah-al Din, Kirkuk Diyala and Anbar governorates, as ISF and Peshmerga forces (latter in Kirkuk and Sinjar in Nineveh) withdrew. On June 12, 2014, Ayatollah Ali al-Sistani, the highest Shia religious authority in Iraq, issued a fatwa calling for the defence of Baghdad and other sites and for volunteer fighters to join security forces to fight ISIS. In August 2014, the Peshmerga and the PMU, supported by US-led anti-ISIS coalition air strikes, mounted a counter offensive against ISIS in Sinjar to retake the city. Ramadi was retaken by early January 2016, Fallujah by June 2016, Mosul by July 2017, Tal Afar by August 2017, Hawija by October 2017, Qaim and Akahsa in Anbar by November 2017.

²⁵⁴ Peshmerga forces were trained and equipped by the coalition. Most of the PMU units – comprised of volunteer fighters who responded to Ayatollah Sistani's call to defend Iraq – many of whom affiliated with Iran were not trained or equipped by the US-led anti-ISIS coalition. US Special Operations Forces trained and equipped tribal PMUs to be garrison forces for Mosul city.

At the start of the operation in October 2016, over 1.5 million civilians lived in the area. ISIS maintained a lightly armed paramilitary force of 3,000-5,000 in the city equipped with small arms, heavy machine guns, rocket-propelled grenade launchers, recoilless rifles, mortars and rockets. It created elaborate networks of defensive works in the city, fortifying buildings, blocking roads, creating obstacles and building tunnels and shelters housing munitions. ISIS fire support elements included Vehicle-Born Explosive Devices (VBIEDs), primitive chemical weapons and small commercial unmanned aerial vehicles which were adapted into reconnaissance and strike platforms carrying hand grenades. ISIS also used civilians as shields and prevented civilians from leaving the area, further compounding the challenge for offensive forces.

The toll on civilians during the fight against ISIS was enormous. Between 2014 and 2015, over 5.8 million Iraqis were displaced. Associated Press estimated that between 9,000 to 11,000 civilians died in the nine-month operation.²⁵⁵ ISF suffered high casualties as well.²⁵⁶ The scale of destruction was staggering, with west Mosul hit hard and 72% of houses damaged compared to 26% in east Mosul. Nine of the 13 hospitals were damaged, with al Shifa hospital, the second-largest hospital in Iraq, destroyed.²⁵⁷ The UN estimates that the fighting in Mosul resulted in 8 million tons of debris²⁵⁸ and the Iraqi government estimates the total damage to the housing sectors in the seven affected governorates was roughly \$16.1 billion. As of mid-2020, over 1.4 million remain displaced and unable to return to their area of origin due to lack of essential services and danger from explosive remnants of war.²⁵⁹

²⁵⁵ S. George, 'Mosul is a Graveyard: Final IS Battle kills 9,000 Civilians', The Associated Press, (December 20, 2017), <https://apnews.com/article/bbea7094fb954838a2fdc11278d65460>.

²⁵⁶ G. Browne, 'Attack on Mosul: World's biggest military operation runs into troubles', Middle East Eye (January 2, 2017), <https://www.middleeasteye.net/columns/manpower-shortage-plagues-mosul-offensive-2023724912>.

²⁵⁷ Center for Civilians in Conflict, 'Policies and Practices to Protect Civilians: Lesson from ISF Operations Against ISIS in Urban Areas' (October 2018), p.62, <https://civiliansinconflict.org/wp-content/uploads/2019/10/Policies-and-Practices-2.pdf>.

See Also: K.O. Amin, 'Health Care System Broken One Year After Defeat of ISIS,' Reuters (July 17, 2018).

²⁵⁸ UNEP, UN-Habitat, Joint Press Release of the 2-day workshop in Mosul on a Multi-stakeholder city-wide debris management master plan (March 21, 2018), <https://reliefweb.int/report/iraq/multi-stakeholder-city-wide-debris-management-master-plan-initiated-un-environment-and>.

²⁵⁹ CIVIC interviews with Combined Joint Operations Command and ISF members (2016-2017).

Lesson Identified

CIVIC's research in Mosul interviewing civilians, members of Iraqi forces and coalition advisors shows both the preparedness and the obstacles in operations against ISIS when fighting in densely populated areas.¹ In 2015, Iraqi Prime Minister Haider al Abadi instructed all forces to protect civilians during operations, supported by similar calls from religious and political authorities, which had a positive influence on the mindset of Iraqi troops as they moved into action. These calls could have been further complemented by tailored rules of engagement (ROE), operational orders, or training on how to meet the objective of civilian protection in urban war.

A review by CIVIC of available training materials showed that training organised by the Ministry of Defense (MOD), Ministry of Interior (MOI) and the coalition prior to and during operations were instrumental in building the ISF's capacity to fight ISIS and retake territory. But training curricula also showed gaps due to the lack of preparation through scenarios and simulations of the complex operational environment with civilians present and incorporating common ISIS tactics.

LOAC training was woven into coalition practical training and exercises starting in late 2016. But the Programs of Instruction (POI) may not have been sufficiently adjusted after operations to consider threats to civilians and good practices on civilian harm mitigation.¹ In addition, the training grounds used did not adequately replicate the unique characteristics of dense urban environments, including the structural and population densities of cities like Mosul.

Post Harm Assessment Capabilities

'The coalition was tracking incidents of civilian casualties attributed to its own fires,² but did not train the ISF to assume this responsibility. The ISF did not conduct post-strike assessments of civilian harm to better understand the impact of its operations on civilians and infrastructure or the causes of civilian harm. Without this information, Iraqi forces were hamstrung in identifying ways to adjust tactics, policies and trainings and in properly responding to civilian losses. ISF After Action Reviews (AAR) on operations did not include any information regarding civilian harm and its causes due to their lack of training and tasking by command to undertake this assessment. Had this data and analysis been undertaken, it could have informed new tactics and guidance and reduced incidental harm, contributing to Prime Minister's directive to protect civilians'.

¹ Policies and Practices to protect Civilians: Lessons from ISF Operations Against ISIS in Urban Areas <https://civiliansinconflict.org/wp-content/uploads/2019/10/Policies-and-Practices-2.pdf>.

² Ibid.

3.2 Sahel

Military operations in the Sahel are taking place in the midst of intersecting violence between religious groups and communities, between herders and peasants and from the trafficking of drugs and people. The region, including the countries which compose the G5 Sahel (Mali, Niger, Burkina Faso, Chad and Mauritania), has experienced spikes of violence since April 2019. As AOGs²⁶⁰ continue their expansion, the Armed Conflict Local Events Database (ACLED) recorded more than 3,660 incidents that harmed civilians in the five countries of the G5 Sahel, including riots, looting, attacks and assassinations.²⁶¹

Attacks from those groups and the associated military responses targeting armed groups' proxies harmed and killed civilians and fuelled ethnic tensions stoked by decades of frustration among farmers and herders. Communities are concerned about the lack of security and protection in the region and view all armed actors (national and international) with suspicion. In response to these threats, France, Mali, Niger and Burkina Faso have pledged to boost military cooperation and operations with a focus on the three-border region between Mali, Niger and Burkina Faso.²⁶² The fight against terrorism in the region requires mobility and adaptation to different threats from the AOGs.

Military assistance to the joint-Force G5 Sahel covers a broad set of actions, including light footprint support, 'train, advise and assist' missions and in-depth operational partnerships. It ranges from the delivery of training programmes to Sahelian military units by the European Union Mission in Mali (EUTM) and advised by American, German and Belgian military advisors, to coordinated or unilateral military operations such as France's Operation Barkhane²⁶³ or the United Nations Mission in Mali (MINUSMA).

Thus, security partnerships in the Sahel must include specific efforts to enhance the capacity of national forces to mitigate harm to civilians in their areas of operation and adopt POC tools and approaches to deter terrorist threats in the region.

²⁶⁰ These include: Jamaat Nusrat al-Islam wal Muslimeen (JNIM) and the Islamic State in the Greater Sahara (ISGS).

²⁶¹ ACLED Database, <https://acleddata.com/dashboard/#/dashboard/A8C7DA080BAAA7BDDBC96C34FCA8AED2>.

²⁶² G5 Sahel Heads of State and French Presidency, 'Pau declaration' (January 13, 2020), <https://www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat>.

²⁶³ Operation Barkhane is based on a military partnership with the major countries in the region and aims to 'support the Group of Five for the Sahel (G5 Sahel) partner countries in taking over the fight against armed terrorist groups across the Sahel-Saharan strip (SSS)'. Source: Ministère des Armées, 'Opération Barkhane Press Pack' (February 12, 2020), p.4, https://www.defense.gouv.fr/english/content/download/577214/9871585/20200212_NP_EMA%20CABCOM_DP%20BARKHANE_EN.pdf.

Military operations in the Sahel are conducted in areas populated by farmers and nomads who migrate for work in the fields or the best pastures. These groups are already in conflict with each other due to scarcity of resources and lack of governance. This poses a severe problem of distinction for local forces best summarised by J.T. Johnson:

*“Even if all enemy group members are not targeted, it is difficult to distinguish in irregular warfare a non-combatant from a combatant and, in practice, it is complex if not impossible to differentiate the from each other. In such a war, the combatants are generally dressed as they would normally be in civilian clothes. They can continue to live at home with their families or be accommodated and fed in a friendly neighbourhood. They can switch easily and without problems from combatant to civilian.”*²⁶⁴

Since the end of 2019, Sahelian governments and regional platforms like the G5 Executive Secretariat have begun to acknowledge the importance of better protecting civilians and the critical role this plays in restoring trust between the state and communities. The governments reaffirmed their commitment to the protection of civilians in the fight against terrorism. For example, in October 2019 they committed to reducing inter-communal violence, facilitating access to asylum and protection from forced returns.²⁶⁵ Such public declarations are important milestones and point at encouraging evolutions.

In June 2020, with CIVIC's technical support, the Joint Force set up the Mechanism for Identification, Monitoring and Analysis on Damage Caused to Civilians (MISAD) during its operations, which was officially launched in January 2021. The creation of this mechanism is an encouraging step towards reducing civilian incidents, but the full roll-out of the MISAD and its operationalisation will be critical to better civilian protection.²⁶⁶

²⁶⁴ J.T. Johnson , ‘ L ’érosion de l’immunité des non combattants dans la guerre Asymétrique’ in ASPJ Afrique & Francophonie, p.69 https://www.airuniversity.af.edu/Portals/10/ASPJ_French/journals_F/Volume-06_Issue-1/johnson_f.pdf.

²⁶⁵ UNHCR, ‘G5 Sahel Governments commit to protecting civilians and reducing inter-community violence’, Press Release (October 9, 2019), <https://reliefweb.int/sites/reliefweb.int/files/resources/Les%20gouvernements%20du%20G5%20Sahel%20s%20engagent%20pour%20la%20protection%20des%20civils%20et%20la%20r%C3%A9duction%20de%20la%20violence%20intercommunautaire.pdf>.

²⁶⁶ CIVIC ‘Official Launch of the Civilian Casualties Identification, Tracking and Analysis Cell for the G5 Sahel Joint Force Operations’, January 2021, <https://civiliansinconflict.org/blog/sahel-misad-launch/>.

Lessons learned and recommendations

The complexity of the scenarios underlined the relevance of civilian harm mitigation when conducting operations. SFA frameworks should integrate mechanisms for the protection of civilians as soon as security partnerships are set up and insist on the means and mechanisms for measuring, monitoring and responding to incidents involving civilians.

Where local forces are conducting counterinsurgency or counterterrorism operations in the midst of long-standing intercommunal conflict, proactive communication with civilians on military operations and protection concerns is key to further their protection, reduces rumours and promotes understanding of local security and defence forces' missions and challenges. A local study revealed that if local forces lack the population's trust, a greater presence of local forces does not provide a sense of security, but rather of insecurity. To increase the confidence of the local population, local and regional forces need to integrate a strong community engagement approach in their operational planning. Assisting forces, including EUTM, may also consider including advisory work on building constructive civil-military relations.

Civil-Military Cooperation (CIMIC or ACM) processes are a good foundation for improving civil-military relations, but these efforts must go beyond delivery of assistance or other in-kind support. Local forces' approaches to community engagement should focus on creating channels of communication – often where they do not exist – and cultivating relationships. If local forces have better access to civilians in conflict zones, it 'not only contributes to build confidence, but also facilitates the collection of sensitive data on conflict dynamics and thus ultimately leads to better and more sustainably embed the protection of civilians within military operations'. Local forces must, however, dedicate sufficient time for robust situational analysis of the threats to civilians as visible engagement could result in AOGs attacking civilians in retribution for their perceived engagement with security and defence forces. Local forces' strategic communications approaches must depart from the classic 'winning people's hearts and minds' to putting civilians' protection – including welfare and security - at the heart of messaging.¹

In particular, the cases of Iraq and Sahel highlighted the importance to:

- Make post-strike assessments of civilian harm to better understand the impact of operations on civilians and infrastructure or the causes of civilian harm.
- Introduce tailored Rules of Engagement (ROE), operational orders, or trainings on how to meet the objective of civilian protection in urban war.
- Prepare through scenarios and simulations of the complex operational environment with civilians presence.
- Identify high risks of civilian casualties and the way to minimise these risks, especially in cases of dense urban environments.

Determine accurately the number of civilians occupying a target area prior to approving strikes, such as the inclusion of troops to observe targets (e.g. forward-observers).²

¹ See: https://www.sipri.org/sites/default/files/2019-02/livre_blanc_mali_2019.pdf https://www.sipri.org/sites/default/files/2019-02/livre_blanc_mali_2019.pdf SIPRI, 'Livre Blanc de la société civile pour la paix et la sécurité au Mali' (January 31, 2019), https://www.sipri.org/sites/default/files/2019-02/livre_blanc_mali_2019.pdf.

² <https://blog.prif.org/2019/03/07/military-cooperation-in-the-sahel-much-to-do-to-protect-civilians/> S. Schnabel, 'Military cooperation in the Sahel: Much to do to protect civilians', PRIF Blog (March 7, 2019), <https://blog.prif.org/2019/03/07/military-cooperation-in-the-sahel-much-to-do-to-protect-civilians/>.

4. A POC Framework in Security Partnerships

Militaries can and should be more deliberate in strengthening civilian protection in security partnerships and assistance. To initiate a positive change in partner behaviour, assisting nations need to develop a range of initiatives. Assisting nations and supporting forces need to establish a framework for a partnership that will integrate strong POC and CHM commitments, safeguards, good practices and tools at all levels of the security partnership.

CIVIC offers the following suggestions on SFA measures and activities:

- Leadership demonstrates a commitment to prioritise the protection of civilians.

*'Sustained commitment by high-level civilian and military leadership, including a command climate that emphasizes the importance of preventing civilian harm, are essential for civilian harm mitigation.'*²⁶⁷

Encouraging compliance with the rule of law and ensuring respect for IHL and IHRL, assisting nations and local forces should prioritise civilian harm mitigation when evaluating the possibility of a partnership in the first place and during the partnership forming process and within all structures and activities.

- Key documents framing security partnerships should include strong language on the prioritisation of the protection of civilians and civilian harm mitigation.

Such documents include initial joint political declarations, Status Of Force Agreements (SOFAs) and terms of reference or Memoranda of Understanding (MOUs). High-level planning documents such as

²⁶⁷ Center for Civilians in Conflict, 'The Sum of All Parts: Reducing Civilian Harm in Multinational Coalition Operations' (January 23, 2019), https://civiliansinconflict.org/wp-content/uploads/2019/02/SumofAllParts_CIVICReport-2.pdf.

‘commander’s intents’ should also include clear language on the priority given to POC in military assistance activities.

- SFA measures integrate CHM safeguards.

Robust safeguards include a set of tools and measures that will help assess partner forces’ capabilities for POC and identify potential POC risks entailed by the partnership. Reporting and monitoring frameworks that assess progress toward mitigating harm to civilians and civilian objects should also be put in place and support conditioned to that progress. These include:

- CHM assessment frameworks.

CIVIC has observed the importance of assessment matrixes of assisting nations to focus on political, legal and reputational risks that affect the partnership. CIVIC thus proposes a CHM assessment framework²⁶⁸ that analyses seven levels (political, legal, operational, training, accountability and oversight, civil-military and economic), allowing for a comprehensive assessment of the CHM implications of the partnership. Going systematically through all seven will allow assisting nations to uncover potential discrepancies in the perception of threats to civilians, divergences in strategic and political objectives and disagreements on the applicable legal frameworks.

It will also provide guidance on what success looks like from a CHM perspective and in the absence of success, what steps need to be taken, including limiting the assistance provided or an exit strategy from the security partnership. From a technical perspective, a CHM assessment framework will help think through how CHM is being integrated in the military operations of local forces and what variables need to be considered to improve CHM such as tactics and procedures, the command environment, roles and responsibilities, weapons, targeting, Concept of Operations (CONOPS) and Civilian Casualties (CIVCAS) allegations.

²⁶⁸ Please refer for instance to the proposed ‘Assessment framework: Civilian Harm Mitigation in US Advise, Assist and Accompany Missions’ developed by CIVIC in 2019: https://www.dropbox.com/s/singlu849dxx65i/11_1%20Assessment%20Framework%20Train%2C%20Advise%2C%20Accompany%2C%20and%20Assist.pdf?dl=0.

CHM assessment frameworks could be further developed and adapted to the specific needs and contexts of NATO SFA activities and processes.

- POC capabilities assessments of local forces.

Developing a clear and comprehensive picture of local forces' capabilities to mitigate civilian harm is essential in defining and designing assistance measures in ways that will contribute to preventing and responding to civilian harm, while also reinforcing mutual benefits for partners. In some countries, CIVIC has performed POC capabilities assessments, applying the Doctrine, Organisation, Training, Materiel, Leadership and education, Personnel, Facilities and Policies (DOTMLPF) approach, which revealed critical shortcomings that, if addressed, could contribute to mitigating civilian harm.

POC capability 'assessments consistently reveal numerous capabilities gaps, including disparities in command and control, flawed recruitment processes'²⁶⁹ and shortfalls in (if not a complete absence of) oversight and accountability that can be bridged by SFA. These assessments have also identified the importance of comprehensive training on IHL and IHRL, scenario-based training, understanding of weapons' effects in populated areas and rules of engagement and an absence of after-action reviews that include the effect on civilians.

- Reporting and monitoring of assisted forces' progress.

In addition to initial assessments, assisting nations and local forces should agree a clear reporting and monitoring framework that values progress toward mitigating harm to civilians and civilian objects and offers support to that progress. While a CHM assessment matrix may provide a baseline, such a reporting and monitoring mechanism should build on this baseline and formulate explicit thresholds or triggers to determine when to review, amend, or terminate a partnership. It also should include explicit expectations about partner conduct that require the integration of civilian harm mitigation measures. The methodology used to report and monitor should be consistent. Reporting and monitoring should not only be

²⁶⁹ Why the EU Must Learn From Others' Mistakes to Ensure Better Protection of Civilians through European Peace Facility (EPF) Activities, <https://civiliansinconflict.org/blog/epf-ensure-civilian-protection/?msg=fail&shared=email>.

done at the onset and completion of the SFA activities, but throughout the delivery phase.

4.1 Assisting nations and organisations to promote the integration of CHM into the cycle of operations

In addition to strong safeguards, assisting nations and local forces need to integrate in-depth approaches to CHM in technical assistance. Assisting nations may also encourage local forces to systematically track civilian harm through the development of dedicated civilian harm tracking mechanisms.

Technical support. Provided local forces show genuine intent to improve POC, assisting nations should offer technical support on the adaptation or creation of policies, tactical directives and guidance that integrate civilian harm mitigation into the planning, conduct and review of military operations. Such support can include the development of ROE, targeting processes that identify risks to civilians and objects, training on weapons and their effects in populated areas, interoperable intelligence sharing and imagery and ground-to-air coordination that takes risks to civilians into account.²⁷⁰

Civilian Harm Tracking (CHT). Assisting nations are encouraged to promote the creation of mechanisms to track, analyse and respond to civilian harm by local forces. CHT is key to understanding the effect of military operations on civilians, responding appropriately to allegations of harm and mitigating future civilian harm. Supporting the adoption of CHT mechanisms provides military forces with a practical tool to enhance the lawfulness and success of an operation. CHT mechanisms also allow for changes to policy, doctrine, tactical guidance, or Standard Operating Procedures (SOPs) to be initiated and mistakes to be corrected through incorporating lessons learned into the planning cycle.

Civilian engagement. Engagement with local civil society and communities is key to better understanding the human environment, identifying threats to civilians, triangulating information on civilian incidents and advancing the overall protection of civilians. Assisting nations may promote and assist in creating channels of communication with the conflict-affected civilian population and humanitarian organisations, including through the establishment of safe spaces to allow local forces to discuss approaches to advance the protection of civilians. Local forces should also conduct a

²⁷⁰ Please refer to the ‘The Civilian Harm Mitigation Playbook for Lesson Planners’ developed by CIVIC in 2019: <https://www.dropbox.com/s/ex42y62w25uf2cr/Playbook%20V1.pdf?dl=0>.

thorough situational analysis of threats to civilians, as visible engagement could result in attacks by armed opposition groups.

4.2 Training efforts introduce a practical approach to risk reduction and mitigation

SFA measures and activities allow for opportunities to translate POC approaches into practice in different operational environments. In addition to IHL and IHRL training, which are a prerequisite, training programmes should include scenario-based CHM modules, providing trainees with an immersive environment contextualised to specific terrains and enemy TTPs. This will help forces to plan, prepare and respond to risks to civilians and civilian objects and take appropriate mitigation measures. In the context of a pandemic or large-scale epidemic outbreak, training modules on the readiness of national security forces to enact public health measures, respect rights and continue to be responsive to security threats should be included.²⁷¹

5. Conclusions

Assisting nations engaged in the security sector should consider higher POC standards to mitigate civilian harm. Effectively preventing and mitigating civilian harm is an essential component of the accomplishment of long-term stability and the mission's success. Through improving civilian protection, local forces and assisting nations do not only anchor their action into compliance to LOAC and ethical grounds, but also have a positive effect on perception, acceptance and legitimacy vis-à-vis local, international and domestic audiences.

As threats to civilians and CHM challenges vary, approaches to POC in security partnerships need to be tailored to specific operational and human environments, being mindful that urban contexts or open settings may require emphasis on different civilian harm mitigation measures.

To positively influence partners' behaviour, a number of venues can be explored: 1) adopt stronger safeguards in the assessment, design, execution and monitoring of security partnerships; 2) reinforce training programmes that develop a practical approach to risk reduction and mitigation; and 3) enable partners to better factor-in the protection of civilian in the operations cycle through adapted doctrines, policies, procedures and tactical guidance and through the promotion of civilian harm tracking and mitigation mechanisms.

²⁷¹ CIVIC's training module 'COVID-19 and Security Forces: Rights and Responsibilities'.

Since 2016, NATO has pioneered an approach to CHM in military operations and developed a comprehensive and ambitious framework for implementation and operationalisation of better POC practices, as set out in the NATO Policy for the Protection of Civilians (2016) and recently issued PoC Handbook (ACO, 2021). Through a stronger integration of learnings and best practices integrating CHM in SFA activities and measures, NATO and its member nations have the opportunity to continue setting the direction for partners and assisted nations.

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CHAPTER 7

Training for reducing risks of Sexual and Gender-Based Crimes in Crisis Areas

ICC Office of the Prosecutor (OTP) Policy Paper

Rosette Muzigo-Morrison

Abstract

This chapter examines the measures which the Office of the Prosecutor (OTP or the Office) of the International Criminal Court (ICC) has employed to ensure the effective investigation and prosecution of Sexual and Gender-Based Crimes that fall within the jurisdiction conferred by the Rome Statute. Having recognised that sexual and gender-based crimes are some of the gravest within the remit of its mandate, the OTP elevated their effective investigation and prosecution to a key strategic goal in the 2012-2015 strategic plans and reiterated this priority in subsequent strategic plans. The Office integrated a gender perspective and analysis into all its work while applying creative and innovative methods of work at all stages of its work, including the preliminary examination, the investigation and prosecution stages. A key element that the Office has drawn upon is the identification and recruitment of specialised staff in the field of investigating and prosecuting sexual and gender-based crimes. The Office has also provided continuous training to its staff and paid particular attention to staff interaction with the victims and witnesses. At the prosecution stage, the Office has ensured that charges for sexual and gender-based crimes are brought where sufficient evidence to support such charges is available. Similarly, the Office has made it a practice to press for sentences that have due regard to the dimensions of the crimes, especially the effect on the victims, their families and communities. While the OTP is not a party to the reparations phase of the proceedings, it has advocated for gender-inclusive forms of reparations.

Considering that ICC's work is complementary to the efforts undertaken by individual national juridical systems and recognising its jurisdictional and admissibility considerations, the role of national systems in closing the impunity gap by investigating and prosecuting sexual and gender-based crimes is crucial. The Office thus continues to support genuine national efforts, where possible, as part of its positive complementarity policy. It also monitors developments in this

area closely to develop appropriate mechanisms to address emerging challenges. Finally, other international organisations such as NATO are committed to the development of policies to support UN Resolutions²⁷² to reduce the risks of these crimes including Sexual and Gender-Based Violence (SGBV).²⁷³

Keywords: *sexual and gender-based crimes (SGBC), international criminal court, sexual and gender-based violence (SGBV), responsibility, victims.*

1. Introduction

The prevalence of sexual violence during crises is as old as war itself. In most cases, these crimes have slipped under the radar as the victims deal with a trauma that manifests a deep shame and stigma that leaves them reluctant to speak out or report the violation they have suffered. Until recently, the international press and media also shied away from reporting sexual offences in conflict situations.

International agreements such as the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864 Geneva),²⁷⁴ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1899 The Hague)²⁷⁵ and Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907 The Hague)²⁷⁶ did not explicitly prohibit sexual crimes, neither did the Charters of the Nuremberg and Tokyo Tribunals. However, the Tokyo Tribunal charged rape based on Hague IV. Control Council Law No. 10²⁷⁷

²⁷² UNSCRs 1888 (2009), 1889 (2009), 1960 (2010), 2086 (2013), 2093 (2013), 2098 (2013), 2100 (2013), 2102 (2013), 2106 (2013), 2109 (2013), 2112 (2013), 2121 (2013) full texts available at: <http://unscr.com/en/resolutions/>.

²⁷³ NATO's definition of conflict-related sexual and gender-based violence (SGBV) is the following: 'Any sexual and/or gender-based violence against an individual or group of individuals, used or commissioned in relation to a crisis or an armed conflict', https://www.nato.int/issues/women_nato/2015/MCM-0009-2015_ENG_PDP.pdf.

²⁷⁴ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864: <https://ihl-databases.icrc.org/ihl/52d68d14de6160e0c12563da005fdb1b/87a3bb58c1c44f0dc125641a005a06e0>

²⁷⁵ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899. Available at, <https://ihl-databases.icrc.org/ihl/INTRO/150>.

²⁷⁶ Regulation: Article 46: Family Honour; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 19; available at: <https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E719FBF0283E98E3C12563CD005168BD07>.

²⁷⁷ Article II, Crimes against Humanity (a) lists rape, enslavement and other inhuman acts in the Control Council; Law No. 10 Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity. <https://www.legal-tools.org/doc/ffda62/>.

changed the status quo, listing rape as a crime against humanity. Not many pronounced progressive steps to stomp out the scourge of sexual crimes at the international level were registered in subsequent decades, until the 1990s when the ad hoc International Criminal Tribunals of The Former Yugoslavia and Rwanda and the Special Court for Sierra Leone placed rape and other sexual crimes under the rubric of genocide, crimes against humanity and war crimes.

Several UN resolutions have been adopted to take special measures to prevent Sexual and Gender-Based Violence (SGBV) and ensure the applicability of and respect for human rights. NATO policy on this has sought to support the efforts of the UN and to reduce the risk of SGBV and include it in the NATO mission analysis. NATO's Committee on Gender Perspective addressed the topic during the 2013 Annual Conference as a result of the Chicago Summit Declaration in which the heads of state and government agreed that SGBV is one of the major obstacles to sustainable peace.²⁷⁸ Following its mandate, the Alliance seeks to raise the awareness of local forces to all issues related to SGBV and include them in the training programmes for the host nations to reduce the risk of violations in case of conflicts. It is also essential to coordinate with other international organisations working in the field and facilitate the local institutions to interact with international stakeholders.

The Rome Statute and the establishment of the International Criminal Court (ICC) represented the first step towards the recognition of sexual and gender-based crimes as underlying acts of genocide, crimes against humanity and war crimes.²⁷⁹ Recent global events have demonstrated that these international law developments notwithstanding, these crimes are endemic to all crises and continue unabated; hence the need for concerted measures to bring to an end the impunity for sexual and gender-based crimes.

One of the novel features of the Rome Statute is the promise for a 'victim-centred court'²⁸⁰. The Office of the Prosecutor (OTP) has adopted a victim-responsive approach in its work, ensuring physical and psychological support and protection of witnesses and victims' safety, privacy and dignity at all times and every stage of its work. Equally important is the protection of all

²⁷⁸ NATO Chicago Summit Declaration (2012), https://www.nato.int/cps/en/natohq/official_texts_87593.htm?selectedLocale=en.

²⁷⁹ DRAFT Policy Paper on Sexual and Gender-based Crimes February (2014), The Hague <https://www.icc-cpi.int/iccdocs/otp/OTP-draft-policy-paper-February2014-Eng.pdf>.

²⁸⁰ W.A. Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press, 2011); C. Hoyle and L. Ullrich, 'New Court, New Justice? The Evolution of "Justice for Victims" at Domestic Courts and at the International Criminal Court', 12 *Journal of International Criminal Justice (JICJ)* (2014) 681.

individuals who come in contact with the staff of the Office – intermediaries, victims’ families and affected communities – ensuring that due regard is paid to their physical and psychological well-being.

Providing information to witnesses, victims and their communities, including keeping them updated on the progress of the cases, managing witnesses and victims’ expectations, explaining the intricacies of trials and the possibility of witnesses being called to testify, being cross-examined, the scope and effect of possible disclosure, reparations and the possibility that the accused may be acquitted are all aspects that contribute to building confidence in affected individuals to come forward and report and testify in cases of sexual and gender-based crimes.

The global challenge of the persistent commission of sexual and gender-based crimes calls for universal concerted efforts, so building networks with other stakeholders in this field is vital, including governmental and non-governmental organisations, civil society, national task forces and international organisations such as the United Nations and its agencies, regional bodies and NATO.

By sharing the Office’s experience of this significant aspect of its work, participants to the legal round tables²⁸¹ and the organisations that they represent will be encouraged to contribute more actively in the fight to stamp out the impunity of sexual and gender-based crimes in crisis situations.

2. Setting the Scene: historical development of international law prohibiting sexual and gender-based crimes in crisis situations

2.1 Development before the adoption of the Rome Statute

Sexual violence during crisis situations has been described as being as old as war itself. Prominent examples of sexual violence during conflicts in the past are often highlighted, including the First Crusade, the American Revolution and the two World Wars.²⁸² There is also plenty of evidence of sexual violence from colonial wars, wars of conquest, raids on indigenous lands and various forms of military occupation. The perpetrators of sexual violence believed that such atrocity was a ‘deserved prize’ for them to boost morale in army lines. This is evident from Homer’s poetry describing the Trojan War and the sexual

²⁸¹ NATO SFA COE: Legal Round table on ‘Rule of law for SFA Activities in Crisis Zones’, <https://www.nsfacoe.org/nato-sfa-coe-legal-roundtable-on-rule-of-law-for-sfa-activities-in-crisis-zones/>.

²⁸² Susan Brownmiller, ‘Against Our Will: Men, Women and Rape’, Simon & Schuster (1975).

enslavement of some 200,000 so-called ‘comfort women’ during the Second World War. Sexual violence was also committed to dominate, demoralise and destroy society and the way of life of the enemy, as the severance of the victims’ familial importance through sexual violence was taken as the ultimate victory and the defeat of the very essence of an entire community.²⁸³

2.2 Evolution to the *ad hoc* Tribunals

As rape and other forms of sexual violence had long been viewed as an inevitable part of warfare,²⁸⁴ little attention was initially paid to these topics in international law. The Geneva Convention of 1864 and The Hague Conventions of 1899 and 1907 do not explicitly prohibit sexual violence. Hague Convention IV of 1907 (Convention respecting the Laws and Customs of War on Land) nevertheless required warring parties to show respect for ‘family honour’,²⁸⁵ which has been described as a euphemistic prohibition of rape and sexual assault.²⁸⁶ The Charters of the Nuremberg and Tokyo tribunals – the two post-war international criminal tribunals – do not mention sexual violence, although the Tokyo tribunal, in practice, charged rape as an offence under the Hague Convention IV.²⁸⁷ Only Control Council Law No. 10, which was enacted to prosecute lower-level Nazis, listed rape as a crime against humanity.²⁸⁸

Various events towards the end of the 20th century have caused these conservative attitudes to change and efforts to put an end to impunity for sexual violence during crisis situations have borne some fruit. Since the 1990s, the UN Security Council has established several *ad hoc* international criminal tribunals, including the International Criminal Tribunals for the Former Yugoslavia (ICTY), the International Criminal Tribunals for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). The ICTY and ICTR statutes place rape under the rubric of crimes against humanity,²⁸⁹ with the SCSL Statute adding ‘sexual slavery, enforced prostitution, forced pregnancy and any

²⁸³ M. Rafiqul Islam, ‘The Culpability of Gender-Based Terrorism in International Humanitarian Law: The Rape of Women in Armed Conflicts’, 6 ISIL Y.B. Int’l Human. & Refugee L. 87, 88 (2006).

²⁸⁴ Barbara Bedont and Katherine ‘Hall-Martinez, Ending Impunity for Gender Crimes under the International Criminal Court’, 6 Brown Journal of World Affairs 65, 66 (1999).

²⁸⁵ The Hague Convention IV, Article 46.

²⁸⁶ M. Cherif Bassiouni, ‘*Crimes Against Humanity in International Criminal Law*’, 2nd Rev. edn., Kluwer Law International, 1999, p. 348; Kelly D. Askin, Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles, 21 Berkeley Journal of International Law 288, 300 (2003).

²⁸⁷ T.V.G.N.S. Sudhakar, ‘Protection of Women during Armed Conflict: A Survey of Existing Network of Treaty – Customary Law and Practice’, 6 ISIL Y.B. Int’l Human. & Refugee L. 251, 256 (2006).

²⁸⁸ Control Council Law No. 10, Article 2(1)(c).

²⁸⁹ ICTY Statute (As Amended 7 July 2009), Article 5(g); ICTR Statute, Article 3(g).

other form of sexual violence'.²⁹⁰ Both the ICTR and SCSL statutes criminalise rape and enforced prostitution as 'outrages upon personal dignity' which stand as a form of war crime in non-international armed conflicts.²⁹¹ Although the ICTY statute contains no explicit reference to sexual violence as a war crime under the ICTY's jurisdiction, Article 3²⁹² was interpreted as inclusive of serious violations of any international rule of humanitarian law so long as the requisite conditions were met.²⁹³ Hence, pursuant to Article 3, outrages upon personal dignity, including rape, also fall into the ICTY's jurisdiction.²⁹⁴

2.3 International Criminal Court: Sexual & Gender-based Crimes in International law. Definition of sexual crimes under the Rome Statute

The adoption of the Rome Statute of the ICC in 1998 and the formal establishment of the ICC in 2002 brought the international community a brand-new forum for investigating and prosecuting sexual and gender-based crimes in crises. Sexual crimes that fall under the subject-matter jurisdiction of the ICC are explicitly listed under Articles 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) of the Rome Statute.¹ Article 7(1)(g) provides that '*[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity*' constitute crimes against humanity. Articles 8(2)(b)(xxii) and (e)(vi) criminalise 'rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence' as war crimes in international armed conflicts and in non-international armed conflicts, respectively.

They are elaborated upon in the Elements of the Crimes.²⁹⁵ In relation to rape, enforced prostitution and sexual violence, the Elements require the perpetrator to have committed an act of a sexual nature against a person, or to have caused another to engage in such an act, by force, or by the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.²⁹⁶ Sexual crimes

²⁹⁰ SCSL Statute, Article 2(g).

²⁹¹ ICTR Statute, Article 4(e); SCSL Statute, Article 3(e).

²⁹² Article 3 of the ICTY Statute reads: '[t]he International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: [...]' See ICTY Statute (As Amended 7 July 2009), Article 3.

²⁹³ ICTY, *Prosecutor v. Anto Furundžija*, Judgement, Case No.: IT-95-17/1-T, 10 December 1998, para. 133.

²⁹⁴ *Ibid* para. 158.

²⁹⁵ See Elements of Crimes, Article 7(1) (g) 1-6, see also Article 8(2)(b)(xxi), (xxii) 1-6.

²⁹⁶ See Elements of Crimes, Article 7(1) (g) 1-6, see also Article 8(2)(b)(xxi), (xxii) 1-6.

also cover both physical and non-physical acts committed towards a person's sexual characteristics (e.g. forced nudity).²⁹⁷

Article 54(1)(b) of the Rome Statute states that the Prosecutor shall '[t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3 and health and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.'

Gender-based crimes include acts committed against persons, male or female, because of their sex or socially constructed gender roles and that might occur in forms other than sexual violence.²⁹⁸ The Rome Statute and other ICC instruments such as the statutes of the *ad hoc* tribunals highlight the importance of the effective investigation and prosecution of sexual and gender-based crimes.²⁹⁹

Notwithstanding the imperfections in the system designed at the Rome Conference, when the Rome Statute which created the ICC was adopted, there was consensus that the ICC has a crucial role to play in addressing international crimes including sexual and gender-based crimes at both the national and international level, thereby contributing to the deterrence of such offences. Thus, the Office has maintained this issue as a key focus of attention in its successive Strategic Plans³⁰⁰ and has committed itself to integrating a gender perspective and analysis into all of its work.³⁰¹ Pursuant to Article 42(9) of the Statute,³⁰² the OTP has also set up the Gender and Children Unit which provides advice and assistance to OTP divisions, including for sexual and gender-based crimes.³⁰³

²⁹⁷ See ICC OTP Policy Paper on Sexual and Gender-Based Crimes - June 2014, at page 3, <https://www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

²⁹⁸ Ibid, p. 12. Article 7(3) of the Rome Statute defines 'gender' as follows: '[f]or the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above.' See Rome Statute, Article 7(3).

²⁹⁹ Rome Statute, Article 54(1)(b). (emphasis added).

³⁰⁰ ICC OTP, Strategic Plan June 2012-2015, 11 October 2013, p. 27; ICC OTP, Strategic Plan 2016-2018, 16 November 2015, p. 6; ICC OTP, Strategic Plan 2019-2021, 17 July 2019, p. 5.

³⁰¹ Ibid, p. 6.

³⁰² Article 42(9) of the Rome Statute reads: '[t]he Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.' See Rome Statute, Article 42(9).

³⁰³ Diane Lupig, Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court, 17 Journal of Gender, Social Policy & the Law 431, 434 (2009).

3. Investigations of sexual and gender-based crimes before the ICC

Effectively combating the scourge of sexual and gender-based crimes is no easy task, particularly at the international level. The OTP has, in practice, adopted its own approach to the investigation and prosecution of such crimes, which is largely reflected in its Policy Paper on Sexual and Gender-Based Crimes issued in June 2014.³⁰⁴

3.1 Addressing sexual and gender-based crimes at each stage of the investigative process

In the investigative process, the OTP endeavours to ensure that sexual and gender-based crimes are thoroughly addressed at each stage.³⁰⁵ For example, in September 2014, the Office opened an investigation in the Central African Republic (CAR II)³⁰⁶ situation on the basis of the preliminary examination in which the Office assessed that there was a reasonable basis to believe alleged crimes including rape as a war crime and as a crime against humanity had occurred. In the Burundi situation, in October 2017 the Office received judicial authorisation to investigate the situation in Burundi after the preliminary examination found reasonable grounds to believe that (among other alleged crimes) members of the Burundian Security Forces and the Imbonerakure³⁰⁷ had committed rape as a crime against humanity against women and girls perceived to be associated with the opposition and that sexual assaults committed against men in detention constituted other forms of sexual violence of comparable gravity to acts listed in Article 7(1)(g) of the Rome Statute.

3.2 Contact and Interviews: best practices in minimising exposure and trauma

The OTP has developed best practices on its witness-centred approach in relation to interaction and relationship-building with victims and witnesses. It counts the information gained in the preliminary phase about local communities and civil-society organisation, considering the essential role they have in building networks for an effective inquiry on sexual and gender-based

³⁰⁴ ICC OTP, Policy Paper on Sexual and Gender-Based Crimes - June 2014, <https://www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

³⁰⁵ ICC OTP, June 2014, p. 25.

³⁰⁶ In 2007 the ICC opened an investigation (CAR I) into alleged crimes against humanity and war crimes committed in the CAR from 2002-3. In light of renewed violence, the ICC prosecutor opened a second investigation (CAR II), this time looking at alleged war crimes and crimes against humanity since 1 August 2012. <https://www.coalitionfortheicc.org/country/central-african-republic-i-and-ii>.

³⁰⁷ The UN defined Imbonerakure as a militia. <https://www.bbc.com/news/world-africa-48980959>.

crimes.³⁰⁸ Therefore, to develop the activities of the OTP, the creation of contacts and networks in a community is the priority as it increases access to information and evidence to obtain a referral base to assist the victims.

During contact and interviews, the OTP strives to minimise exposure and possible traumatisation to cause no more harm to victims and witnesses. It identifies potential intermediaries for investigations³⁰⁹ and ensures that all intermediaries are trained to have a complete picture of the potentially traumatic effects in relation to both sexual and gender-based crimes and the investigative process.³¹⁰

3.3 Briefing the staff

OTP staff members are briefed on any relevant aspect for the investigation of the civil society such as cultural issues, customs (including the status of men and women) and religious and traditional rituals so that the staff are aware of them and how they might affect the investigation and interview process.³¹¹

To interact with witnesses and to implement best practices, the interview team and interpreters must undertake specific preparation such as familiarising themselves with euphemisms and any kind of verbal and non-verbal communication which can be used to express an act of sexual violence. It is also important to have deep knowledge about the appropriate terms to define acts of sexual violence and parts of the body. Among others, the interview team should take into consideration the witness' preference for the profile factors of interpreters and interviewers (e.g., gender).³¹² For example, pre-deployment briefings were organised for the Central Africa Republic, Côte d'Ivoire, Georgia and Burundi and glossaries were developed for the Central Africa Republic and Mali and in both English and Arabic for Darfur and are currently being produced for Burundi. Following authorisation³¹³ to open investigations into the Rohingya situation in Bangladesh and Myanmar, a Rohingya-language glossary is being developed.

³⁰⁸ Ibid, p. 26.

³⁰⁹ On identifying and selecting intermediaries, see ICC, Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel Working with Intermediaries, March 2014, pp. 7-10.

³¹⁰ ICC OTP, June 2014, p. 26.

³¹¹ Ibid, pp. 26-27.

³¹² Ibid, p. 27.

³¹³ ICC-01/19-27 14-11-2019 2/58 NM PT; On 14 November 2019, Pre-Trial Chamber (PTC) III of the International Criminal Court (ICC) delivered its decision authorising the Prosecutor to open an investigation for alleged crimes against humanity, such as deportation, acts of persecution and other inhumane acts, committed against Myanmar's Rohingya population on Bangladesh soil. https://www.icc-cpi.int/CourtRecords/CR2019_06955.PDF .

3.4 Witness support and protection

As required by Article 68(1) of the Statute, the OTP takes seriously the issue of witness support and protection.³¹⁴ Under OTP Regulation 36, potential victims and witnesses of sexual and gender-based crimes should be subjected to preliminary psychosocial and security assessments and screenings.³¹⁵ Such assessments are conducted by certified psychosocial experts who are in charge of analysing the welfare of the witnesses and their ability to go through an interview process without personal or psychological harm. The expert may be present during the interview to monitor the process and support the interviewer and the witness.³¹⁶

The screening of witnesses of sexual and gender-based crimes is generally conducted during face-to-face meetings, with the necessary support for the witnesses provided. Where remote screening is required, the OTP seeks to ensure that support is available to the witness, taking into consideration the prevailing situation and the need not to expose the witness to any risk that may result from the screening activities.³¹⁷

The security assessment focuses on risks and protection measures; eventually, the OTP interviews the respondent to assess their psychosocial condition, investigative needs and security.³¹⁸

The OTP recognises that victims of sexual and gender-based crimes may face further risks of discrimination, social stigma and other forms of reprisal. When selecting witnesses, the OTP takes into consideration the security of the victims, including social and psychological risks which can be associated with providing evidence of sexual and gender-based crimes. Within this framework, psychosocial and security assessments help the OTP assess whether taking

³¹⁴ Article 68(1) of the Rome Statute obliges the OTP to take various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during its investigation and prosecution activities with regard to sexual and gender-based crimes and crimes against children. See Rome Statute, Article 68(1).

³¹⁵ Regulation 36 of the Regulations of the OTP provides that '[t]he physical and psychological well-being of persons who are questioned by the Office and are considered vulnerable (in particular children, persons with disabilities and victims of gender and sexual crimes) shall be assessed by a psychology, psycho-social or other expert during a face-to-face interview prior to questioning. This assessment shall determine whether the person's condition at that particular time allows him or her to be questioned without risk of re-traumatisation.' See Regulations of the Office of the Prosecutor, ICC-BD/05-01-09, 23 April 2009, Regulation 36(3).

³¹⁶ ICC OTP, June 2014, p. 27. For example, a number of witnesses expressed a preference for female-only investigative teams. See Diane Lupig, Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court, 17 *Journal of Gender, Social Policy & the Law* 431, 488 (2009).

³¹⁷ *Ibid.*, p. 28.

³¹⁸ *Ibid.*, p. 28.

evidence from a given witness will benefit or harm that individual. Experience has highlighted the importance of managing the expectations of victims and witnesses. In this respect, the OTP makes use of an established practice that keeps witnesses informed of, inter alia, the mandate of the OTP, the procedures for protection, the developments in the case and reparations. Explanations are also provided about the role of the Registry's Victims and Witnesses Section³¹⁹ on matters related to medical and psychological assistance, support and protection and the role of the Office in these areas. The OTP liaises with the Victims and Witnesses Section on all such matters and informs victims and witnesses of possible options and measures to be taken in this regard.³²⁰

To minimise exposure and possible retraumatisation, the OTP seeks to collect other types of evidence, where available, such as insider testimony, medical and pharmaceutical records and other data coming from reliable sources.³²¹ In Ntaganda,³²² for instance, Maeve Lewis, a psychotherapist, testified on factors that can contribute to the delayed reporting of rape and other forms of sexual violence. Her testimony was relied on by the Trial Chamber in its judgment. Likewise, in Bemba,³²³ several experts testified to the gravity of the sexual violence, including on post-traumatic stress disorder and sexual violence in armed conflict and on the 'longitudinal and intergenerational impact of mass sexual violence'.

3.5 Challenges and obstacles

Despite these efforts, investigations of sexual and gender-based crimes face some huge challenges and obstacles. In addition to general challenges, the investigation of sexual and gender-based crimes presents its own challenges and obstacles. These include 'the under- or non-reporting of sexual violence related to societal, cultural, or religious factors, the stigma for victims of sexual and gender-based crimes, limited domestic investigations and the lack

³¹⁹ According to Article 43(6) of the Rome Statute, '[t]he Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence'. See the Rome Statute, Article 43(6).

³²⁰ ICC OTP, June 2014, p. 29.

³²¹ *Ibid* p. 28.

³²² See ICC-01/04-02/06-2359 08-07-2019 1/539 EC T, Judgment in: Situation in the Democratic Republic of the Congo in the Case of the Prosecutor Vs. Bosco Ntaganda, 8 July 2019 Paragraph 88, footnote 192.

³²³ See ICC-01/05-01/08 Situation in the Central African Republic in the case of the Prosecutor Vs. Jean-Pierre Bemba Gombo Judgement of 21 March 2016, footnote 265. https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.

of readily available evidence'.³²⁴ These challenges and obstacles severely reduced investigative opportunities, contributing to a continuing reign of impunity.³²⁵

The OTP developed specific means to address these challenges and obstacles, analysing these crimes from the earliest stages and, in addition, to witness statements, collecting different types of evidence, including forensic and documentary evidence, including video footage, and indirect indicia of the commission of the crimes.³²⁶ While these types of evidence are not legally required as corroboration to prove the crimes,³²⁷ the OTP endeavours to collect it to strengthen its case and highlight other aspects related to it, such as the responsibility of the accused. Analysis techniques such as database design, statistics and mapping are also important to identify the relevant patterns of crime and organisational structures. The OTP applies lessons-learned and best-practice standards to maximise the effectiveness of the investigations in this category of crimes by considering any challenge to obtaining the evidence.³²⁸ For example, volatile security situations, cultural and religious aspects, under-reporting, the fear for stigmatisation and the fear of reprisal are some of the challenges that stand in the way of investigating SGBC. In its analysis of the situation in eastern Ukraine,³²⁹ the Office considered the security situation, prevailing gender attitudes, the prevalence of and attitudes towards SGBC and the availability of legal, psychosocial and medical support to victims in its analysis of allegations of SGBC against both women and men in the context of conflict-related detention; these factors have been cited as reasons for apparent under-reporting in relation to this conduct.³³⁰

³²⁴ ICC OTP, pp. 24-25.

³²⁵ Fatou Bensouda, *The Investigation and Prosecution of Sexual and Gender-Based Crimes: Reflections from the Office of the Prosecutor*, 24 August 2015, p. 9, available at: <https://www.hagueacademy.nl/wp-content/uploads/2015/03/Opening-keynote-speech-The-Hague-Academy-of-International-Law-Advanced-Course-on-International-Criminal-Law.pdf>.

³²⁶ ICC OTP, p. 25.

³²⁷ Rule 63(4) of the Rules of Procedure and Evidence reads: '[w]ithout prejudice to article 66, paragraph 3, a Chamber shall not impose a legal requirement that corroboration is required to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.' See Rules of Procedure and Evidence, Rule 63(4).

³²⁸ ICC OTP, June 2014, p. 25.

³²⁹ External report on the implementation of the Sexual and Gender-based Policy, Office of the Prosecutor of the International Criminal Court, footnote 8 at page 5.

³³⁰ See External report on the implementation of the Sexual and Gender-based Policy, Office of the Prosecutor of the International Criminal Court, at pages 5-6.

4. Prosecutions of sexual and gender-based crimes before the ICC

The OTP ensures that charges for sexual and gender-based crimes are brought wherever sufficient evidence is found.³³¹

4.1 Selection of criminal charges

Due to resource and other constraints, considering that the ICC is a Court of last resort, only coming in where national courts are not able or willing to prosecute, recalling that the Court's work is also guided by other jurisdictional limitations, the OTP's policy aims at prosecuting only the most responsible perpetrators. The selection of charges is also guided by the gravity of the crimes, availability of evidence and the decision on which charges to bring is also made in the interest of justice. In principle, the OTP brings charges for sexual and gender-based crimes explicitly as crimes per se, such as rape, forced pregnancy or forced marriage, in addition to charging these acts as forms of other violence within the Court's subject-matter jurisdiction, (e.g. charging rape as torture, persecution and genocide). The OTP aims to provide charges to reflect the different aspects of these crimes and their supporting evidence fairly.³³²

In this case, the OTP also charges acts of sexual and gender-based crimes as different categories of crimes within the Court's jurisdiction (war crimes, crimes against humanity and genocide), to properly describe those crimes.³³³ In Ongwen,³³⁴ charges brought included forced marriage as other inhumane acts as Crime Against Humanity (CAH), rape (CAH and war crime), sexual slavery (CAH and war crime), enslavement (CAH), forced pregnancy (CAH and war crime), outrages upon personal dignity (war crime), torture (as CAH and war crime) and enslavement (as CAH).

4.2 Modes of Liability

In the cases in which the ICC intervened, the common thread is that sexual and gender-based crimes are usually committed as a tool of war and repression, and are the result of explicit or implicit orders and omissions such as not ordering subordinates to protect civilians or not previously punishing similar crimes. They are also the result of several factors at all levels of the organisation.³³⁵

³³¹ Ibid, pp. 29-30.

³³² Ibid, p. 30.

³³³ Ibid, p. 30.

³³⁴ ICC-02/04-01/15; Situation in Uganda in the case of the Prosecutor v. Dominic Ongwen Public redacted With public annex: List of participating victims Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016.

³³⁵ Policy Paper on Sexual and Gender-Based Crimes, ICC OTP, p. 30. <https://www.legal-tools.org/doc/7ede6c/>.

To guarantee accountability in the diversity of circumstances, the OTP has increasingly investigated the potential of bringing charges based on appropriate modes of liability, based mainly on Articles 25 and 28 of the Rome Statute. Under Article 25, individuals, including military commanders or non-military superiors, may be responsible for sexual and gender-based crimes that they commit as individuals, or jointly with or through another person, or if they order, solicit, induce, aid, abet, otherwise assist in, or in any way contribute to, the commission or attempted commission of those crimes.³³⁶ Under Article 28, military commanders or non-military superiors can also be held responsible due to their command or superior responsibility. They may be held accountable not only where they intended the specific conduct or consequence of sexual and gender-based crimes, but also when they knew, or should have known, or consciously disregarded information regarding the commission of such crimes and failed to take all necessary and reasonable measures within their power to prevent or repress such commission, or to submit the matter to the competent authorities for investigation and prosecution.³³⁷ There is nevertheless an element of control to be met.³³⁸ For military commanders, command responsibility arises only when such crimes are committed by forces under their effective command and control, or effective authority and control as the case may be, whereas, for non-military superiors, superior responsibility arises only when such crimes are committed by subordinates under their effective authority and control.³³⁹

4.3 Increasing measures to support witnesses and victims in court

The main article of the Statute that concerns the protection of victims and witnesses is Article 68, which includes the prosecution of sexual and gender-based crimes to ensure all suitable actions are taken.³⁴⁰

As a crucial step, the OTP exercises due diligence in ensuring that it meets its statutory requirements in relation to effective disclosure of evidence. If the disclosure of identity imperils the victims and witnesses either physically or psychologically, the OTP may request redaction of their identities³⁴¹ or use

³³⁶ See Rome Statute, Article 25. In respect of the crime of genocide, individuals may also be responsible for directly and publicly inciting others to commit genocide. See Rome Statute, Article 25(3)(e).

³³⁷ *Ibid*, Article 28.

³³⁸ *Ibid*, Article 28(a).

³³⁹ *Ibid*, Article 28(b).

³⁴⁰ Article 68(1) of the Rome Statute obliges the OTP to take various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during its investigation and prosecution activities with regard to sexual and gender-based crimes and crimes against children. See Rome Statute, Article 68(1).

³⁴¹ Rule 81(4) of the Rules of Procedure and Evidence empowers the Chamber to take the necessary steps to ensure the confidentiality of information, including authorising the non-disclosure of their identity prior to the commencement of the trial. See Rules of Procedure and Evidence, Rule 81(4).

summaries of previous statements.³⁴² Before an interview, the OTP informs witnesses of its obligation about its declarations always taking into consideration safety repercussions.³⁴³

Concerning the provisions listed in Article 68(2) which allows any part of the proceedings to be conducted in camera or evidence to be shown by electronic means to ensure the protection of victims and witnesses,³⁴⁴ the OTP asks a Chamber to collect any identifying information from the public records of the Chamber, allowing the use of pseudonyms and closed sessions.³⁴⁵

In case of particular risks to the witnesses such as psychological or physical harm,³⁴⁶ the OTP can ask the Chamber for special measures to minimise these risks, which include the use of a screen to avoid direct eye contact between the witness and the accused, the provision of evidence by video-link and the witness being supported by a person or an in-court assistant who can be an assistant from the Victims and Witnesses Unit or a psychologist or outside expert during the testimony). The witnesses are informed about any special measures to protect them depending on the range of the risks and they are to be agreed with the Chamber although there are cases in which the option requested by the witness is not guaranteed. Finally, the OTP pays particular attention to the way it poses questions to victims and witnesses³⁴⁷ to prevent consequences such as embarrassment, harassment and re-traumatisation.³⁴⁸

³⁴² Article 61(5) of the Rome Statute entitles the Prosecutor to rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial. Article 68(5) provides that '[w]here the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof'. See Rome Statute, Article 61(5) and Article 68(5).

³⁴³ ICC OTP, June 2014, p. 34.

³⁴⁴ See Rome Statute, Article 68(2).

³⁴⁵ ICC OTP, June 2014, pp. 34-35.

³⁴⁶ The first sentence of Rule 88(1) of the Rules of Procedure and Evidence reads: '[u]pon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatised victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2.' See Rules of Procedure and Evidence, Rule 88(1).

³⁴⁷ Rule 88(5) of the Rules of Procedure and Evidence reads: '[t]aking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.' See Rules of Procedure and Evidence, Rule 88(5).

³⁴⁸ ICC OTP, June 2014, p. 35.

4.4 Sentencing: deterring sentences, taking into consideration dimensions of the crime and impact on the victims

Taking into consideration the effect of sexual and gender-based crimes on victims' families and communities, the OTP adduces evidence to propose appropriate sentences and for related harm and social damage to victims, their families and communities.³⁴⁹

*“The commission of a crime with a motive involving discrimination, including on the grounds of gender, or where the victim is particularly vulnerable, in itself constitutes aggravating circumstances.”*³⁵⁰

5. Conclusions

While investigation and prosecution are crucial to closing the impunity gap,³⁵¹ the global campaign against sexual and gender-based crimes still has a long way to go. It is not only a legal matter in the courts of international criminal tribunals. Rather, its success depends on cooperation with states and other relevant stakeholders, institutional development and proper means of implementation of legal rules. Therefore, efficient training for reducing the risks of SGBC in crisis areas has to be based on those key elements, which have been endorsed by the OTP for its effectiveness.

Effective Cooperation. Firstly, particular attention must be paid to effective cooperation, which is crucial to the ICC in carrying out its mandate and any other institution that wishes to engage in the prevention of these crimes. To build up solid external relations and networking, the ICC will enhance its efforts to identify, support and engage with initiatives and actions to respond to sexual and gender-based crimes and facilitate contact between different entities (e.g., the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict), actively keeping abreast with evolving developments in this field, including in particular the UN peacekeeping missions.

³⁴⁹ ICC OTP, June 2014, p. 37.

³⁵⁰ The aggravating circumstances set out under Rule 145(2)(b) of the Rules of Procedure and Evidence include '[c]ommission of the crime where the victim is particularly defenceless' and '[c]ommission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3', which includes gender. See Rules of Procedure and Evidence, Rule 145(2)(b)(iii) and (v).

³⁵¹ Maxine Marcus, 'Investigation of Crimes of Sexual and Gender-Based Violence under International Criminal Law', in Anne-Marie de Brouwer *et al.* (eds.), *Sexual Violence as an International Crime: Interdisciplinary Approaches*, Intersentia, 2013, p. 242.

Institutional Development. Secondly, institutional development has to be enhanced for more effective investigation and prosecution of sexual and gender-based crimes. Continuous staff training is an essential component of such development. The OTP will assure that all staff members have the necessary competencies and support them in performing their duties in the area of sexual and gender-based crimes. The OTP will also give technical and advanced teaching on methodologies to collect and analyse any evidence of these crimes considering the legal framework, culture, religion and traditional practices of the community. Additional training will be given on how to conduct the examination of witnesses in court.

Monitoring. Finally, the OTP will constantly monitor the investigation and prosecution of sexual and gender-based crimes through standardised and institutionalised lessons-learned processes, to favour the implementation of best practices in the field.

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CHAPTER 8

Addressing Corruption in Post-Conflict Situations

Laura Valli

Abstract

This chapter examines the link between state fragility and corruption, analysing how the two phenomena are interconnected and feed each other. Major reports on the subject by Transparency International, United Nations Development Programme (UNDP),³⁵² the World Bank, the Organisation for Economic and Cooperation Development (OECD)³⁵³ and others have highlighted how, by creating an enabling environment for terrorism, organised crime, and human trafficking, fragility constitutes a global threat to international security.³⁵⁴ Giving that the prevalence of post-conflict situations is on the rise,³⁵⁵ the International Community must focus on how to improve its anti-corruption interventions in post-conflict situations. Starting the definition of the concept of ‘fragility’, a few strategies coming from recent experiences in post-conflict countries are analysed, with particular attention to the possibility of embedding prevention measures in the governance and overall reform framework (included the rule of law and security intervention) and acting sooner rather than later to support initiatives that promote ethics, accountability and transparency in a way that is compatible with political stability.³⁵⁶

This paper will analyse the case study of the US Mission to Afghanistan in which corruption represented an obstacle to operations and the identified drives to understand the role and function of corruption in a specific context.

³⁵² See website: <https://www.undp.org/>.

³⁵³ See website: <https://data.oecd.org/>.

³⁵⁴ See website: <https://www.worldbank.org/>.

³⁵⁵ OECD (2020), *States of Fragility 2020* (Paris: OECD Publishing, 2020), <https://doi.org/10.1787/ba7c22e7-en>.

³⁵⁶ UNDP, ‘Fighting corruption in post-conflict and recovery situation – Learning from the past’ (2010) http://content-ext.undp.org/aplaws_publications/2594849/Fighting%20corruption%20in%20post-conflict%20and%20recovery%20situations.pdf.

In conclusion, it will be explained the experience of the international community in fragile states as described by a UNDP Report, which suggests the proper prevention measures and initiatives addressed to promote good governance in a way that is compatible with political stability.

Keywords: *fragility, corruption, Afghanistan, fragile states, conflict.*

1. Introduction

While the link between corruption and economic and social development has been discussed internationally³⁵⁷ since the 1990s³⁵⁸, work on the effect of corruption on the stability or fragility of states is more recent.³⁵⁹

Corruption has been identified as a major concern of the populations in a wide range of conflict-affected countries,³⁶⁰ as shown by several surveys appointed by civil society organisations.³⁶¹ For example, in an Integrity Watch Afghanistan survey, about 50% of the respondents considered corruption to strengthen the expansion of the Taliban, or, in Afghanistan and Kosovo, it has been identified as a major challenge to the countries.³⁶² Another analysed phenomenon showed the major concern by protesters on corruption during the Arab Springs.

State fragility is not only a worldwide threat, but also the main impediment to the achievement of the 2030 Sustainable Development Goals (SDGs)^{363,364} adopted by all UN member states in 2015, which provide a shared blueprint for peace and

³⁵⁷ Paul Corral et al., *Fragility and Conflict : On the Front Lines of the Fight against Poverty* (Washington, DC: World Bank, 2020), <https://openknowledge.worldbank.org/handle/10986/33324>.

³⁵⁸ OECD (2018), *States of Fragility 2018* (Paris: OECD Publishing, 2018): <https://doi.org/10.1787/9789264302075-en>.

³⁵⁹ OECD/DAC, *Integrity in State building: Anti-Corruption with a State building Lens* (Paris: OECD Publishing, 2009), <https://static1.squarespace.com/static/5728c7b18259b5e0087689a6/t/57ab3e99be659454809c15dc/1470840473978/Karen+Hussman+Integrity+in+state-building-lens+%281%29.pdf>.

³⁶⁰ World Bank, *World Development Report 2011: Conflict, Security, and Development*, (Washington, DC: World Bank, 2011), <https://openknowledge.worldbank.org/handle/10986/4389>.

³⁶¹ Transparency International Germany, *Corruption as a Threat to Stability and Peace*, (Berlin: Transparency International Deutschland, 2014), https://ti-defence.org/wp-content/uploads/2016/03/2014-01_CorruptionThreatStabilityPeace.pdf.

³⁶² The Asia Foundation 2011; UNDP 2011.

<https://asiafoundation.org/resources/pdfs/TAF2011AGSurvey.pdf>.

³⁶³ The international community has made combating corruption a global priority in Sustainable Development Goal (SDG) 16; a key element of promoting just, peaceful and inclusive societies – is to substantially reduce corruption and bribery in all its forms.

³⁶⁴ ‘Implementing a fragility strategy’.

prosperity for people and the planet. It is considered an urgent call for action by all countries – developed and developing – in a global partnership.³⁶⁵

1.1 Definition of Fragility

Definitions of fragile states vary and often focus on different dimensions of fragility depending on the different authors and organisations. These may include a state's level of territorial control, its administrative capacity, the prevalence of authoritarian politics, the respect for the rule of law, the levels of development and/or presence of violent conflict. However, development actors start to agree on the fact that fragility is related to the willingness and capability of the state to perform certain fundamental functions.³⁶⁶ Several definitions have been adopted by various international organisations:

- Fragility is the extent to which state-society relations fail to produce outcomes that are considered to be effective and legitimate (USAID).³⁶⁷
- Fragile contexts include those countries and territories experiencing armed conflict, emerging from armed conflict, or affected by acute political, social and economic vulnerability and susceptible to chronic forms of organised criminal violence (UNDP).³⁶⁸
- A fragile state is one having either a composite Country Policy and Institutional Assessment (CPIA) rating of 3.2 or less or the presence of a UN and/or regional peacekeeping or peacebuilding mission during the past three years (World Bank).³⁶⁹
- Fragility is the combination of exposure to risk and insufficient coping capacity of the state, system, and/or communities to manage, absorb or mitigate those risks (OECD).³⁷⁰

³⁶⁵ The 17 United Nations Goals <https://sdgs.un.org/goals>.

³⁶⁶ M. M. Torres and M. Anderson, 'Fragile States: Defining Difficult Environments for Poverty Reduction', *UK Department for International Development*, PRDE Working Paper 1, (August 2004), <https://core.ac.uk/download/pdf/7062308.pdf>.

³⁶⁷ A. Moran et al., 'Policy Summary: The Nexus of Fragility and Climate Risks', *USAID*, (March 2019), https://pdf.usaid.gov/pdf_docs/PA00TKRR.pdf.

³⁶⁸ UNDP, *Do fragile and conflict-affected countries prioritise core government functions?*, (UNDP Publications, 2019), <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/conflict-prevention/do-fragile-and-conflict-affected-countries-prioritise-core-gover.html>.

³⁶⁹ 'Classification of Fragile and Conflict-Affected Situations', The World Bank, last updated July 9, 2020, <https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonised-list-of-fragile-situations>.

³⁷⁰ OECD, *State of Fragility 2020*.

- Fragility [is] when sustainable socio-economic development requires greater emphasis on complementary peacebuilding and state-building activities such as building inclusive political settlements, security, justice, jobs, good management of resources, and accountable and fair service delivery (G7).³⁷¹

1.2 The correlation between fragility and corruption

According to a recent report by the World Bank, although extreme poverty has decreased rapidly in recent decades, it persists in post-conflict economies and the prevalence of fragility situations is on the rise. As a result, the number of people living in fragile situations will grow from 1.8 billion in 2018 to 2.3 billion by 2030 and 80% of those living in extreme poverty are expected to live in fragile states by the same year.

According to a 2009 OECD report on corruption and state-building, ‘corruption lies at the core of fragility. Certain forms of corruption can fundamentally delegitimize the state’. In 2011, the World Bank suggested that ‘*corruption [...] has doubly pernicious impacts on the risk of violence, by fuelling grievances and by undermining the effectiveness of national institutions and social norms*’.

In a report of 2014, Transparency International highlighted a strong correlation between corruption and violent conflict. Countries with high levels of corruption (as reflected in low scores in the Transparency Corruption Perceptions Index) were more likely to have experienced violent conflict: 11 of the 20 most corrupt countries in the world have been affected by violent and often long-lasting conflicts. Nine of these 20 have seen peace operations deployed on their territory, while 11 of them have suffered from very high rates of violent death (over 10 per 100,000), including death from conflict, terrorism, crime and state violence against civilians.

2. Corruption and conflict feed each other

According to the Report of the UN Secretary-General’s High-Level Panel on Threats, Challenges and Change, ‘*corruption, illicit trade and money laundering contribute to State weakness, impede economic growth and undermine democracy.*

³⁷¹ ‘Note on the Fragility Spectrum’, G7+, 2013, https://www.pbsdialogue.org/media/filer_public/17/43/17434d29-eb70-425b-8367-7ccef13bfb0b/g7fragility_spectrum_2013.pdf.

These activities thus create a permissive environment for civil conflict'.³⁷² Only recently has more attention been given to the costs of corruption for both developing countries and international security as they create an enabling environment for terrorism, organised crime and human trafficking.

The Report of the UN High-level Independent Panel on Peace Operations states that organised criminal groups are financed by corruption that results in extremism and public unrest, undermining peacekeeping efforts.³⁷³

Countries in transition where institutions are in a political, economic and social state of instability are particularly vulnerable to corruption, including state capture. Weak governments often lack the power, resources and strategies to fight corruption within and outside their institutions. In such cases, corruption can become the norm, leading to a depletion of the resources needed to strengthen the state. Citizens are unlikely to trust institutions they perceive as corrupt and may even question their legitimacy. Such a lack of social and institutional trust may further undermine attempts to establish the rule of law.³⁷⁴

Corruption is also one of the factors that contribute to the return of violence as shown by several studies that highlight how post-conflict societies return to disorders in about one decade. Therefore, overcoming corruption in a post-conflict environment is essential to restoring the confidence of citizens in the state.³⁷⁵

The World Bank has also concluded that corruption can fuel conflict. The 2011 World Development Report cites two factors:

³⁷² United Nations, *A More Secure World: Our Shared Responsibility: Report of the Secretary General's High-level Panel on Threats, Challenges, and Change*, (New York: United Nations, 2004), https://www.un.org/ar/peacebuilding/pdf/historical/hlp_more_secure_world.pdf.

³⁷³ 'Report of the High-level Independent Panel on Peace Operations', UN Peacekeeping, accessed February 17, 2021, <https://peacekeeping.un.org/en/report-of-independent-high-level-panel-peace-operations>.

³⁷⁴ A. K. Schwickerath, *How to conceptualize corruption? Conference Proceedings: Interdisciplinary Corruption Research Forum, June 2017*, (Interdisciplinary Corruption Research Network, 2018), <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-57389-8>.

³⁷⁵ UNDP, *Fighting corruption in post-conflict and recovery situations*, (New York: UNDP, 2010), http://content-ext.undp.org/aplaws_publications/2594849/Fighting%20corruption%20in%20post-conflict%20and%20recovery%20situations.pdf; 'The Sierra Leone Truth and Reconciliation Commission: Reviewing the first year', *International Center for Transitional Justice*, Case Study Series (January 2004), <https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Justice-Review-2004-English.pdf>; 'Liberia's TRC presents final report', ReliefWeb, accessed February 17, 2021, <https://reliefweb.int/report/liberia/liberias-trc-presents-final-report>.

“...the way corruption adds to popular grievances (such as political and economic exclusion, human rights abuses, or access to justice systems) and the diminished effectiveness and legitimacy of national institutions and social norms. These two factors effectively explain why high corruption levels are associated with higher levels of state fragility and lower resilience.”

Highly fragile states are less able to withstand challenges, survive crises and address the factors that precipitate them.

Investigating the causes of the 1990s civil war in Sierra Leone

The national Truth and Reconciliation Commission (TRC) found *‘that the central cause of the war was endemic greed, corruption and nepotism that deprived the nation of its dignity and reduced most people to a state of poverty’*. Similarly, the national Truth and Reconciliation Commission that operated in Liberia found that a major root cause of the Liberian civil war was *‘entrenched political and social system founded on privilege, patronage, politicisation of the military and endemic corruption which created limited access to education and justice, economic and social opportunities’*.

Another way in which corruption can lead to insecurity is through fuelling activities such as illegal exploitation of natural resources, violent extremism, terrorism, human trafficking and organised crime. These activities can both cause and sustain conflict and continue to be present after the formal end of the conflict, preventing the attainment of sustainable peace and at times even leading to a relapse of conflict.³⁷⁶

There is much literature on war-time economies and their association with rising corruption³⁷⁷ showing that corruption often predates hostilities and is often among the factors that triggered political unrest or facilitated conflict

³⁷⁶ ‘Education for Justice (E4J) University Modules: Integrity and Ethics’, UNODC, last updated July 2, 2019, https://www.unodc.org/documents/e4j/E4J-Ethics_Fact_Sheet_20190702.pdf.

³⁷⁷ Summarized in David M. Malone and Heiko Nitzschke, ‘Economic Agendas of Civil Wars: What We Know, What We Need to Know’, *WIDER*, Discussion Paper No. 2005/07 (April 2005), https://www.researchgate.net/publication/23566034_Economic_Agendas_in_Civil_Wars_What_We_Know_What_We_Need_to_Know.

escalation. Given that governmental structures collapse or are weakened by war, corruption spreads easily and is used by armed factions as an instrument to support and maintain their power structures.³⁷⁸ Even the risk of conflict and perceptions of growing insecurity can undermine accountability and create a permissive environment for state impunity – both for human rights abuses and corruption.³⁷⁹

The Arab Spring is a good example of the role of corruption in increasing conflicts. In particular, the outbreak of the protests shows the importance of perceived conspicuous corruption redirecting wealth and privilege to some and resulting in poverty for many. In Tunisia, for instance, economic growth just before the Arab Spring was not accompanied by perceptions of improving standards of living.³⁸⁰

Corruption can derail international economic and humanitarian initiatives, as funds disbursed from loans and aid are embezzled or handed out to contractors who have won their bids through corrupt means.³⁸¹ As a consequence, corruption acquires a central role in driving conflict and instability and is a direct threat to the implementation of peacekeeping mandates.³⁸²

Insecurity grows when corruption affects the defence sector and peace operations; for example, through kickbacks, bribes, collusion, extortion, awarding of non-competitive contracts, disadvantageous offset agreements, use of military resources to generate off-budget profits and manipulations of the military payroll.

³⁷⁸ O'Donnell, Madalene. 'Post conflict Corruption: A Rule of Law Agenda'. In *Civil War and the Rule of Law*. Eds. Hurwitz, Agnes and Reyko Huang. International Peace Academy, New York, NY: Lynne Rienner, forthcoming May 2007.

³⁷⁹ World Bank, *World Development Report 2011: Conflict, Security, and Development*.

³⁸⁰ 'Tunisia: Analyzing the Dawn of the Arab Spring Examining Public Perceptions Leading up to the First Regional Uprising', Gallup Polls, accessed February 17, 2021, <https://news.gallup.com/poll/157049/tunisia-analyzing-dawn-arab-spring.aspx>.

³⁸¹ 'Exporting Corruption: Progress Report 2014: Assessing enforcement of the OECD Convention on Combating Foreign Bribery', Transparency International, accessed February 17, 2021, <https://www.transparency.org/en/publications/exporting-corruption-progress-report-2014-assessing-enforcement-of-the-oecd>.

³⁸² Transparency international 'Corruption & Peace Operations: Risks and recommendations for Troop Contributing Countries and the United Nations' (2016), <https://ti-defence.org/publications/corruption-peace-operations-risks-and-recommendations-for-troop-contributing-countries-and-the-united-nations-2/>.

3. Challenges to anti-corruption interventions in post-conflict situations

It is a legitimate question to ask if it is possible to address corruption in unstable regions where fragile states cannot even provide public order. It would be a difficult thing to control maybe corruption should be a second-order priority that can be tackled later. The international community – governments, civil society or international organisations – can play a positive role in ending conflict³⁸³ donors are often faced with insurmountable difficulties posed by the concentration of financial aid in fragile areas.

According to the OECD:

*‘bilateral and multilateral aid agencies have traditionally seen sovereign governments as their natural partners and/or arenas of action. But in fragile contexts, states are often weak or predatory. Other actors may fill the vacuum of politics and administration, among them traditional leaders, social movements and armed groups. Furthermore, the instruments of aid – funding cycles, logical framework approaches, project management, and monitoring and evaluation – assume a level of stability and predictability that is often absent in such settings’.*³⁸⁴

Jasper Johnson argues that *‘the traditional corruption risk assessment processes that are used in the anti-corruption world tend to provide a universal theory, or “recipe”, that can be replicated across contexts—with variations only in the details of the implementation’.*³⁸⁵

In some instances, political support for kleptocratic leaders, a focus on short-term security goals can all add to the factors driving instability.³⁸⁶ The analysis of anti-corruption interventions in post-conflict situations published by the

³⁸³ Transparency International ‘The Fifth Column: Understanding the Relationship Between Corruption and Conflict’ (2017) <https://ti-defence.org/publications/the-fifth-column/>.

³⁸⁴ OECD, *States of Fragility 2018*.

³⁸⁵ Jesper Johnson, ‘Theories of Change in Anti-Corruption Work: A Tool for Programme Design and Evaluation’, The Communication Initiative Network, last updated January 10, 2013, <https://www.comminit.com/content/theories-change-anti-corruption-work-tool-programme-design-and-evaluation>.

³⁸⁶ ‘The Fifth Column Understanding the relationship between corruption and conflict’, Transparency International UK, accessed February 17, 2021, <https://ti-defence.org/publications/the-fifth-column/>.

UNDP in 2010³⁸⁷ suggests that the main challenges to successful anti-corruption interventions are:³⁸⁸

The UNDP Report (2010)

- *‘The fragile nature of the post-conflict environment in some, and the ongoing conflict in others.*
- *The lack of political support for combating corruption at the highest levels of government.*
- *Most of the anti-corruption interventions being implemented on an ad hoc basis, rather than being integrated into other development processes or implemented holistically.*
- *Most anti-corruption interventions being implemented at late recovery stages.*
- *The perception of corruption as insignificant and technical, and not as a political, power distribution issue, wherein a simple response is being applied to a complex, systemic problem that is inseparable from the socio-political context in which it takes place’.*

3.1 Corruption and military operations

Training for managing corruption risks in military operations remains low around the world including in NATO countries despite the experience gained in Afghanistan, Iraq, Bosnia and Herzegovina in which corruption ruined the international stabilisation missions.

Corruption can weaken international efforts and reduce the effectiveness of the mission by reducing public trust in intervention. Where intervention forces lack adequate oversight and control, for example, or procurement is based on the interests of a single individual or state rather than the requirements of the organisation, the military’s ability to respond to crises suffers. In such a complex and political organisational situation, ensuring accountability and oversight is difficult.³⁸⁹ The UNDP has confirmed that corruption is a key

³⁸⁷ UNDP, *Fighting Corruption in Post-Conflict and Recovery Situations: Learning from the Past*.

³⁸⁸ UNDP, ‘*Fighting corruption in post-conflict and recovery situations*’.

³⁸⁹ ‘An Assessment of Corruption Risks in UN Peace Operations’, Transparency International UK, May 2019 accessed February 17, 2021, <https://ti-defence.org/publications/corruption-risks-un-peacekeeping-operations/>.

factor in perpetuating conflict and instability, undermining the effectiveness and credibility of military operations and other international efforts.³⁹⁰

The 2019 Transparency International Defence and Security Programme report analysed the oversight, control and anti-corruption processes governing UN peace operations in the context of the implementation of Secretary-General António Guterres's major reform agenda on the management and conduct of peace operations. It makes several pragmatic recommendations for strengthening the organisation's anti-corruption controls in peacekeeping missions:

- New mandates should be reviewed to ensure they take account of corruption risks inherent in the mission. A key aim should be to ensure missions do not inadvertently reinforce kleptocratic behaviours, or corrupt networks and practices. They should also consider the interests of host populations and include an analysis of the dynamics of corruption, its risks, corrupt networks and potential abuses of power.
- The Secretary-General should issue a direction providing greater clarity on the responsibilities and expectations of Troop- and Police-Contributing Countries (T/PCCs) and the secretariat responsible for operational missions. This should expand on existing mechanisms and set out the standards that T/PCCs should meet, including the appropriateness of contingent-owned equipment, pre-deployment training, capabilities and standards expected of troops and police; and commitments to ensure that personnel who have been involved in crimes are not sent into the field. The document should be publicly available.
- The UN should hold to account individuals who have been found to engage in corruption. To deter the corrupt and shift the institutional culture, the Secretary-General should act against officials whenever allegations of corruption or misuse of power are substantiated.

NATO also has an important role in setting integrity standards and practical guidance to military officers as they rotate through the NATO systems. NATO's Summit Declarations (Chicago, Brussels, Warsaw) contain references

³⁹⁰ Ibid.

to corruption and its relationship to security challenges. NATO's norms and practices on Building Integrity and reducing corruption in the defence sector have been adopted by national defence institutions throughout the Alliance. For instance, at the Warsaw Summit, a new NATO Building Integrity policy was introduced which reaffirmed NATO's conviction that '*transparent and accountable defence institutions under democratic control are fundamental to stability in the Euro-Atlantic area and essential for international security cooperation*'.³⁹¹

3.2 The US mission to Afghanistan

As we have seen, 'corruption can be a consequence of violent conflicts and an impediment to peacebuilding and reconstruction initiatives'.^{392,393} For example, according to the Special Inspector General for Afghanistan Reconstruction (SIGAR),³⁹⁴ corruption in Afghan security forces was one of the main challenges the US faced in supporting the Afghan military and security forces against the Taliban. The report stresses that corruption cut across all aspects of the reconstruction effort, endangering the progress made in security, rule of law, governance and economic growth:

- 1) Corruption undermined the US mission by fuelling grievances against the Afghan government and channelling material support to the insurgency.
- 2) The injection of tens of billions of dollars into the Afghan economy worsened the level of corruption.
- 3) There was a slow recognition of the role of corrupt patronage networks in how corruption threatened core US goals.
- 4) Even when corruption was fully acknowledged as a strategic threat, security and political goals consistently trumped strong anti-corruption actions.³⁹⁵

³⁹¹ 'The Warsaw declaration on Transatlantic Security', NATO, last updated July 9, 2016:

https://www.nato.int/cps/en/natohq/official_texts_133168.htm.

³⁹² Wadsworth, Shelley MacDermid, and David S. Riggs, eds. *Military deployment and its consequences for families*. Springer New York, 2014.

³⁹³ Frank Vogl 'The Corruption-Security Nexus: Forging U.S. Strategy':

<https://www.ia-forum.org/Files/IDCGDC.pdf>.

³⁹⁴ 'CORRUPTION IN CONFLICT: LESSONS FROM THE U.S. EXPERIENCE IN AFGHANISTAN' *Special Inspector General for Afghanistan Reconstruction* (September 2016):

<https://www.sigar.mil/pdf/lessonslearned/sigar-16-58-ll.pdf>.

³⁹⁵ Ibid.

As a result of this analysis, the report made the following recommendations:

Report Recommendations

- ‘The U.S. government should make anticorruption efforts a top priority in contingency operations to prevent systemic corruption from undermining U.S. strategic goals.
- U.S. agencies should develop a shared understanding of the nature and scope of corruption in a host country through political, economic and network analyses.
- The U.S. government should take into account the amount of assistance a host country can absorb, and agencies should improve their ability to effectively monitor this assistance.
- The U.S. government should limit alliances with malign powerbrokers and aim to balance any short-term gains from such relationships against the risk that empowering these actors will lead to systemic corruption.
- U.S. strategies and plans should incorporate anticorruption objectives into security and stability goals, rather than viewing anticorruption as imposing tradeoffs on those goals.
- The U.S. government should recognize that solutions to endemic corruption are fundamentally political. Therefore, the United States should bring to bear high-level, consistent political will when pressing the host government for reforms and ensuring U.S. policies and practices do not exacerbate corruption’.

3.3 The way forward: better analysis of what drives corruption

According to Cheyanne Church,³⁹⁶ corruption is a complex, adaptive, phenomenon characterised by interconnectedness. Analyses should therefore look comprehensively at: a) the function of corruption in the political culture of a certain environment; b) the role social norms play in corruption, i.e., who is engaging in corruption, their family, business, and

³⁹⁶ Cheyanne Church, ‘Taking the Blinders off: Questioning how development assistance is used to combat corruption’, CDA, last updated June 2016: <https://www.cdacollaborative.org/publication/taking-binders-off-questioning-development-assistance-used-combat-corruption/>.

political ties and interests; c) the licit and illicit financial networks they use and the larger power structures that protect them; and, d) how those factors interact.

For instance, a focus on identifying and prosecuting individuals engaging in corrupt procurement practices may achieve success in securing convictions. However, the processes, structures, and interactions that allowed those individuals to commit a corrupt act remain unaddressed and so the system is still operating. The approach of punishing individuals assumes that addressing individual events eventually will add up to diminish corruption by removing corrupt people and by setting an example without the need to tackle underlying structures and patterns that generate the corrupt behaviour.

Church's questions to understand role and function of corruption

- 'What functions does corruption serve? As a complex system, corruption may be negative and simultaneously serve a function and solve problems people face - from helping leaders to command the loyalty of diverse groups or providing a means for the center to retain control over peripheral areas of the country. It is also both a cause and a consequence of governance problems - what are key strengths and weaknesses of political culture in that context?
- How might the system 'push back' against efforts at reform? Who are the key people – people with influence over the factors that drive corruption – and how will they respond to or resist reforms? How will actors and institutions adapt, circumvent or resist reforms?
- What is the connection between local and/or sectoral actors and issues relevant to corruption to national level political actors and dynamics?
- What are the interests and relationships among key actors? How can we understand not only 'vested interests,' but broader interests, resources and power of different affected people and groups, as well as relationships and patterns of influence among them, including the role and relationship of corruption to these interests?
- Where is there energy for change and what is the linkage between the people and the issues involved?'¹

¹ Cheyanne Church, 'Taking the Blinders off: Questioning how development assistance is used to combat corruption', CDA, last updated June 2016: <https://www.cdacollaborative.org/publication/taking-binders-off-questioning-development-assistance-used-combat-corruption/>.

4. Conclusions

The experience of the international community in fragile states suggests an approach based on embedding prevention measures in the governance and overall reform framework (including rule of law and security intervention) and supporting initiatives that will promote ethics, accountability and transparency in a way that is compatible with political stability.³⁹⁷

- 1) Identify and ensure political commitment to transparency, accountability and anti-corruption, by carrying out a political economy analysis or mapping.
- 2) Identify institutional entry points in the governance framework and create new frameworks, embedding access to information, social accountability and transparency
- 3) Start early after a conflict ends. While there is no strict chronological order, some reform initiatives help lay the groundwork for others. Re-establishing the rule law of and restoring basic service delivery are fundamental to the success of state-building.
- 4) Lead by example and build transparency into budget support from the beginning.
- 5) Build in more time for the process of consultation, collaboration and dialogue.
- 6) Improve and take the lead on coordination. Coordination of anti-corruption approaches across development and humanitarian aid is crucial.

The importance of involving civil society in the peace-building process was highlighted by CARE Netherlands in a report in 2019.³⁹⁸ Essential steps in this direction are:

- 1) Encourage and support bottom-up engagement from the community level, specifically targeting public authorities as community members.
- 2) Encourage identification of champions within and between communities.

³⁹⁷ UNDP, *Fighting corruption in post-conflict and recovery situations*.

³⁹⁸ Jennie Phillips et al., *Enhancing Inclusive Governance in Fragile & (Post) Conflict-Affected Settings* (CARE Nederland, 2019), https://www.carenederland.org/wp-content/uploads/2019/10/Enhancing-Inclusive-Governance-in-Fragile-Post-Conflict-Affected-Settings_REPORT.pdf.

- 3) Support governments to work with communities to identify local needs, fears and motivations.
- 4) Promote internship programs for youth to gain experience within national and local governments, particularly for women to recognise and build their capacity and experience.
- 5) Encourage Civil Society Organisation to work with community members (especially members of marginalized communities) to build an understanding of an inclusive reconstruction, how it is developed and the benefits it provides to them. Community members must develop intrinsic motivations to engage while dispelling the feelings of fear and disempowerment to build confidence in the capacity to engage.

Whenever corruption is not addressed it can undermine the entire transition of the post-conflict environments, and do so in ways that do not create large additional demands on already overwhelmed reformers within and outside fragile state structures.

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CHAPTER 9

Preventing Violent Conflict by Building Integrity in the Security Sector:

A United Nations Perspective

Oana Topala

Abstract

This chapter articulates how the UN works towards security sector transformation and contributes to promoting integrity and good governance, thus preventing tensions and disparities from taking a violent form. Drawing on lessons learned from the delivery of specialised assistance to Security Sector Reform (SSR) in fragile and conflict-torn countries, it sets out good practices on 1) analysing the political economy of the security sector, 2) capitalising on defence sector reform to prevent or mitigate predatory and corrupt behaviours and, 3) leveraging the coordination role of the UN to strengthen weak security sectors by devising policy options to secure peacebuilding dividends as measured in SSR gains. It offers an opportunity for the broader SSR community to reflect on how to make good on commitments such as the Secretary-General's prevention agenda and the Sustainable Development Goal 16, which calls for reducing corruption and developing effective, inclusive and transparent institutions.

Keywords: *security sector reform (SSR), building integrity, defence sector reform, peace operations, conflict prevention.*

1. Introduction

The UN pursues a coordinated and comprehensive approach to Security Sector Reform (SSR), anchored in Security Council Resolutions 2151(2014) and 2553(2020). When promoting a widely shared national vision of security, developed through inclusive political processes, the UN is not solely concerned with institutional effectiveness and professionalism, but also prioritises sector-

wide integrity and good governance. It takes integrity to curtail corruption in the security sector. This is as valid for countries with a long tradition of democratic institutions and values as it is for those lacking civilian scrutiny over defence and security matters. Addressing corruption as a systemic issue within the security sector is critical. SSR processes that deliver improved parliamentary oversight, codes of conduct, strengthened financial and human resource management have the potential to uproot patronage networks and remove ‘ghost soldiers’ from the payroll, thus generating trust in security institutions and facilitating steady progress over time.

“Corruption breeds disillusion with government and governance – and is often at the root of political dysfunction and social disunity. [...] combatting corruption and addressing governance challenges, which lie at the root of many conflicts, must be a component of preventive approaches. This is an opportunity to build a solid foundation of trust and accountability and increase a society’s resilience to crisis.” (António Guterres, United Nations Secretary-General)³⁹⁹

2. Why Building Integrity and fighting corruption in the security sector matter

In many contexts, the absence of a sound security sector governance framework contributes to states failing to honour their primary responsibility to protect the population from violence. When security institutions become prone to corruption and operate with impunity, they endanger national development and breed political instability and socio-economic fragility. Governance deficits are ‘first identifiable in the mindset, reflecting entrenched old ways of thinking about security which is exclusionary and inherently undemocratic’.⁴⁰⁰ Tremendous efforts are being deployed by the UN to shift incentives away from corrupt gains among SSR actors through peacebuilding initiatives and to put in

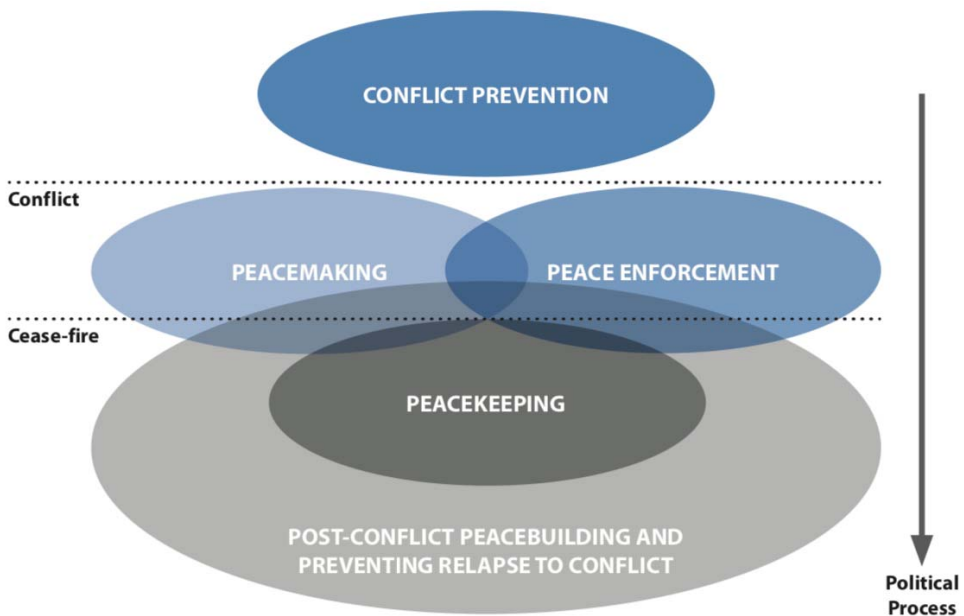
³⁹⁹ Secretary-General's remarks to the Security Council on Corruption in Conflict: <https://www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-security-council-corruption-conflict>.

⁴⁰⁰ Adedeji Ebo, ‘The Challenges of Security Sector Reform in Post-Conflict Sierra Leone’, *Conflict, Security & Development Journal*, Volume 6, Issue 4, Routledge (December 2006): <https://www.tandfonline.com/doi/abs/10.1080/14678800601066447?queryID=%24%7BresultBean.queryID%7D&>.

place mechanisms and processes and safeguards to reduce patterns of corruption that are known to enhance the risk of violent conflict.

The UN promotes good governance across the spectrum of peacekeeping, peacebuilding and development. This entails assuring that corruption is minimised, that the delivery of security is responsive to the needs of the population and that the voices of the most vulnerable in society are heard in decision-making. Such undertakings are aligned with and contribute to the implementation of the UN system-wide common framework on addressing global corruption challenges.

Figure 1. Mainstreaming integrity and anti-corruption across the peace continuum



Source: United Nations Peacekeeping Operations Principles and Guidelines, 2008

In many of the settings where the UN implements SSR mandates, there is an amalgamation of political and military actors with the army often playing the role of primary security actor and important political stakeholder. *‘The politicisation of security services undermines public trust. Abusive or repressive security and defence institutions are directly responsible for triggering or fuelling conflict’.*⁴⁰¹ UN SSR assistance is thus geared towards

⁴⁰¹ Alexander Burian ‘Security sector reform and conflict prevention’: <https://blogs.worldbank.org/dev4peace/security-sector-reform-and-conflict-prevention>.

security and defence institution building to promote professionalism, accountability and inclusivity, while also addressing political-military dynamics which are drivers of conflict. Military transformation in all its aspects – force structure, modernisation, operational readiness and sustainability – is a key element of SSR efforts and increasingly recognised as a prerequisite for good governance, as per the UN Defence Sector Reform (DSR) policy.

In the context of UN peacekeeping operations, SSR is deemed critical for achieving progress with the implementation of peace agreements, supporting states to build, restore and extend their legitimate authority and creating a conducive environment for mission exit. By systematically mainstreaming integrity building in SSR support packages and the broader political strategies of UN peace operations, SSR enables the implementation of mandates aimed at the protection of civilians, stabilization and support to political processes. Promoting integrity and anti-corruption measures as part of SSR assistance is a daunting task. It requires the practitioner to be conflict- and politically-sensitive, to swiftly identify and exploit windows of opportunity for security sector governance and reform, to weigh corruption risks in security sector analysis and SSR mandate delivery, to empower national agents of change to elevate corruption in policy-making and to establish partnerships among national SSR actors to strengthen good governance. The UN thus helps host countries peacefully resolve conflict, address popular grievances and move towards sustained peace and development.

SSR is an integral element of the UN sustaining peace and prevention agendas; it also has ramifications throughout Agenda 2030 and spans reconstruction efforts that take place across a range of political contexts. Conflicts often leave behind traumatised populations and deeply divided societies. Before security institutions can be transformed, countries hosting UN peace operations will need to repair the social fabric damaged by violence. Where SSR has the necessary political traction and national ownership, it can serve as an entry point for sensitive reform efforts, helping to fight corruption and impunity and thus restoring the social contract on which stability depends. The UN continues to adjust efforts to build integrity in the security sector, carefully tailoring its approach to the national context and conflict dynamics, systematically exchanging knowledge on anti-corruption initiatives with partners and applying good practices collected over the years.

3. Good practices in Building Integrity in fragile and conflict-affected settings

There is no one-size-fits-all algorithm to translate political directives by the Security Council into operational priorities at the level of peace operations. What works in one setting may not lead to a successful SSR process in another, even though the political stakes and security realities may be comparable. The UN SSR work is successful when it proves the ability to adapt to new realities.

The complexity and scope of SSR mandates have evolved beyond ‘training and equipping’ security providers to include interventions that address the governance and management of the sector as a whole, but also component-specific issues, such as DSR. The UN Security Council has issued SSR mandates consisting of complex undertakings which help fight corruption , including the promotion of national dialogue, enhancing civilian oversight and public financial management (Guinea-Bissau, Libya, Somalia), security sector governance, police, prison and DSR (the Central African Republic, the Democratic Republic of the Congo, Libya, Somalia), institutional development and capacity building, establishing national security coordination mechanisms (the Democratic Republic of the Congo, Libya, Mali, Somalia), speciality areas such as border management (Mali) or maritime security (Somalia) and cross-cutting issues, such as gender mainstreaming and protection of human rights in the security sector.

The UN has distilled the following good practices based on interventions designed to diminish the space for corruption and to improve the governance and institutional strength of the security sector:

First, the UN has become increasingly aware of the social and economic root causes of conflicts, gearing up efforts to analyse the political economy of the security in the framework of structural prevention approaches. To enhance delivery in many settings where the UN implements SSR mandates, the UN works collaboratively with the World Bank (WB) to strengthen the affordability and financial sustainability of security sectors, including through Public Expenditure Reviews (PER) and, as of June 2020, the development of joint research, analysis and guidance in close coordination with UNDP to strengthen of the UN-WB partnership in the area of SSR through the UN Humanitarian Development Peacebuilding and Partnership (HDPP) Facility.

A PER is:

an analytical instrument that examines government resource allocations within and among sectors, assessing the equity, efficiency and effectiveness of those allocations in the context of a country's macroeconomic framework and sectoral priorities. In addition, a PER identifies the reforms needed in budget processes and administration to improve the efficiency of public spending. PERs may focus on critical economic policy questions, such as affordability and sustainability, or they may focus on Public Financial Management (PFM) and assess the quality of budget execution.⁴⁰²

In contexts of democratic transition, state-building and post-conflict reconstruction, security expenditure reviews have been increasingly used to inform governments and international partners on critical policy questions related to the affordability and sustainability of security sector financing.⁴⁰³

The United Nations Assistance Mission in Somalia (UNSOM) works closely with the WB and the Ministry of Finance within the Federal Government of Somalia, providing strategic financial advice in matters pertaining to the security sector. In 2013 at the Ministry of Finance of the Federal Government of Somalia, the WB and UNSOM jointly conducted a PER of the security and justice sectors. It provided options on critical financially related aspects of defence, criminal justice and policing which enabled the Federal Government of Somalia and partners to navigate the political transition and ensuing electoral cycles, while making informed decisions on the affordability, efficiency, effectiveness and accountability of the security sector. The joint WB-UN Security and justice PER was published in January 2017; it provided key fiscal information and assisted the Federal Government of Somalia and the Federal Member States in making financial decisions, analysing trade-offs and devising models for the country's security and justice institutions. The PER was updated in December 2017 with an addendum reflecting the personnel numbers, as per the National Security Architecture Agreement. The Federal Government also

⁴⁰² Bernard Harborne et al., *Securing Development: Public Finance and the Security Sector* (Washington, DC: World Bank, 2017), <https://openknowledge.worldbank.org/handle/10986/25138>.

⁴⁰³ Adedeji Ebo and Heiner Hänggi, 'Following the money: The role of public financial management in SSR', in *The United Nations and Security Sector Reform: Policy and Practice* (LIT Verlag, 2019), <https://www.dcaf.ch/united-nations-and-security-sector-reform-policy-and-practice>.

introduced a new aid mapping system led by the Ministry of Planning, with a parallel process of security aid mapping being overseen through the Office of National Security, which increased transparency of all forms of donor support to the security sector.

Second, recruitment and promotion within the armed forces are often riddled with corruption. Weak governance of the defence sector, high levels of secrecy and a lack of transparency erode public confidence in state institutions. In addition to promoting professional, inclusive and accountable security delivery, defence institution building efforts by the UN also aim to prevent or mitigate predatory and corrupt behaviours among security and defence forces. Peace operations provide technical and advisory support to national authorities on DSR, in the framework of SSR implementation. The provision of UN support to national DSR processes is an integral part of efforts to achieve broader SSR deliverables such as: 1) open national recruitment campaigns; 2) effective and corruption-free administration both in terms of payroll control, benefits to retirees and those discharged due to service (psychological or physical) injuries and uniformed services dependants; 3) effective military justice; 4) restored confidence between the armed forces and the local population; and 5) bilateral and regional cooperation on cross border security and interoperability, including legislative compatibility.

*‘One of the reasons for deploying a billion-dollar mission with tens of thousands of troops is to be able to provide a security guarantee to a political process and one of the reasons for expanding a mandate into areas like [...] security sector reform [...] is to underpin a political process with improved conditions and confidence on the ground’.*⁴⁰⁴

In the Central African Republic, SSR is at the core of the peace agreement. Encouraging the negotiation of a political solution through the African Initiative, while concurrently supporting the recruitment, integration and deployment of defence and security services has been a litmus test for the

⁴⁰⁴ Adam Day et al., *The Political Practice of Peacekeeping: How Strategies for Peace Operations are Developed and Implemented* (New York: United Nations University, 2020): <https://www.stimson.org/wp-content/uploads/2020/09/1-PeaceOps-2020-1245-Paper.pdf>.

UN capacity to develop policy options to reduce the threat of armed groups, extend state authority and address the root causes of the conflict.

“We need professional security institutions. We need to make sure that the best of women and men are recruited and have equal opportunities.” (H.E. Tijjani Muhammad Bande, President of the 74th Session of the United Nations General Assembly)

The success of the first nationwide, inclusive, transparent and merit-based recruitment campaign hinged on UN advice on rank harmonisation, on quotas per province and for the promotion of women. Good offices engagement was critical to instigating the application of strict geographic, ethnic and gender quotas. A whole-of-mission approach enabled the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) to support the recruitment campaign from process design to the organisation of physical and written exams in a manner that prompted renewed national demand. Based on this positive track record, the SSR component in MINUSCA currently coordinates mission-wide efforts to support the recruitment of 2,600 new personnel within the Central African Armed Forces (FACA); works to strengthen democratic accountability and internal oversight mechanisms thus reducing risks to the democratic process which could be posed by military interference in the elections; and strives to leverage the Mission’s convening power to enhance alignment between SSR and the peace process.

Sustained efforts are required to build viable national capacity in the security sector, thus preserving stabilization gains. Capacity deficits at the level of defence forces *‘undermine their authority and capacity as guarantors of public security, as well as increase the risk that FACA troops will engage in predatory behaviour to sustain themselves’*.⁴⁰⁵ MINUSCA bolstered the capacity of the Ministry of Defence to mobilise resources and coordinate international assistance. This enabled better alignment of support from bilateral partners with priority reforms outlined in the National Defence Plan and the Military Programming Law within the overall framework of the national SSR strategy. The establishment of the North-East defence zone and the deployment of a

⁴⁰⁵ International Peace Institute, *Prioritising and Sequencing Peacekeeping Mandates: The Case of MINUSCA* (IPI, 2019), https://www.ipinst.org/wp-content/uploads/2019/10/1910_The-Case-of-MINUSCA.pdf.

command support unit to Ndele in June were milestones in the transformation of the FACA into a garrison army and to the extension of state authority.

MINUSCA also developed a series of innovative tools for a better peacekeeping response to security sector governance challenges based on improved coordination. Advocacy and engagement with financial partners helped ensure that SSR financing needs were factored into the IMF lending policy and the EU direct budget support, resulting in the adequate funding of key reforms. Coordinated UN support to the full implementation of the National SSR Strategy, enhanced parliamentary oversight and accountability, the provision of security beyond Bangui and the development of a culture of inclusivity helped create a protective environment and advance SSR priorities outlined in the National Recovery and Peacebuilding Plan.

*‘The key to facilitating and enhancing national ownership and sustainability of SSR processes is not just technical proficiency and regular exchange of information, but also the ability to build effective partnerships based on mutual trust and confidence’.*⁴⁰⁶ MINUSCA is pioneering the Defence Sector Support and Liaison Team (DESSLIT) comprising eight members of the Force recruited for their specialist capacity and collocated with the SSR component. This enables the UN to partner closely with the EU to support the national SSR process. MINUSCA works closely with the European Union Training Mission in the Central African Republic (EUTM RCA) and the EU Delegation to assist the Ministry of Defence with the coordination of bilateral security assistance, the implementation of the National Defence Plan, including the 2019-2020 FACA recruitment campaign, the establishment of the garrison army and integration of former combatants in the security sector, and the COVID-19 preparedness and response plan for the armed forces. The Mission also cultivates partnerships with the AU, Economic Community of Central African States (ECCAS) and national counterparts, notably the National SSR Advisor and Ministries of Defence and Public Security, thus retaining the ability to build consensus on priority joint interventions to help implement the SSR provisions of the peace agreement.

⁴⁰⁶ Randy Holden (ed.), *Security Sector Reform: Integrated Technical Guidance Notes* (New York: United Nations SSR, 2012): https://peacekeeping.un.org/sites/default/files/un_integrated_technical_guidance_notes_on_ssr_1.pdf.

The case of the Central African Republic is not singular. The UN works with partners – national and international – in virtually all mission settings to weed out corruption from the security sector. In Somalia, UNSOM is working with the Ministries of Internal Security and Defence towards the implementation of a programme aimed at rightsizing security and defence personnel. In the absence of a retirement scheme, the Federal Government of Somalia continues to pay full salaries to many non-operational personnel who are too old or otherwise unable to serve. Several spouses and children of security service personnel who died on duty also remain on the payroll of security institutions. Not only is this an ineffective use of the limited public funds available for the security sector, but it also prevents the recruitment of new personnel. Acknowledging the need for solutions that allow for ‘retirement with dignity’ of non-operational personnel, UNSOM is advising the Federal Government of Somalia on rightsizing, and policies on the effective demobilization and reintegration of non-operational personnel into civil society. These efforts also help mitigate the risk of recruitment of non-operational personnel by extremist groups, thus preventing an exacerbation of violence in the long-term.

UNSOM is also leading efforts to tackle corruption at sea. Building Integrity, increasing legitimacy and strengthening institutional capacity and transparency in the maritime sector is of paramount importance in the case of Somalia, which has the longest coastline in Africa and borders one of the most important marine ecosystems in the Indian Ocean. Tackling the underlying causes of piracy off the coast of Somalia, including through the provision of alternative livelihoods and ‘blue’ economic opportunities, presents ample opportunities for conflict prevention. SSR is assisting Somali authorities to put in place an effective legal and institutional framework for improved maritime governance towards a peaceful and stable maritime domain.

UNSOM works alongside other UN entities and international partners to help the Federal Government of Somalia and the Federal Member States to promote inclusive participation in the areas of maritime security and governance, to strengthen civilian oversight while ensuring national ownership of SSR initiatives. Cooperation amongst the Federal Government of Somalia and state ministries and major actors in the maritime community in Somalia such as shipping, security, ports, fisheries, energy, academia, civil society, the private sector and international partners, is key to the development of cross-sectoral

initiatives in the maritime sector that can foster integrity and legitimacy. UNSOM has also provided support to the development and revitalisation of the National Maritime Coordination Committee, a national inter-ministerial mechanism tasked to administer the maritime domain.

UNSOM pursues a comprehensive approach to Building Integrity and advancing maritime governance and security, which consists of the following elements: 1) assisting the Federal Government of Somalia and the Federal Member States with defining the roles and responsibilities of maritime security forces and institutions, through consultative processes, providing support to the Maritime Police Working Group, advising on the development of the training and professional development strategy for the Maritime Police Units and implementing capacity building activities. These efforts contribute to promoting professional, inclusive and accountable maritime law enforcement agencies and prevent or minimise corrupt behaviours; 2) advancing Blue Economy through the establishment and operationalisation of the Somali Maritime Administration Department, through assistance with institutional, strategic development, and legal and policy advice; and 3) fostering gender mainstreaming through the Women in the Maritime Sector (WiMS) Initiative. The WiMS initiative has been instrumental in identifying barriers to women's representation in the maritime sector and broader security sector governance. It created the conditions for an inclusive dialogue between the Federal Government of Somalia and the Federal Member States and garnered inter-ministerial consensus on the development of inclusive gender activities and a comprehensive action plan.

In Côte d'Ivoire, SSR contributed directly and as a matter of priority to national reconciliation in the aftermath of conflict. The UN and national counterparts alike acknowledged the potential of SSR to 'become a catalyst for a wider confidence-building process that will help Ivoirian society rebuild itself and 'disarm minds'.⁴⁰⁷ Tailored confidence-building measures brokered by the UN generated an impetus for change at the national level. Cultivating civilian awareness of SSR issues through dialogue, organising training on soft skills for the armed forces and seminars on collaborative leadership resulted in improved

⁴⁰⁷ Arthur Boutellis, *The Security Sector in Côte d'Ivoire: A Source of Conflict and a Key to Peace* (New York: International Peace Institute, 2011): https://www.ipinst.org/wp-content/uploads/publications/ipi_epub_cote_d_ivoire.pdf.

relations between the security sector and the population, creating national consensus on reforms and building coalitions to sustain the process.

*“One of the cornerstones of governance of the security sector is support to confidence-building and dialogue across all sectors of the population.”*⁴⁰⁸

The United Nations Operation in Côte d'Ivoire (UNOCI) spearheaded a Confidence-Building Measures (CBMs) initiative tailored to: 1) increase trust within the security and defence forces, fostering greater inter-army openness and transparency in the field of military planning (including via regular exchange of information on force capabilities and the scope of operations); and 2) ensure that people feel secure and trust security services, which operate with greater accountability. The initiative contributed to reinforcing the operational capacity of the three main security providers (armed forces/FRCI⁴⁰⁹, Police and Gendarmerie), while empowering them to fulfil their roles and responsibilities and generating civil-military synergies.

Quick wins materialise when support is rooted in an analysis of the local security and political context and implemented through collaborative efforts. UNOCI carried out high-impact, short-term initiatives to foster confidence and open the SSR debate to non-traditional security actors such as civil society, religious and customary leaders and political parties. To this end, the Mission initiated the Brown Bag Lunch dialogue series jointly with the Friedrich Ebert Stiftung and the Abidjan-based *Centre de Recherche et d'Action pour la Paix*. By facilitating information sharing and awareness-raising on SSR dynamics, the dialogue series generated a community of practice, while also homogenising strategic thinking on SSR within the civil society, diplomatic circles and security and defence establishments.

An emphasis was placed on minimising the harm done by elements of the Ivoirian security apparatus, tackling the racketeering phenomenon and the lack of military discipline which encouraged human rights violations. Removing the FRCI from the streets through barracking was not enough to restore popular trust. UNOCI mapped the requirements of security and defence forces, assessing their training needs and defining capacity building criteria. A soft

⁴⁰⁸ https://peacekeeping.un.org/sites/default/files/un_integrated_technical_guidance_notes_on_ssr_1.pdf.

⁴⁰⁹ Forces Republicaines de Cote d'Ivoire

skills training on international standards of ethics and military deontology was complemented by civil-military activities, such as cross country running, football matches and blood donation, which brought the FRCI and the population together to renew ties, develop mutual trust. Through these efforts, the UN helped uphold discipline within the ranks and strengthened institutional capacity to protect civilians and thus created momentum for reform.

Building confidence and integrity requires significant investments in leadership. The CBMs also targeted senior and middle-ranking officers, understanding that their role in changing the institutional culture ‘will depend on their leadership, commitment to reform and ownership and whether they themselves need to be (re)built, transformed, or to develop existing capacities’.⁴¹⁰ The UN partnered with the Kofi Annan International Peacekeeping Training Centre (KAIPTC), the Geneva Centre for Security Sector Governance (DCAF) and the Thinking Africa think-tank to offer a series of collaborative leadership workshops to the FRCI, Police and Gendarmerie. This facilitated comprehensive dialogue and expert-level political follow-up mechanisms for SSR in Côte d’Ivoire. Collaborative leadership ultimately enabled: 1) improved oversight of the SSR process; 2) the development of repositories of strategies, legislation and other resources that sustain policy coherence; and 3) better linking the assessment of political and security conditions to SSR decision-making.

Third, the UN actively guides national efforts to advance security sector governance and plays a lead role in the coordination of international SSR assistance. Preventing conflict and tackling security sector governance deficits requires host states and the UN, alongside other international partners, to work collaboratively from analysis to action and create enabling conditions for long-term SSR, thus facilitating the gradual and responsible withdrawal of peace operations.

“The United Nations is particularly well-positioned to support and coordinate sector-wide reforms’ and ‘support the coordination of international assistance to security sector

⁴¹⁰ Madeline England and Alix Boucher, *Security Sector Reform: Thematic Literature Review on Best Practices and Lessons Learned* (Washington, DC: Stimson Center, 2009): https://www.stimson.org/wp-content/files/file-attachments/Stimson_SSR_practicenotes_complete_set_dec09_1_1.pdf.

reform.” (United Nations Security Council Resolutions 2151(2014) and 2553 (2020) on SSR)⁴¹¹

Measures to address corruption are defined through UN system-wide consultations, ensuring strict alignment with the political strategy and mandate of a peace operation. There are coordination mechanisms with variable geometry: within the mission, between national and international counterparts and among international donors. These mechanisms are employed to foster the exchange of information and analysis, and to feed into SSR support programmes.

Coordinated SSR efforts can improve security and generate confidence in the States’ ability to undertake security sector transformation. As part of broader efforts to foster system-wide coherence, the Secretary-General established an Inter-Agency Security Sector Reform Task Force (IASSRTF) in 2007 to promote an integrated, holistic UN approach to SSR. Its core functions are: developing sector-wide guidance; leading regional partnerships for SSR; pursuing policy dialogue and consultations with member states; and managing a UN roster of SSR experts.⁴¹²

The IASSRTF, co-chaired by DPO and UNDP, consists of 14 UN entities addressing different dimensions of SSR processes in a complementary manner. Collaborative efforts in the framework of the IASSRTF led to the adoption of Resolution 2151(2014); the Integrated Technical Guidance Notes on SSR (2012), on the linkages between SSR and transnational organised crime (2016) and the Defence Sector Reform policy.

The IASSRTF acts as a force multiplier, facilitating coordination of support to national SSR processes. The UN made strides in reinforcing policy coherence and operational effectiveness among UN entities supporting SSR across the world. The IASSRTF has enabled: 1) the development of coherent, shared understanding and analysis on country-specific support; 2) the partnership with the WB by facilitating joint policy work, knowledge and guidance development to build the UN capacity to better partner with the WB in the implementation of the fragility, conflict and violence strategy; 3) the mainstreaming of gender in SSR support including through high-level advocacy and outreach to member

⁴¹¹ <https://www.un.org/press/en/2020/sc14370.doc.htm>.

⁴¹² Security Sector Reform, <https://peacekeeping.un.org/en/security-sector-reform>.

states; and enhancing women's participation in national security forces as part of broader good governance support. Through this mechanism, the UN established itself as a coordination hub capable of creating space for restoring integrity and good governance of security sectors across the globe by: 1) facilitating a common framework for action around key tenets of resolution 2151(2014), including through guidance development; 2) synchronising and prioritising SSR initiatives; and 3) engaging in closer dialogue with host states.

4. Conclusions

The following conclusions can be drawn from the UN experience with Building Integrity in the security sector, as an integral part of efforts to reduce the fragility of security and defence institutions and thus prevent violent conflict.

- Corruption represents both a driver and a consequence of conflict. Building Integrity in the security sector creates space for interventions that can reverse democratic deficits within security and defence institutions and diminish the sources of insecurity. Even modest efforts to tackle core budgeting issues that stymie efficiency or spawn corruption have important stabilising effects on security institutions.
- Political leadership is required to bolster the integrity of security and defence institutions. Reforms have been most successful where political and military leaders systematically outline the risk of corrupt behaviours on the effectiveness of operations and institutional stability in public engagements and strategic documents.
- To be effective, support to security sector governance and reform must remain transparent and coherent. The UN remains uniquely positioned to lead on the coordination of international assistance to SSR and to assist host countries to successfully match support pledges with system-wide governance and reform priorities.
- Changing the institutional culture is a *sine qua non* for reducing corruption and Building Integrity in the security sector. DSR efforts helped rebuild security and defence establishments perpetuating corruption and denying accountability for misconduct.

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CHAPTER 10

Building Integrity and Good Governance in the Defence and Related Security Sector:

NATO's approach

Nadja Milanova

Abstract

This chapter elaborates on NATO's approach to Building Integrity (BI) and Good Governance in the defence and related security sector as an expression of the North Atlantic Treaty and its contribution to the fulfilment of the Alliance's three core tasks: collective defence, crisis management and cooperative security.⁴¹³ Drawing upon lessons learned, it outlines the importance of integrating a BI perspective into the planning and execution of NATO-led operations and missions and the need to develop adequate capabilities to this end. The role of embedding BI into training and education at a NATO and a national level is emphasised as one of the ways to ensure that the right knowledge, competence and skills are deployed within the context of NATO's engagement in fragile environments, including SFA. The article highlights the BI requirements needed to ensure the sustainability and long-term impact of advisory and training functions such as: 1) understanding of the impact of corruption, especially concerning local forces and their associated institutions; 2) understanding of the impact of corruption on operational effectiveness; and 3) understanding of reform processes and transformation within the defence and related security sector, including the importance of integrity for leadership and for institutional legitimacy.

Keywords: *building integrity, good governance, corruption, collective defence, defence institution and capacity building.*

⁴¹³ NATO Building Integrity, https://www.nato.int/cps/en/natohq/topics_68368.htm.

1. Introduction

The NATO work on Building Integrity (BI)⁴¹⁴ and Good Governance in the defence and related security sector is intrinsic to the Alliance as a values-based organisation promoting the principles of integrity, transparency and accountability that underlie free and democratic institutions, as enshrined in the Preamble and Article 2 of the North Atlantic Treaty.⁴¹⁵ At the 2016 Warsaw Summit, Heads of state and Government endorsed the NATO BI Policy reaffirming their conviction that transparent and accountable defence institutions under democratic control are fundamental to the stability and essential for international security cooperation.⁴¹⁶ The impact of the BI Policy is manifold. First and foremost, corruption and poor governance have been recognised as ‘security challenges as they undermine democracy, the rule of law and economic development, erode public trust in defence institutions and have a negative impact on operational effectiveness’.⁴¹⁷ Secondly, BI has been integrated within the context of NATO’s wider policy objectives, the implementation of the Alliance’s core tasks and within the context of its institutional adaptation. Thirdly, the development of effective, transparent and accountable defence institutions, which are responsive to unpredictable security challenges, including those of a hybrid nature, contributes to the fulfilment of the Alliance’s mission to safeguard the freedom and security of its members, both in the context of NATO’s efforts to provide credible deterrence and defence and in projecting stability in the Euro-Atlantic area and beyond.⁴¹⁸ In this sense, NATO’s approach to BI and good governance in the defence and related security sector contributes to the fulfilment of the Alliance’s three core tasks as defined in the *NATO Strategic Concept Active Engagement and Modern Defence* of 2010: collective defence, crisis

⁴¹⁴ The NATO definition of integrity, as approved in the NATO Building Integrity (BI) Policy, is defined as ‘the link between behaviour and principles. In institutional terms, integrity is directly linked to good governance. Reinforcing an institution’s integrity is a question of institutionalising the principles that we want the institution to stand for, and a question of socialising these norms and values among its personnel’; paragraph 3 of the NATO BI Policy, at:

https://www.nato.int/cps/en/natohq/official_texts_135626.htm?selectedLocale=en.

⁴¹⁵ The North Atlantic Treaty, Washington DC, 4 April 1949; at:

https://www.nato.int/cps/en/natolive/official_texts_17120.htm.

⁴¹⁶ *Ibid.* To date, NATO Allies, the Euro-Atlantic Partnership Council (EAPC) partners and Afghanistan, Australia and Colombia are associated with the BI Policy.

⁴¹⁷ *Ibid.*, paragraph 2; also the Warsaw Summit Communiqué, paragraph 130:

https://www.nato.int/cps/en/natohq/official_texts_133169.htm.

⁴¹⁸ NATO Encyclopedia:

https://www.nato.int/nato_static_fl2014/assets/pdf/2020/1/pdf/2019-nato-encyclopedia-eng.pdf.

management and cooperative security.⁴¹⁹ The BI Policy and the ensuing BI Action Plans for 2016-2020 and 2021-2025, both respectively noted by NATO Foreign Ministers at their meeting in December 2016 and NATO Defence Ministers in February 2021, have therefore provided strategic guidance for a structured approach to operationalising BI and good governance along NATO's political and military lines of activity through joined-up civil-military cooperation across the strategic, operational and tactical levels.

2. Building Integrity: Cooperative Security

When developed and endorsed in 2016, the NATO BI Policy had built on the experience gained through NATO Partnership for Peace (PfP) activities and in the context of preparing nations for membership and the implementation of the dedicated NATO BI Programme (NATO BI) established in 2007 to support the reduction of corruption risks in the defence and related security sector in both NATO and partner countries. Defence reforms have always been at the centre of NATO's engagement with partners within the cooperative security core task. The importance of BI and good governance for the sustainability of NATO's work on defence institution building and capacity building has been consolidated with the BI Policy. It was further reinforced through the NATO's Projecting Stability strand of work after the Warsaw Summit and decisions taken at the NATO Summit in Brussels in 2018 to strengthen NATO's role in 'helping partners, upon request, to build stronger defence institutions, improve good governance, enhance their resilience, provide for their own security and more effectively contribute to the fight against terrorism'.⁴²⁰

The Partnership Action Plan for Defence Institution Building (PAP-DIB), adopted at the NATO Istanbul Summit in 2004, defines NATO's principles that are considered fundamental to the development of effective and democratically responsible defence institutions. They comprise:⁴²¹

⁴¹⁹ NATO's Strategic Concept, 2010, official text at: https://www.nato.int/cps/en/natohq/official_texts_68580.htm?selectedLocale=en.

⁴²⁰ Brussels Summit Declaration, 2018, paragraph 50, official text at: https://www.nato.int/cps/en/natohq/official_texts_156624.htm.

⁴²¹ *NATO's Partnership Action Plan on Defence Institution Building (PAP-DIB)*, 2004, the official text can be accessed at: https://www.nato.int/cps/en/natohq/official_texts_21014.htm.

- 1) Effective and transparent arrangements for the democratic control of defence activities.
- 2) Effective and transparent procedures to promote civilian participation in developing defence and security policy, including the participation of civilians in governmental defence institutions, cooperation with NGOs and arrangements to ensure appropriate public access to information on defence and security issues.
- 3) Effective and transparent legislative and judicial oversight of the defence sector.
- 4) Effective and transparent arrangements and procedures to assess security risks and national defence requirements.
- 5) Effective and transparent measures to optimise the management of defence ministries and agencies with responsibility for defence matters and associated force structures, including procedures to promote inter-agency cooperation.
- 6) Effective and transparent arrangements and practices to ensure compliance with internationally accepted norms and practices established in the defence sector, including export controls on defence technology and military equipment.
- 7) Effective and transparent personnel structures and practices in the defence forces.
- 8) Effective and transparent financial, planning and resource allocation procedures in the defence area.
- 9) Effective, transparent and economically viable management of defence spending.
- 10) Effective and transparent arrangements to ensure effective international cooperation and good neighbourly relations in defence and security matters.

Since its inception in 2007, NATO BI has provided practical solutions to operationalising the NATO PAP-DIB through a systems-based approach to defence institution building and transformation to prevent the risk of

corruption. This approach encompasses the BI Self-Assessment and Peer Review Process, which is conducted voluntarily as a diagnostic tool to identify national needs and gaps followed by country-specific tailored support aimed at developing national leadership, strengthening individual and institutional capabilities and improving the processes and procedures for the management of defence resources.⁴²² The NATO BI Self-Assessment Questionnaire and its completion as a primary entry-level instrument for both Allies and partners allows for mapping out national practices and procedures and identifying good practices and needs for further improvement in the following areas: democratic control; national anti-corruption laws and policies; anti-corruption policy in defence and security; personnel – behaviour, policy, training, discipline; planning and budgeting; operations; procurement; engaging with defence companies and other suppliers; and finally nation-specific questions.⁴²³

In parallel, efforts are directed at embedding BI into NATO's partnership mechanisms and frameworks, making BI and good governance a part of the political engagement and dialogue with partners and part of the process of improving partners' interoperability and building their operational capacity. Examples are the integration of BI into the countries' Membership Action Plans (MAPs), Individual Partnership Action Plans (IPAPs), Individual Partnership and Cooperation Programmes (IPCPs), Annual National Programmes (ANPs) and the PfP Planning and Review Process (PARP). BI is also a component of the Defence Capacity Building (DCB) Initiative since its establishment at the Wales Summit in 2014 and is an integral part of the existing NATO DCB Packages for five partner countries: Georgia, Jordan, Iraq, the Republic of Moldova and Tunisia.

Much of the experience of NATO in the area of prevention of corruption and strengthening of good governance, including its methodological framework

⁴²² As of end 2020, 20 countries – both Allies and partners – have completed or are in the process of completing the BI Self-Assessment and Peer Review Process. These are: Afghanistan, Armenia, Bosnia and Herzegovina, Bulgaria, Colombia, Croatia, Georgia, Hungary, Iraq, Jordan, Latvia, the Republic of Moldova, Montenegro, the Republic of North Macedonia, Norway, Poland, Serbia, Tunisia, Ukraine and the United Kingdom. Iraq is the most recent addition to the list, when in December 2020 it committed officially to completing the process. Colombia and the Republic of Moldova are completing the process for a second time. Ukraine completed the process four times, with the last completion finalised in October 2019 for nine institutions of the defence and related security sector.

⁴²³ NATO BI Self-Assessment Questionnaire, 2015 revision, can be accessed at: https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2015_03/20150309_150309-bi-saq-en.pdf.

and practical tools, comes from socialising NATO's approach to BI with partners, on their request, by providing strategic level advice to national defence and related security institutions and generating individual and institutional capabilities to identify and mitigate corruption risks, with a focus on institutions' functional areas such as procurement, financial resources management and human resources management from the perspective of BI and good governance, in line with the fundamental principles of effective and efficient defence institutions expounded in the PAP-DIB.

In its essence, NATO's approach to BI and good governance within the Organisation's efforts at Defence Institution and Capacity Building (DICB) under the Projecting Stability strand of work and as part of partnership policies revolve around two primary objectives. The first is to empower partner countries to undertake and sustain defence reforms to attain greater integrity, transparency and accountability in defence governance to ensure effective and efficient management of defence resources. The second is to enable partner countries to provide for their own security, including by strengthening interoperability so that they can partake in NATO-led operations and missions that benefit shared security interests.⁴²⁴ By generating a learning process within national defence and related security institutions and sustaining political commitment to good governance, NATO strengthens national ownership as a prerequisite for engagement and develops individual and institutional capacities for sustainable reforms through an iterative process of systems-based analysis, policies and procedural amendments and institutionalisation of positive behavioural changes.

3. Building Integrity: Collective Defence

NATO's approach to BI and good governance also contributes to the fulfilment of the Alliance's core task of collective defence. Integrating BI into this core task might seem to represent a major shift. However, from a DOTMLPFI perspective (Doctrine, Organisation, Training, Materiel, Leadership, Personnel, Facilities and Interoperability),⁴²⁵ a BI logic can enhance the effectiveness and reliability of defence capabilities needed to ensure the

⁴²⁴ NATO Encyclopedia 2019.

⁴²⁵ Joint Analysis Handbook 4th Edition February 2016:

https://www.jallc.nato.int/application/files/9416/0261/6056/Joint_Analysis_Handbook_4th_edition.pdf.

security of the Alliance and its member states. Each of these eight elements is vital and irreplaceable to ensure national and collective defence and security. Integrity, transparency and accountability are essential underlying principles for their processes and outcomes. For instance, BI is critical for the areas of leadership, personnel and training. The development of national armed forces with a different kind of qualifications, knowledge and skills are indispensable to meet current and future security challenges and are essential for the accomplishment of both military and non-military tasks, including those in the area of BI and good governance in the context of crisis management. To have a pool of talent, it is necessary to foster the development of the right human capital and to fully integrate it into the process of defence planning, capabilities development and forces preparedness to enhance the operational effectiveness of NATO and the interoperability of its Allies and partners.⁴²⁶

In 2017, for the first time, a chapter with BI-related questions was included in the NATO Defence Planning Capability Survey (DPCS), highlighting the importance of this area of work for maximising the value of money to further build defence capabilities and ensure better-resourced armed forces and resilient institutions.⁴²⁷ An increasing number of Allies address BI topics as part of their national pre-deployment training and have reflected the impact of corruption on operational effectiveness in their national security strategies and defence reviews. Capabilities that support non-military tasks and objectives have become an integral part of NATO's Defence Planning Process (NDPP), such as the deployable governance development capability needed for Stabilization and Reconstruction (S&R) missions to support good governance of the host nation, transparency and anti-corruption. The link between this capability and the BI Policy and the development of BI advisory capacity as part of recognised military capability for military and non-military objectives still needs to be operationalised.

⁴²⁶ Through the Smart Defence project on Female Leaders in Security and Defence, this chapter's author had promoted the need of including diverse perspectives in the process of defence planning, capabilities development and force preparedness; the project's White Paper and Roadmap can be accessed at https://flsd.mod.bg/docs/20140106_FLSD_White_Paper_and_Roadmap.pdf.

⁴²⁷ A BI chapter is included in the 2019 DPCS iteration as well and is planned for inclusion in the iteration for 2021, contingent upon Allies' decision.

4. Building Integrity: Crisis Management

The main transformative drive of the BI Policy stems from the unequivocal reaffirmation of the impact of corruption on security. While the understanding of the primary role of accountable defence institutions and effective and efficient management of defence resources has always been at the core of NATO's business, the impact of corruption as a negative factor to be reckoned with has come to the centre with the endorsement of the BI Policy. This represents a major shift in addressing the nexus between security and corruption, elevating BI and good governance to an area of strategic importance in its own right as a distinct cross-cutting domain of expertise and practical application concerning NATO's efforts at institutional enhancement and within the context of the Alliance's current and future operations and missions. Recognising the link between security and corruption, NATO has consolidated its strategic approach to BI under the crisis management core task as a non-military measure to address the full spectrum of crises, including when training and developing local forces in crisis zones to enable local authorities to maintain security without international assistance.⁴²⁸

As set out in the BI Policy, corruption erodes public trust, affects economic development and perpetuates conflict. In NATO, corruption is considered a security challenge with an impact on political legitimacy, operational effectiveness and the success of operations and missions across the whole spectrum of engagement, namely crisis management, S&R, Security Force Assistance and tailored DICB support to host governments. BI and good governance also contribute to NATO's core task of crisis management. BI contributes to the implementation of a comprehensive approach in crisis prevention and crisis management. The integration of a BI perspective into the planning and execution of NATO-led operations and missions has gained traction over the last few years since the development and endorsement of the BI Policy and its Action Plan, culminating with the approval of the Military Concept for Building Integrity in Operations (BIIO) in February 2021, to ensure the strategic level direction on both the political and military side.

Therefore, BI and good governance in the defence and related security sector have transitioned from being a tangential issue to an issue of importance within the context of NATO-led operations and missions; in other words, they have

⁴²⁸ NATO's Strategic Concept, *op.cit.*

transitioned from a purely partnership programme of cooperation to a wider strategic policy applying to the organisation and beyond. The catalyst for this transition proved to be NATO's experience in leading the International Security Assistance Force (ISAF) from 2001 to 2014, the lessons learned from this period in Afghanistan and the follow-on Resolute Support Mission (RS) in place since 2014. In the period 2003 to 2008, corruption was discussed and analysed by every aid agency and there were a host of governance projects funded by international donors. While some progress could be registered, there was no overall political strategy or coordinated action among external stakeholders operating in Afghanistan at the time. The negative repercussions of corruption in a context of fragility and its impact on the success of the NATO-led mission came to the fore, starting in 2009, through the public pronouncements of several successive ISAF Commanders highlighting the need to address corruption as a mission-critical issue and as an operational imperative.⁴²⁹ However, the statements made by ISAF Commanders in 2009-2014 came in the aftermath of a period when corruption had not been factored into the analysis of the context within which ISAF had been functioning and when the inflow of international donor money into a country with poor governance and no mechanisms for robust oversight had distorted the local economy and had helped entrench mismanagement and corrupt practices, undermining the legitimacy of the Afghan government. Efforts undertaken to address corruption and reverse its negative impact included the COMISAF Counter-insurgency Guidance, the 2010 COMISAF Anti-Corruption Guidance and the Counter-Insurgency (COIN) Contracting Guidance. Counter- and Anti-Corruption (CAC) became a distinct line of operation in the campaign plan with the establishment of the ISAF Combined Joint Inter-Agency Task Force Shafafiyat (Transparency) as the most visible tool on the military side to investigate various aspects of corruption in Afghanistan, including in contracting.⁴³⁰ NATO BI conducted the BI Self-Assessment and Peer Review Process for the Ministry of Defence and the MOI in Afghanistan in 2011 and

⁴²⁹ COMISAF General Stanley MacCrystal (2009-2010), General David Petraeus (2010-2011), General John Allen (2011-2013), General Joseph Dunford (2013-2014) have highlighted the impact of corruption on the legitimacy of the Afghan state and on the mission's success.

⁴³⁰ Building Integrity and Reducing Corruption in Defence, A Compendium of Best Practices, Volume II, NATO and DCAF publication, *Anti-corruption Effort in Conflict Zones: Lessons from Afghanistan*, Daniel Weggeland, https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_12/20161209_1612 - Anti-corruption-Effort-Afg.pdf.

updated its recommendations in 2013. These tailored activities were implemented by NATO BI with the support of Task Force Shafafiyat.

In 2013, the Joint Analysis and Lessons Learned Centre (JALCC) published a report after COMISAF General Joseph Dunford identified corruption as the ‘primary risk that could undermine our mission’ and requested a study into CAC in post-conflict states.⁴³¹ The JALCC report concludes that there are no obvious, easy or quick remedies to corruption in crisis response operations; corruption must be addressed at the earliest opportunity in the planning process, factored into assessments and included in policy, doctrine and directives; military forces do not have the training, skills or resources to counter corruption alone and thus need increased training and education in this area; and that there is a need for a linked and coordinated approach to corruption across all levels of command and within all structures. The JALCC report concludes that *‘[a]n essential element of planning CAC efforts is recognising not only that corruption can impact achievement of mission objectives but also that the military force can contribute, largely unwittingly, to the rise and prevalence of corruption’*.⁴³²

Since 2014, Resolute Support (RS), the NATO-led Train, Advise and Assist (TAA) mission in Afghanistan, has had a Transparency, Accountability and Oversight (TAO) function embedded into its mandate and mission objectives. BI has been incorporated into the RS operational planning at the outset. While the proof-of-practice still needs to be substantiated through a thorough analysis of lessons learned in this period and with the distance of time, initial observations point to the specific nature of BI and capacity building as fragile. Experience in Afghanistan demonstrated that operating in fragile and complex security environments requires an understanding of the impact that corruption can have on operational effectiveness and the mission’s success at the outset of the planning process and as of the earliest stages of the mission’s conduct. Addressing corruption with a host government and local forces in a non-permissive environment against the backdrop of an urgent need to tackle this complex issue within a limited timeframe requires a structured approach and a

⁴³¹ *Counter- and Anti-Corruption: Theory and Practice from NATO Operations*, Joint Analysis and Lessons Learned Centre (JALCC), 27 June 2013, accessed at: http://www.jalcc.nato.int/products/docs/jalcc_report_corruption_releasable.pdf on 29 December 2020.

⁴³² *Ibid.*, 4.

longer-term perspective through integrating subject matter expertise along political and military lines of effort throughout all stages of the international engagement.

Fostering national ownership, sustaining the political commitment on the side of the host government and developing local leadership to undertake BI and good governance reforms places the onus on the mission's advisors and their ability to analyse indigenous policies and capacities, to define national requirements and needs and to design and apply bespoke solutions and strategies.

As concluded in the JALLC report, while the complex topic of corruption must be included in the planning phases for any security or stabilisation mission, no one solution or approach can be prescribed in advance.⁴³³ The lack of an overarching BI strategy tailored to support Afghanistan in addressing corruption and strengthening good governance has revealed several institutional challenges, encapsulating the need for synchronisation of efforts at the political and military levels, an integrated civilian-military approach and expertise and strong civil-military cooperation throughout all stages of planning and conduct of NATO-led operations and missions at the strategic, operational and tactical levels. Based on lessons identified and lessons learned, the principles listed above are being applied with the planning and the conduct of the NATO Mission Iraq (NMI) established in 2018 as a non-combat advisory, training and capacity building mission with a mandate that includes advising relevant national security institutions to build more sustainable, transparent, inclusive and effective institutions and structures.⁴³⁴ BI and prevention of corruption feature as a distinct line of effort and a cross-cutting area with impact on the other functional areas within the institutional system of defence and related security sector. With relation to BI, NMI conducts, in particular, the following list of activities: building the capacity of national security institutions to assess corruption risks and identify systemic vulnerabilities; engaging Iraqi authorities at all levels to develop national ownership of reforms; conducting the NATO BI Self-Assessment and Peer Review Process to identify shortfalls and design solutions tailored to national needs; and embedding the NATO BI Discipline and the BI Reference

⁴³³ Ibid., pp. 4.

⁴³⁴ NATO Mission Iraq on NATO Website at https://www.nato.int/cps/en/natohq/topics_166936.htm.

Curriculum⁴³⁵ into the national military education to enhance the professionalisation of personnel and build a culture of integrity at an institutional and individual level.

5. Building Integrity: Operationalising the Concept

Against the background of NATO's engagements with a focus on Afghanistan, the reality check with regard to operationalising BI and good governance along NATO's military line of activity within the context of crisis management reveals the complex nature of the task, especially when it is not included in the early stages of the planning and conduct of an operation or a mission and is not supported by adequate capabilities. Through the lessons identified and the lessons learned process, NATO BI stakeholders across the organization – both on the civilian and the military side, including the NATO Command Structure (NCS) and NATO Force Structure (NFS) – have advanced the BI agenda in terms of mainstreaming BI into NATO's doctrinal architecture, concept development, capabilities building and operationalisation at the strategic, operational and tactical levels.

As directed by the BI Action Plan, work is underway to update NATO doctrine, where relevant and in accordance with their lifecycles, taking into account the BI Policy and the BI experience gained through the process of mainstreaming BI into NATO's partnership mechanisms and operationalising BI in the context of NATO-led operations and missions. The Allied Joint Doctrine (AJP-01) dated February 2017 takes corruption and poor governance as factors of the strategic context. The Allied Joint Doctrines for Stability Policing (AJP-3.22), for military support to S&R (AJP-3.4.5) and for Counter-Insurgency (AJP-3.4.4) are examples of the documents being revised and updated to take account of BI Policy. Equally, the Allied Joint Doctrine for SFA (AJP-3.16) of May 2016 includes the 'scale, drivers and form of any corruption' as part of the requisite understanding of the local forces.⁴³⁶ The SFA doctrine identifies BI as one of the functional areas that need to be developed as part of sustainable

⁴³⁵ Reference Curriculum, *Good Governance and Building Integrity in the Defence and Related Security Sector*, NATO Building Integrity and Training Discipline, accessible at: https://www.nato.int/cps/en/natohq/topics_149270.htm.

⁴³⁶ Allied Joint Doctrine for Security Force Assistance (AJP – 3.16), May 2016, accessed at: <http://www.esercito.difesa.it/en/organization/The-Chief-of-General-Staff-of-the-Army/Training-Specialization-and-Doctrine-Command/Infantry-School/Documents/Doctrine-SFA/AJP-3-16-A-Allied-Joint-Doctrine-for-Security-Force-Assistance-SFA-Ed-maggio2016.pdf>

security frameworks and organisations that should deliver effective day-to-day operations, management and oversight. BI appears alongside other functional areas such as strategic resource and personnel planning; financial responsibility; legal accountability; and the understanding to analyse and modify the organization's aims, policies and doctrines.

The Military Concept for BI in Operations (BIIO) adopted in February 2021 finalises the architecture of documents needed to make BI conceptually robust and operationally applicable across NATO's political and military lines of effort. Its main purpose is to develop the foundations of BIIO to ensure that military lines of effort address and mitigate the risks of corruption to NATO-led operations and missions in four focus areas: Understand, Plan, Execute and Assess.

The approval by the North Atlantic Council of the BI Education and Training Plan in August 2012 established Building Integrity as a NATO Education and Training Discipline within the Mission Enhancement cluster under the ACT Global Programming in accordance with the NATO Education, Training, Exercise and Evaluation (ETEE) Policy. The BI Discipline and the Education and Training Plan provide a structured and sustainable approach to education and training, addressing both NATO-led operations, current and future and institutional enhancement and capacity building, to develop BI capabilities and embed BI into training and education at a NATO and a national level.⁴³⁷

Therefore, the main requirements that are necessary to operationalise BI have gradually been established and institutionalised. They are:

- Shared understanding on the civilian and military side of the negative impact of corruption and agreement on the strategic objectives and effects that will be attained by factoring corruption into the strategic context analysis, into the planning of operations and missions from the initial strategic level down to the operational and tactical level, into the execution of planned activities and into the assessment phase.
- Shared understanding on the civilian and military side of the importance of BI and good governance and its effect on contributing to

⁴³⁷ NATO BI/Operations Division is the Requirement Authority (RA) for the BI Discipline and the Center for Integrity in Defence Sector (CIDS) at the Ministry of Defence of Norway is its Department Head.

the effective functioning of public institutions, which is needed to ensure the sustainability of operational effects and the implementation of a longer-term BI strategy.

- Civil-military cooperation and institutional procedures to facilitate the formulation of common objectives and strategies.
- Development and improvement of capabilities across DOTMLPFI to ensure BI planning and execution in the context of operations and missions.
- BI implementation in relation to other NATO policies and concepts, such as Gender/Women, Peace and Security, Small Arms and Light Weapons (SALW), Counter-Terrorism, Stability Policing, Security Force Assistance, etc. and in coordination with other international community stakeholders with a comprehensive approach mindset.

6. Conclusions

More than a decade after the inception of the NATO BI Initiative in 2007, BI and good governance in the defence and related security sector is now conceptually robust. This is demonstrated through the established BI role in NATO's partnership mechanisms and frameworks and consequently, within the context of the NATO-led operations, missions and activities. The trend of strengthening the BI discipline has culminated with the new BI Action Plan for the next period of 2021-2025 and the adoption of the Military Concept for BIIO, with which the underpinning framework of publications for BI is completed.

BI and good governance in the defence and related security sector is now being operationalised as a stand-alone strand of work and as a distinct line of effort in NATO's operations, missions and activities, including engagements with partners through advising and guiding defence reforms and transformation and assisting, training and developing local forces in crisis zones, so that local authorities are able, as quickly as possible, to maintain security without international assistance, as outlined in the crisis management core task of the Alliance's Strategic Concept. Therefore, embedding BI and good governance in the defence and related security sector is now primarily a question of practice

and capabilities rather than a question of understanding the importance of BI and good governance.

The link of BI with SFA is clearly articulated in the SFA Doctrine of 2016, both as a factor of the strategic context within which SFA forces would be expected to operate and as a separate defined functional area that needs to be developed as part of sustainable security frameworks and organisations, to which NATO-led engagements, including via SFA, would be expected to contribute. The success of the training and development of local forces and their associated institutions in crisis zones as an integral part of a broader strategy within the framework of defence and related security capacity building depends on the ability of advisors and trainers to foster national commitment and ownership of defence reforms, to assess national requirements and the level of absorption capacity, to engage constructively with partners and to provide targeted support tailored to the needs of the country. The credibility of local forces and their associated institutions, to which SFA would be assigned to provide support and assistance, needs to be assessed and gauged at the very early stages of the planning process and constantly monitored and analysed when conducting activities. The whole gamut of tasks and their proper execution require developing the right knowledge, competences and skills set for practitioners and advisors, introducing monitoring and evaluation at each stage of the process and learning from experience to ensure the sustainability and long-term impact of advisory and training functions. The main components are:

- Awareness and understanding of the impact of corruption, especially with regard to local forces and their associated institutions and their credibility among local populations;
- Assessment of corruption as an outcome and a driver of instability in crisis zones and understanding of the forms and manifestations of corruption in a fragile security environment;
- Awareness and understanding of the impact of corruption on operational effectiveness; and
- Understanding of reform processes and transformation within the defence and related security sector, including the importance of integrity for leadership and for institutional legitimacy.

Strengthening integrity and good governance is a challenging task with no ready-made solutions and with non-linear pathways over a protracted period that would be expected to exceed the span of a mission or an operation and the rotation period of its personnel. It requires political commitment, strong leadership, a long-term perspective and the right mix of tools and good practices to incentivise change and foster sustainable reforms in the defence and related security sector. BI efforts in the context of SFA need to be part of a long-term sustainable BI strategy for the host government developed by NATO's political side within the overall NATO Bi-strategic framework and methodology, planned and executed in a joined civil-military strand of work.

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Biographies

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Security Force Assistance (SFA) is an innovative concept among NATO activities. This publication outlines SFA's potential in the Cross-Cutting Topics (CCTs) at the core of the legal framework in post-conflict areas. CCTs are essential to both the promotion of the Rule of Law, including the respect for Human Rights and International Humanitarian Law, and to foster Integrity, Transparency and Accountability in Good Governance. To ensure the success of NATO missions and operations and effectively promote stability, NATO personnel and the representatives of the host nation must develop a deep understanding of the dynamics related to issues such as the Protection of Civilians (PoC), Conflict-related Sexual and Gender-Based Violence, and Building Integrity.

The collaboration between the NATO SFA COE and world-leading experts from international organisations, which is at the heart of this publication, is essential to the promotion of an interdisciplinary approach to SFA operations and to spark a debate identifying the key elements for capacity building and related tasks in crisis zones within a consistent legal framework.

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President of the Italian Atlantic Committee

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