



Accountability System for the Protection of Civilians

Boards of Inquiry

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SUMMARY

Boards of inquiry (BOI) are defined as “an analytical, as well as an administrative and a managerial tool to assist senior United Nations managers in identifying the causes of serious occurrences, conducting an after-action review of their management.” Among other things, they serve to “identify gaps in procedures and policies, strengthen internal controls and improve financial and managerial accountability, while helping managers draw lessons that will help prevent similar incidents or improve their management as well as minimize their consequences.” They have also “been used as a basis to review claims by United Nations personnel, Member States and third parties against the Organization.”¹ BOIs are convened by the heads of UN missions or the under-secretary-general for operational support.

Although a BOI is “neither an investigative nor a judicial process and does not consider questions of compensation, legal liability or disciplinary action,” it can be used as the basis for administrative action against individuals found to be responsible of an incident.²

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RELEVANCE TO THE PROTECTION OF CIVILIANS

POC was not specifically mentioned in the 2016 standard operating procedures for BOIs. However, they envisaged several cases where BOIs could be mandatory, one of which—“occurrences, including any type of incident or accident, resulting in the death or serious injury of a third party when a mission member(s) is involved”—appeared to be particularly relevant to POC. There were certain circumstances under which a BOI would not be mandatory, including “ongoing hostilities or other serious threats.”³ This would likely exempt the mission and the Secretariat from conducting a BOI in most POC-related cases. As such, it was widely considered that BOIs were not mandatory when missions failed to protect civilians.

In the 2020 standard operating procedures, all this language was removed. Instead, they now require a BOI in two cases relevant to POC: “any occurrence which transpired within the field mission operational area resulting in the death or serious injury of a third party when United Nations personnel member(s) is (are) involved” and “Protection of Civilians–

¹ UN Department of Operational Support (DOS), “Standard Operating Procedures: Boards of Inquiry,” June 2020. In 2016, BOIs were defined as “an analytical and managerial tool used within the United Nations peacekeeping missions and Special Political Missions... to review and record the facts of serious occurrences..., with a view to identifying gaps in procedures and policies, strengthening internal controls and improving financial and managerial accountability.”

² UN DOS, “Standard Operating Procedures: Boards of Inquiry,” June 2020.

³ UN DOS, “Standard Operating Procedures: Boards of Inquiry,” December 2016.

related contravention of the Rules of Engagement or the Directive on the Use of Force.”⁴ The first case could apply in instances involving civilian deaths or serious injuries. The second case ensures that failures to comply with POC-specific directives will be investigated.

Because the 2020 standard operating procedures came into effect quite recently, it remains to be seen if these changes will help hold actors accountable for POC failures and gaps. However, BOIs are a well-established mechanism in missions, with a clear set of criteria and guidelines, and UN personnel are widely familiar with them. Recent practice suggests that BOIs are systematically used to investigate a variety of incidents and are increasingly used to look into the mission's responsibility for major POC incidents.

Examples

UN headquarters set up a BOI to investigate incidents in the UN Mission in South Sudan's (UNMISS) POC camp in Malakal in February 2016, which resulted in the deaths of approximately 30 civilians and the injury of 123. Given that it was a high-profile case, an executive summary of the report was publicly released in a note to correspondents.⁵

BOIs have also been conducted following other POC incidents, including in the Democratic Republic of the Congo (Beni and Kamanyola) and Central African Republic (Alindao). Since most BOIs are confidential, the extent of their use following POC incidents and their impact is difficult to determine.

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RULES, GUIDELINES, AND METHODOLOGY

Governing rules

The 2016 standard operating procedures on BOIs were revised in 2020. With this change, the head of mission (HOM) and the under-secretary-general of the Department of Operational Support (DOS) have the authority to convene a BOI, in coordination with other relevant structures in UN headquarters as needed. While HOMs and the under-secretary-general of DOS can convene a BOI in response to any incident they believe necessitates a review, it is mandatory for the under-secretary-general to convene a BOI in the following circumstances:

1. Any kind of occurrence resulting in the death or serious injury of a mission member, which transpired within the field mission operational area or during the victim's official travel;
2. Any occurrence which transpired within the field mission operational area resulting in the death or serious injury of a third party when a UN personnel member(s) is involved;

⁴ UN DOS, “Standard Operating Procedures: Boards of Inquiry,” June 2020.

⁵ UN Secretary-General, “Note to Correspondents: Board of Inquiry Report on Malakal,” August 5, 2016.

3. Natural death of a field mission member which transpired within the field mission operational area or during the mission member's official travel outside the operational area that had been authorized by the Organization;
4. Occurrences involving UN aircraft irrespective of whether such occurrences resulted in death or injury;
5. The kidnapping or missing-in-action of UN personnel, irrespective of whether it resulted in death or injury;
6. The Protection of Civilians-related contravention of the Rules of Engagement or the Directive on the Use of Force;
7. Loss or damage to UNOE, assets, supplies and stores or other property (except property of personnel) in the amount of \$25,000 USD or more that cannot be ascribed to wear and tear;
8. Loss or damage to third party-owned property in the amount of \$10,000 USD or more when a mission member is involved; and
9. Loss or damage of contingent-owned equipment under certain circumstances.

In addition, HOMs can, at their discretion, or at the request of the under-secretary-general of DOS, "convene a BOI with respect to any occurrence that they consider warrants such review."

Process and functioning

Following an incident, mission personnel are responsible for reporting the occurrence to officials and informing mission leadership. Incidents involving civilian personnel are reported to the chief security adviser or officer, incidents involving military personnel are reported to the military chief of staff, and incidents involving police personnel are typically reported to the chief of staff of UN police.

The fact-finding investigation commences within twenty-four hours of notification of the incident and is expected to be completed within one month. The purpose of the investigation is to collect and record all available evidence and documentation.⁶ The investigation can take different forms and can be conducted by investigative bodies within the mission such as the special investigation unit, the force provost marshal office, or the internal investigations unit of UN police. Investigations conducted by joint protection teams, joint investigation teams, or joint evidence-gathering teams can also be considered to be "fact-finding investigations" within this framework. According to the 2020 standard operating procedures, "Particular attention should be given to ensure that information is collected from individuals who may be required to leave the mission area in the near term due to rotation, reassignment or repatriation. UN personnel, who are due to leave the mission area, may be required to remain in situ until their participation in the investigation has been completed."⁷

⁶ Given the risks related to the high turnover and rotation of staff, UN personnel due to leave the mission area may be required to remain in-theater until their participation in the investigation has been completed.

⁷ UN DOS, "Standard Operating Procedures: Boards of Inquiry," June 2020.

The investigation report is then submitted to the HOM, concerned managers, and the BOI officer. The HOM decides whether a BOI should be established or if an HOM report is sufficient. Factors involved in determining whether a BOI should be established include:

1. The magnitude of the occurrence and its impact on the entity's operations, personnel morale, assets, and public image of the UN;
2. The possibility of systemic issues or policy gaps including in the occurrence; and
3. Individual responsibility or performance shortcomings.

Generally, BOIs are "reserved for more complex and high-profile cases, while the routine occurrences should be covered by HOM reports."

The BOI is convened after the preliminary investigation, within two weeks of the submission of the investigation report to the HOM. The HOM approves the order specifying the BOI's composition and deadline and the terms of reference specifying the facts to be investigated and the scope of the inquiry.

There are several iterations of drafting, with the final report reviewed by the Office of Legal Affairs, HOM, and the under-secretary-general of DOS. The BOI report should be finalized within sixty days after the initial fact-finding investigation report is received.

4 ANALYSIS

While BOIs are only activated following specific incidents, they have come to be used for incidents of any kind and have thus become fairly common. Many personnel are aware of BOIs. Given that BOIs are activated by the HOM or the under-secretary-general, they can carry a lot of weight.

BOIs are prohibited from making recommendations on legal liability, compensation, and disciplinary action against individuals.⁸ Given that they can be activated at the discretion of the HOM or under-secretary-general, their activation can be politicized. BOI findings are rarely public or transparent and are often kept confidential, even within the mission and the Secretariat.

Previously, BOIs used to be a joint DOS/DPO tool. However, the 2020 standard operating procedures make it clear that BOIs are to be activated by the HOM or DOS, with DPO having the lead on special investigations. Some interlocutors have highlighted that this structural change could weaken the visibility and weight of BOIs' findings for accountability purposes.

⁸ Ibid.


Timing

BOIs should be finalized around ninety days after the incident they are established to investigate (one month for the initial fact-finding investigation, two weeks to decide whether the incident necessitates a BOI, and sixty days to finalize the report). However, BOIs are often described as cumbersome because they require finding independent members within the mission or DOS and following a specific set of procedures.

Regular process		
Extraordinary measure after incident	X	BOIs are activated in response to a single incident to establish responsibility and facts.

Actors and answerability structure

BOIs seek to establish the circumstances and causes of incidents in the field to prevent similar incidents in the future. Since they are activated by either the Secretariat or the mission's senior management, BOIs serve as tools for the Secretariat and the mission to evaluate actors on the ground following specific incidents. When a BOI is not mandatory, the decision to establish a BOI could be subject to subjective and potentially political considerations.

 Held accountable by	Individuals	Unit			Mission	Secretariat	Contributing countries	Security Council/ 5 th Committee	Member states	Population	Other
		Military	Police	Civilian							
Individuals					X	X					
Unit/ section/ component	Military				X	X					
	Police				X	X					
	Civilian				X	X					
Mission					X	X					
Secretariat											
Contributing countries					X	X					
Member states											
Security Council/ 5 th Committee											

Scope and objective

BOIs seek to identify the facts behind an incident to address gaps and prevent a similar incident from occurring. Recommendations are geared toward actions missions can take to address the underlying causes of the incident.⁹

Collect best practices and lessons learned	X	Over the course of the investigation, BOIs can identify lessons learned and highlight good practices.
Track performance	X	In determining the cause of an incident, BOIs can identify human or mechanical performance issues, but they are not a performance-monitoring tool, per se.
Establish facts and circumstances	X	BOIs seek to establish the facts and circumstances while identifying the causes of incidents.
Establish responsibility	X	While BOIs may determine responsibility for the incident, they do not determine whether the actions of any individual involved constituted misconduct. Furthermore, board members are told to exercise caution in assigning personal responsibility to individuals.
Identify structural and systemic issues	X	BOIs account for the possibility of systemic issues and identify gaps in procedures and policies.

Type of accountability

As an internal process, BOIs are considered to be an organizational tool that can contribute to performance accountability as they attempt to identify and address gaps that caused an incident and recommend corrective actions.

Outcome

BOIs are an essential accountability tool for the Secretariat and missions and can lead to various outcomes. Reports are usually confidential and remain internal, but in extreme circumstances, key findings can be made public. Recommendations can lead to corrective or remedial measures.

Learn	Disseminate and integrate internally	X	BOI reports are considered confidential, internal documents. Within missions, BOI reports can be provided on a need-to-know basis to entities involved, usually to those that would be implementing or affected by the recommendations. Upon receipt of a BOI report by the under-secretary-general of DOS, appropriate structures within the UN Secretariat also retain access to the BOI report, in its entirety or in part, on a need-to-know basis when there are issues that need to
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⁹ According to the 2020 standard operating procedures, recommendations are supposed to meet SMART standards—specific, measurable, actionable, relevant, and time-bound. Ibid.

			be addressed at UN headquarters. The conduct and discipline team or focal point receives access when alleged misconduct becomes apparent.
	Account for publicly	X	Under rare circumstances, usually in high-profile cases, an executive summary of the key findings and recommendations may be released publicly.
Correct	Improve internal processes	X	Findings can point to shortcomings that call for a revision of internal processes.
	Inform the selection of personnel	X	Depending on the incident under review, troop- and police-contributing countries' contingents may be held accountable via administrative action for their failure to adequately carry out mandated tasks and protect civilians. For example, the BOI established for incidents that occurred at the POC site in South Sudan in February 2016 recommended that "decisive action should be taken to hold the [troop-contributing country] contingents accountable, up to repatriating Commanders and / or Units." ¹⁰
Sanction	Recommend sanctions		While a BOI may serve as the basis for administrative action, board members "shall be particularly careful in apportioning personal responsibility for the occurrence" and are prohibited from making recommendations on compensation, disciplinary action, or legal liability. ¹¹
	Establish incentives		

Independence and impartiality

All members of BOIs serve in their individual capacity and are trusted to remain independent and impartial, and potential conflicts of interest are considered when selecting board members. Board members are mission personnel selected from a roster, but a mission may request that the under-secretary-general of DOS appoint external members.

As described above, BOIs are convened by the HOM or the under-secretary-general of DOS. While there are mandatory circumstances in which a BOI needs to be convened, there is only an obligation to consider POC incidents when there is an apparent

¹⁰ UN Secretary-General, "Note to Correspondents: Board of Inquiry Report on Malakal," August 5, 2016.

¹¹ UN DOS, "Standard Operating Procedures: Boards of Inquiry," June 2020.

contravention of rules of engagement and use of force. As such, it is at the discretion of the HOM or under-secretary-general of DOS to review POC-related occurrences that do not fall into this category.

Recommendations and conclusions formulated by BOIs are endorsed by the HOM and communicated to the under-secretary-general of DOS. The HOM must communicate to relevant components the recommendations that they must implement. Given that the endorsement of recommendations rests with the HOM, this may also lend itself to some bias, as the HOM can decide not to endorse some of the recommendations made by the BOI, and these decisions may be shaped by financial and logistical considerations.

Furthermore, under certain circumstances, the HOM can forgo a BOI and submit an HOM report, which does not require board members. This is determined within the mission and thus can also be subjective.

Inclusivity

The chairperson of the board is equal to or higher than the most senior mission member involved in the incident under review. The board is expected to have an understanding of and expertise in the type of incident under review. For example, if the incident involves civilians, a civilian member acts as the chairperson. At least one member of the board reviewing a case with military or police involvement should be a UN civilian staff member. Uniformed personnel can be appointed to serve on boards reviewing civilian cases. Given that various mission components' expertise is taken into consideration, board membership is inclusive, to a degree.

Transparency

For the most part, BOIs are confidential documents. They are disseminated internally on a need-to-know basis. However, in exceptional circumstances, especially in high-profile cases, an executive summary or short findings of the BOI report have been released to the public.

Follow-up mechanisms

Possible follow-up mechanisms	X	Recommendations are geared toward eliminating the causes of the incident. As such, the implementation of recommendations may lead to enforcement measures or follow-up mechanisms.
Available enforcement measures	X	Recommendations are geared toward eliminating the causes of the incident. As such, the implementation of recommendations may lead to enforcement measures or follow-up mechanisms.
Transmissibility to other mechanisms	X	A BOI report can be used as a basis for subsequent action or further investigations, such as investigations by the Office of Peacekeeping Strategic Partnership (OPSP) or special investigations. Any case of misconduct should be referred to the Office of Internal Oversight Services (OIOS) and the conduct and discipline team for a separate investigation.