

Decision Dilemma in UN Peacekeeping Operations

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Introduction

United Nations Mission in South Sudan (UNMISS) has clear and unambiguous Rules of Engagement (ROE) delineating the parameters within which force may be used by military while executing its mandated tasks. Its application may, however differ from situation to situation depending on availability of credible information at that point in time and number of intangibles like perception of the commander in location, his assessment of the situation, risk taking ability, knowledge of previous incidents and his judgment. While ROE attempt to cover most situations theoretically, their appropriate application to a situation depends on the military personnel on the scene. An analysis of past incidents in South Sudan and case studies highlight a key issue – decision dilemma in application of ROE.

While there can be no ambiguity in actions during a hostile act, however, situations involving hostile intent are often tricky as these require accurate assessment, fine judgment and reactions thereof. The following decision dilemmas are discussed in succeeding paragraphs:-

- (a) Judging hostile intent.
- (b) Use of level of force.
- (c) Pre-emptive self defence.
- (d) Identification of target.
- (e) Protection to armed men of known organised forces in UN bases.

The following past incidents have been used as examples:-

- (a) Attack on Temporary Operating Base (TOB) Akobo on 19 Dec 2013.

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- (b) Events leading to forced extraction of Long Duration Patrol (LDP) to Yuai on 20 Dec 2013.
- (c) Malakal incident of 17-18 Feb 2016.
- (d) Juba crisis of 08-12 Jul 2016.

Hostile Intent and Use of Force

Use of Force. ROE authorise use of force including deadly force for protection of civilians against hostile act or hostile intent and the *Rule No 1.7* qualifies it to state, 'to maintain public safety and security within and of UNMISS protection of civilians sites against a hostile act or hostile intent that involves a grave threat to life or of serious bodily injury'.¹

Events Leading to Juba Crisis. There were sporadic incidents of clashes between Dinka dominated Sudan People's Liberation Army (SPLA) and Nuer dominated Sudan People's Liberation Army - in Opposition (SPLA-iO) in Juba in the first week of Jul 2016 that spiraled into a crisis situation. There were also reports of clashes between Internally Displaced People (IDPs) of the Protection of Civilians (PoC) Site and SPLA soldiers, killing of a SPLA-iO officer allegedly by SPLA and clashes at SPLA check post. As a fallout of these incidents, a meeting was called on 08 Jul 16 by the President (a Dinka) at the Presidential Palace at which First Vice President (a Nuer) was also to be present. During this meeting, SPLA and SPLA-iO soldiers deployed near the Presidential Palace exchanged gunfire and soon, the firefight spread to other parts of the capital including in vicinity of PoC Site of UN House (the location of Mission and Force Headquarters).²

During this crisis, when firefight broke out between the two sides in close vicinity of the UN House Compound, Force Reserve Company of Indian Battalion Number 2 (INDBATT-2) was tasked to restore adverse situation on the northern perimeter of the PoC Site 1. On 10 Jul 16, one platoon was tasked to reinforce the northern perimeter and plug the breaches in the perimeter.³

When attempts by armed men (SPLA-iO personnel) to enter PoC sites were made, it was extremely difficult to judge the intent and the type and level of force to be used.

- (a) **Hostile Intent.** Hostile intent in the ROE is defined as 'the threat of imminent and direct use of force, which is



Figure 1 : Events of 10 July 16, Juba Crisis

demonstrated through an action or behaviour which appears to be preparatory to a hostile act.' Only a reasonable belief in the hostile intent is required, before the force could be used. Whether or not hostile intent is being demonstrated must be judged by the on-scene commander, on the basis of one or a combination of the following factors:-⁴

- (i) The capability and preparedness of the threat.
- (ii) The available evidence which indicates an intention to attack.
- (iii) Historical precedent within the Mission's Area of Responsibility.

(b) **Use of Force.** Use of force is guided by principles of minimum force. Minimum force is defined in the ROE as 'the minimum degree of authorised force that is necessary and reasonable in the circumstances to achieve the authorised objective. Minimum force can also be the use of deadly force, whenever appropriate.⁵ The amount of force, therefore, to be used is required to be judged based on the threat perceptions and a correct assessment of the intent.

(c) On 10 Jul 16, when armed men attempted to enter PoC site in Juba, only unarmed force was used based on the judgment/assessment of following factors:-

(i) Ethnicity of armed men and that of the IDPs. These were SPLA- iO soldiers (Nuer ethnicity) attempting to enter the PoC site which also had IDPs of Nuer ethnicity, thereby, indicating that their intent was to seek protection themselves rather than to harm the IDPs.

(ii) The preparedness and body language of these armed men suggested that their intent was to seek protection and safety for themselves. There were no indications of a posture indicating intent to fire.

(iii) Situational awareness regarding sequence of events as they were unfolding, disposition of warring factions and shifting frontline as witnessed personally by the author at that point in time assisted in establishing the identity of these armed men and led to conclude that they were in fact of SPLA-iO (Nuer Ethnicity)

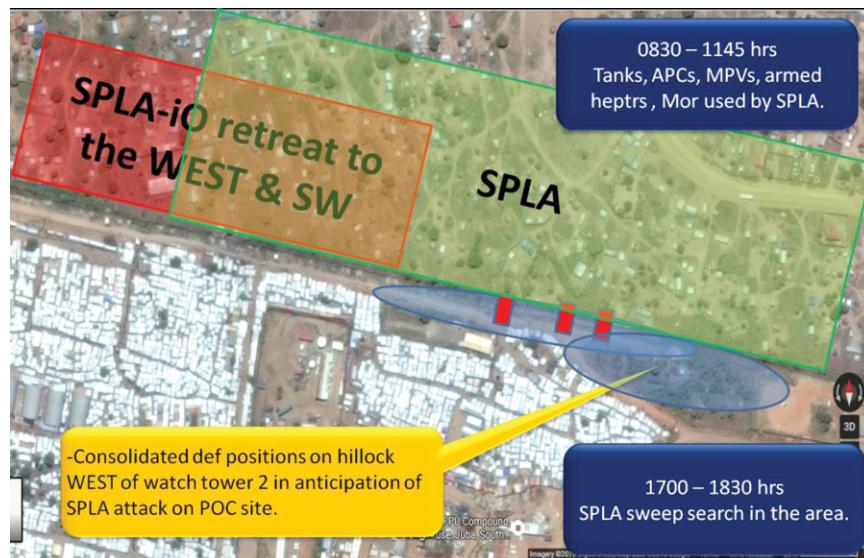


Figure 2 : Events of 11 July 16, Juba Crisis

(d) On the contrary, the next day i.e. on 11 Jul 16, when SPLA (Dinka ethnicity) were successful in beating back SPLA-iO attacks and iO resistance diminished subsequently, the presence of armed men in close vicinity of PoC site was detrimental to safety of IDPs. Therefore, in anticipation of an attack on the IDPs, the *modus operandi* of physically plugging breaches in perimeter and use of unarmed force was changed to consolidating defensive positions and high state of readiness and preparedness to use armed force. The factor of different ethnicity and historical animosity between Nuer and Dinka was noted and sequence of events and situational awareness indicated an imminent threat. Despite this, armed force was not used because the visible signs of body language of SPLA soldiers opposite the perimeter of PoC site did not suggest intent to fire on the IDPs.⁶

Pre-emptive Self Defence

ROE authorises all commanders to take all necessary and appropriate action for self defence.⁷ Self defence is defined as the use of minimum force as is necessary and reasonable to protect oneself, one's unit or other UN personnel against a hostile act or hostile intent.⁸ All UN personnel have the authority to exercise the inherent right to self defence. Further, pre-emptive self defence is defined as 'action taken to pre-empt an imminent hostile act, where one has a reasonable belief,⁹ supported by credible evidence or information, that an attack is about to be made against oneself, one's unit or other UN personnel'.¹⁰ Dilemma exists with respect to reasonable belief that the adversary is about to commit a hostile act. Armed men, not necessarily of organised forces, are often sighted in the vicinity of UN bases. The following instances are highlighted below:-

(a) On 19 Dec 2013 (see **Box 1**),¹¹ when armed men (mostly in civilian clothes) closed in towards the UN Base in Akobo (sited within Akobo town), could the attack have been anticipated, is a question mark. Similarly, on 17 Feb 16, SPLA persons were observed patrolling outside the perimeter of Malakal UN Base, who eventually opened fire in support of a section of IDPs of same ethnicity to up the ante during Malakal incident of 17-18 Feb 2016. On both these occasions, pre-emptive self defence could have been used as authorised

Box 1 : Temporary Operating Base (TOB) Akobo Incident

Strength. One platoon of INDBATT-1 with two Infantry Combat Vehicles (ICVs). It was planned to be reinforced by two sections on 19 Dec 2013.

Sequence of Events.

- **18 Dec.** 36 SPLA (Dinka) soldiers sought protection in TOB due to threat to life from fellow Nuer soldiers in SPLA and Nuer civilians.
- **19 Dec, 1500 Hours.** TOB Commander with two ICVs proceeded for securing helipad for landing of resupply flight. On route in, they were blocked by armed men and civilians. Meanwhile, at 1545 hours, TOB was surrounded by approx. 2000 Nuer. They opened fire and forced entry into the TOB causing two fatal and one non fatal casualty and ransacked the base of arms and ammunition.
- **19 Dec, 1800 Hours.** SPLA reinforcements reached the site and restored situation. Armed groups fled from the site. INDBATT-1 regained control.
- **20 Dec.** TOB extricated.

by ROE supported by credible evidence or information justifying a reasonable belief but only if the commander on ground logically and sensibly concluded that a hostile intent exists. While credible evidence might not have been available on both these occasions, important signs such as change in body language, posture, readiness state, could be better judged, assessed, and corroborated with available information and conclusions drawn by the on-scene commander.

(b) On 11 Jul 16 in Juba (refer **Figure 2**), an attack on PoC site in UN House by SPLA would also have classified as a hostile act on the UN as the platoon was deployed between the SPLA troops and the IDPs. There was a reasonable belief, based on logic and commonsense, that an attack is imminent, thereby, necessitating change of disposition, *modus operandi* and readiness state. The cross fire between SPLA and SPLA-iO did affect UN troops and staff but a visible lack of hostile intent prevented use of force in self defence.

Identification of Target

ROE insists on requirement of positive identification of hostile elements before opening fire.¹² There are instances when a crowd or mob largely of unarmed men, women and children may include a few armed men in civilian clothes. These are not easily identifiable or identified as they are part of large unruly mob and distinguishing them or specifically targeting them can be extremely difficult. Herein lies the dilemma. Use of force may lead to collateral damage to include unintended loss of life/injury to unarmed persons, while no use of force/a lower level of response may put UN personnel or civilians under protection at greater risk. Two incidents are highlighted below:-

- (a) During the Akobo incident of Dec 13 (**Box 1**), as learnt from the After Action Report (AAR) of the incident, force was not used by the platoon because of the presence of women and children in the crowd. The SPLA Battalion in the vicinity of TOB that eventually restored the situation consisted of Nuer soldiers. Opening fire on Nuer crowd of civilians was a cause of possible retaliation from SPLA Battalion, thus putting the UN peacekeepers (only a depleted platoon) in great danger.
- (b) In the Malakal incident, clashes erupted between IDPs of different ethnicity (Nuer, Shilluk and Dinka) in PoC site at Malakal UN Base on 17 Feb 16. Initially spears and machetes were used. As fighting intensified, firing and burning of shelters began. On 18 Feb, at about 0130 hrs, Dinka IDPs breached perimeter and approximately 4000-5000 IDPs moved out. Presence of SPLA (Dinka) soldiers along the Eastern perimeter was observed. At about 1130 hrs, 50-100 soldiers moved in through the breach supported by fire support from outside and opened fire (**Figure 3 refers**). Simultaneously the move of Dinka IDPs through the same breach continued. When Quick Reaction Forces (QRFs) attempted to intervene, decision of opening fire could not be taken as armed men who were in civilian clothes had mingled with the IDPs, making identification difficult. By the time situation was restored (1545 hrs), heavy casualties had been reported.¹³

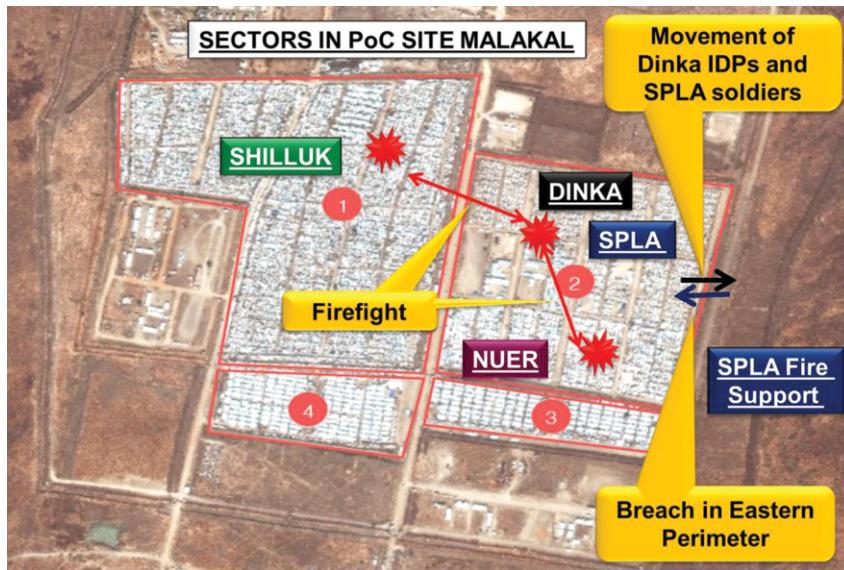


Figure 3 : Malakal Incident of Feb 2016

Decision making in such scenarios is extremely difficult. No set solutions or rules can be formulated for such situations. Application of graduated response to provide adequate warning as well as deterrence to prevent escalation and avoiding/minimising collateral damage is a matter of fine judgment when an adverse situation develops.

Box 2 : LDP YUAI

Strength. One platoon plus a Section of INDBATT-2. It was established on 17 Sep 2013.

Sequence of Events.

- **18 Dec 13, 1515 Hours.** 15 SPLA (Dinka) soldiers sought protection in LDP base due to threat to life from fellow Nuer soldiers in SPLA and Nuer civilians.
- **18 Dec 13, 1820 Hours.** Approx. 1000 armed youth (Nuer) congregated in market area of which about 200-300 moved towards LDP base and demanded handing over of Dinka soldiers. LDP took all precautionary measures to prevent breach.
- **19 Dec 13.** Situation remained tense. Dinka soldiers were not turned over. Extrication of LDP ordered.
- **20 Dec 13.** LDP extricated by helicopters. Dinka soldiers were evacuated first.

Protection to Armed Men of Known Organised Forces in UN Bases

There have been instances when armed men or defectors from government/organised forces have sought protection in UN bases due to threat to life from opposing factions/ethnic groups. In Akobo and Yuai (**Box 2** above)¹⁴ in Dec 13, these persons were searched and disarmed before providing protection within UN base in accordance with ROE on the subject. However, providing shelter/protection to these men, while upholding the mandate of protection of civilians, compromised the neutral/impartial image of the UN, thereby, placing itself at risk and eventually leading to loss of life of two peacekeepers in Akobo.

The important question that arises is, whether these armed men or persons from government/organised forces, now disarmed, or having come to a UN base for protection unarmed, can be classified as civilians against whom UN Security Council has authorised the use of force? If 'no', why and how can they be identified and separated from authorised civilians? If 'yes', are the implications of compromising the neutrality/impartiality of UN peacekeeping operations factored in which could result in an all-out assault/attack by opposing faction on a UN base; and are UN contingents prepared and equipped in terms of strength, weapons and protection to deal with such eventualities? During the Juba crisis, instructions from General Paul Malong, Chief of General Staff, SPLA to their Commanders in Juba, as per leaked letter in open media, were to engage with the UN forces if UN came in the way of defeating SPLA-iO. Eventually, after the crisis, UN was accused by Government of Republic of South Sudan of sheltering SPLA-iO soldiers, thereby, eroding the faith in the UN.

Conclusion

Accurate assessment of the available inputs is necessary to reduce the dilemmas which occur very often for peacekeepers in the field. This is extremely important as a thin line exists between what a peacekeeper is required to do and not do. In case of a wrong judgment, it would be an arduous task to present credible evidence supporting one's judgment and actions in crisis situations. May be, *it is better to be blamed for action than to be blamed for inaction*. Soldiery has borne the brunt of criticism for far too long. One cannot help that, we have to live with it. After all, it is not without

reason when it is said, '*Peacekeeping is not a soldier's job, but only a soldier can do it.*'

Endnotes

¹ Annex A to Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. A-2.

² INDBATT-II After Action Report of Juba Crisis 2016, p. 2.

³ Events as observed by the author.

⁴ Annex B to Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. B-1.

⁵ Ibid.

⁶ Events as observed by the author.

⁷ Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. 3.

⁸ Annex B to Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. B-2.

⁹ Reasonable belief is when the commander or an individual logically and sensibly concludes, based on the conditions and circumstances in which he or she finds him or herself that a hostile intent exists. Annex B to Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. B-2.

¹⁰ Annex B to Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. B-2.

¹¹ INDBATT-I After Action Report of Akobo Incident dated 21 Dec 2013.

¹² Rules of Engagement for United Nations Mission in the Republic of South Sudan, Sep 2014, p. 4.

¹³ UNMISS FHQ After Action Report of Malakal Incident dated 21 Feb 2016.

¹⁴ INDBATT-II After Action Report of Yuai Incident dated 22 Dec 2013.