



Accountability System for the Protection of Civilians

Special Investigations

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SUMMARY

A special investigation is used to “examine grave incidents in UN peacekeeping operations that result in a significant number of casualties, including due to a potential failure to protect civilians or UN personnel, or which involve alleged significant performance failings, or potentially have significant implications for mandate implementation. A special investigation may often be established for incidents that have generated a significant amount of political and/or media attention.”¹ A special investigation is tasked with reviewing and recording facts related to the incident under investigation and providing recommendations on how to address the operational, policy, and systemic issues affecting mandate implementation.

UN Security Council Resolution 2436, which deals with accountability and performance in peacekeeping operations, mentions the importance of special investigations to accountability and performance.² Furthermore, the 2019 Policy on the Protection of Civilians (POC) in United Nations Peacekeeping notes that

in situations where civilians have been killed or subject to physical violence (including sexual violence) in proximity to a UN base or in a situation where the mission knew or should have known about an imminent threat to civilians and failed to respond within their capabilities, an inquiry or after-action review must be undertaken.... Where necessary, UN [headquarters] will support an investigation or conduct an independent investigation. After any evaluation or investigation, remedial or corrective measures must be taken to avoid reoccurrence and/or improve the POC response of the mission.³

Special Investigations have been conducted in South Sudan (UNMISS), the Democratic Republic of the Congo (MONUSCO), and the Central African Republic (MINUSCA). While special investigations are an important tool for assessing UN missions' responses to

¹ UN DPO, “Guidelines: Special Investigations,” January 2019.

² “Welcomes initiatives of the Secretary-General to conduct Special Investigations into issues related to the performance of troop, police, and civilian personnel, including with regard to protection of civilians, and requests the Secretary General to act with urgency to initiate these Special Investigations into alleged instances of significant performance failures and underlines the importance of improving the methodology of the investigations and transparency of the findings of such investigations, as well as the potential of these Special Investigations to facilitate further engagement and dialogue between the United Nations, troop- and police-contributing countries, and other relevant stakeholders to improve performance and inform decisions regarding mandate design; Requests the Secretary-General to provide detailed reporting on the findings and implementation plans of Special Investigations to the Security Council and relevant Member States, as appropriate, to include recommendations to address all factors contributing to any identified failures, as well as accountability measures, as appropriate, for uniformed and civilian components, including mission leadership and mission support personnel, including, as appropriate, remedial training and repatriation or dismissal of personnel.” UN Security Council Resolution 2436 (September 21, 2018), UN Doc. S/RES/2436.

³ Ibid.

scenarios in which civilians have been attacked and the mission has failed to uphold and implement its POC mandate, their application has varied from case to case.

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RELEVANCE TO THE PROTECTION OF CIVILIANS

The policy that guides special investigations explicitly stipulates that incidents pertaining to the protection of civilians—and failures to protect civilians—may be considered for a special investigation. To date, special investigations are the most high-profile accountability mechanism available in cases of POC incidents.

Examples

Malakal, South Sudan, February 2016: The special investigation in Malakal did not look at the UN's response to the incident at the POC site in Malakal that resulted in the deaths of at least thirty civilians. Rather, it looked into external factors that precipitated the violence. A board of inquiry was tasked with looking into the UN's response. Both mechanisms were announced at the same time by the spokesperson of the secretary-general (see South Sudan case study).⁴

Juba, South Sudan, July 2016: In August 2016, the secretary-general announced a special investigation into the violence in Juba and the response of UNMISS. The investigation was led by General Patrick Cammaert.⁵ A summary of the special investigation and key findings were released to the public in November 2016.⁶ A report detailing progress on the implementation of the recommendations was released six months later.⁷ Several other reports from the secretary-general mention the Cammaert report, especially the implementation of the report's recommendations (see South Sudan case study).

Southeastern Central African Republic, May–August 2017: In November 2017, the under-secretary-general for peacekeeping operations announced a special investigation to look into “attacks against civilians by armed groups that occurred in close proximity to a presence of MINUSCA... as well as the Mission's response to the incidents.”⁸ The special investigation, launched in January 2018, was led by Brigadier-General (Rtd.) Fernand Marcel Amoussou. Later that month, the under-secretary-general released key findings from the special investigation in a note to correspondents.⁹ The special investigation identified various gaps and shortcomings related to the POC strategy, early warning, civilian capacity and leadership in field offices, force posture, joint planning, training and

⁴ UN Secretary-General, “Note to Correspondents on the Special Investigation and UNHQ Board of Inquiry into the Violence in the UNMISS Protection of Civilians Site in February 2016,” June 21, 2016.

⁵ United Nations, “Secretary-General Appoints Major General Cammaert of Netherlands to Lead Investigation into July 2016 Violence in South Sudan, Response of United Nations Mission,” UN Doc. SG/A/1677-AFR/3433-PKO/601, August 23, 2016.

⁶ UN Security Council, *Letter Dated 1 November 2016 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2016/924, November 1, 2016.

⁷ UN Security Council, *Letter Dated 17 April 2017 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2017/328, April 17, 2017.

⁸ UN Secretary-General, “Note to Correspondents on the Central African Republic,” November 13, 2017.

⁹ UN Secretary-General, “Note to Correspondents on the Findings of the Central African Republic Special Investigation,” January 24, 2018.

guidelines, perception and outreach, operational availability, and the vision of leadership. Recommendations were made to UN headquarters, including strengthening tools to address underperformance and engage with T/PCCs. A number of recommendations were also made to MINUSCA about reviewing the POC strategy and strengthening the proactive role of civilian components, among others.

The special investigation's recommendations were analyzed by MINUSCA's Senior Management Group on Protection in February 2018, and an action plan to implement the general's recommendations was subsequently adopted by the mission to respond to these recommendations.¹⁰

The action plan proposed improving early-warning and rapid-reaction mechanisms and revising and adopting a new POC strategy for the mission, which was done in April 2018. The mission also issued standard operating procedures for its joint protection teams. Previous drafts of the standard operating procedures were circulated in 2015 but never became final texts. The standard operating procedures address the steps required for the mission to maintain an effective early-warning system, including information gathering and the issuance of alerts, as a way to prevent and respond to serious, credible threats against civilians, as mandated by Security Council Resolution 2387 (2017).

Kamanyola, Democratic Republic of the Congo, September 2017: After thirty-eight Burundian asylum seekers were killed in a confrontation with Congolese security forces in the proximity of MONUSCO personnel, the under-secretary-general for peacekeeping operations announced a special investigation in January 2018 via a note to correspondents.¹¹ However, the findings, or even an executive summary, of the resulting Obiakor report were never released publicly, nor was there an announcement that the investigation had been concluded.

¹⁰ Following the report, the deputy special representative of the secretary-general for political affairs tasked the mission's POC unit with leading a consultation process between MINUSCA's military, police, and civilian components and UN humanitarian agencies on the best way to implement the mission's protection mandate in the field. Consultations took place during the first half of 2018, and an action plan was drafted during the second half of the year. The Protection Working Group was the main deliberative and consultative body, and results were presented for review to the Senior Management Group on Protection in Bangui. The deputy special representative of the secretary-general validated and approved the exercise and final text.

¹¹ UN Secretary-General, "Note to Correspondents: Special Investigation Following Kamanyola Incident," January 16, 2018.

Governing rules

In 2019, the Secretariat issued official guidelines for special investigations. The UN secretary-general or the under-secretary-general for peace operations decides whether a special investigation should be conducted. The guidelines, however, leave room for using special investigations flexibly on a case-by-case basis.

Process and functioning

Ahead of a decision to conduct a special investigation, the UN Department of Peace Operations (DPO) is supposed to coordinate with relevant peacekeeping operations and other relevant departments or offices to check whether another mechanism, such as a board of inquiry or mission-level fact-finding mission or investigation, has not already been established for the same incident. If another mechanism has been established, a special investigation is meant to take into account its findings. DPO and the mission should coordinate the sequencing of different mechanisms.

The regional division of the peacekeeping operation under review drafts terms of reference for the investigation, outlining its purpose, scope, and outputs, as well as relevant documents that the special investigation team should review. After team members are appointed, the team conducts the special investigation and formulates recommendations.

Special Investigations were only recently codified by guidelines released in January 2020. Since these guidelines were released, no special investigations have been publicly announced.¹² Nonetheless, by defining the scope and objective of special investigations, these guidelines give more leeway to use them as a tool to hold peacekeeping missions accountable for POC incidents.

Although they have a strong mandate to investigate incidents that result in a significant number of casualties due to failures to protect civilians and failures in UN performance, especially with regards to mandate implementation, special investigations are rarely authorized. Their activation rests solely with senior management at the Secretariat, and this high profile makes them susceptible to political considerations. Furthermore, media and public attention on special investigations is very high, which may influence the Secretariat's decision to authorize one or lead to more discretion and confidentiality, especially in cases of performance failures and failures to protect civilians. The level of visibility and transparency of each special investigation is determined by who calls the

¹² UN DPO, "Guidelines: Special Investigations."

Investigation, with the highest visibility for investigations called by the secretary-general, which has only occurred once.¹³

There appears to be a lot of leeway as to when special investigations can be used. The UN can also conduct other types of independent investigations or reviews, similar to special investigations, which are not explicitly called special investigations. For example, the assessment led by General Carlos Alberto Dos Santos Cruz in Beni, the Democratic Republic of the Congo in 2019 was called an “independent assessment,” even though it featured many of the same aspects and objectives as a special investigation. Special assessments are not codified in UN special operating procedures, guidelines, or policies.

Timing		
Regular process		
Extraordinary measure after incident	X	As per the guidelines, special investigations are conducted following a grave incident “in UN peacekeeping operations that result in a significant number of casualties, including due to a potential failure to protect civilians or UN personnel, or which involve alleged significant performance failings, or potentially have significant implications for mandate implementation.” ¹⁴


¹³ Evan Cinq-Mars, “Special Investigations into Peacekeeping Performance in Protecting Civilians: Enhancing Transparency and Accountability,” *IPI Global Observatory*, September 19, 2019.

¹⁴ *Ibid.*

Actors and answerability structure

Given that a special investigation can be called by the secretary-general or the under-secretary-general for peace operations, the mission being investigated is accountable to the Secretariat. Special investigations are used to evaluate and examine grave performance failures, including failures to protect civilians.

The Security Council receives a detailed report on the findings and implementation plans of special investigations, as per Resolution 2436. This means that special investigations may influence the Security Council's drafting of mandates, thereby holding peacekeeping operations accountable to the Security Council for their responses to POC incidents. In addition, they can provide contributing countries an objective assessment of the factors that hampered a mission's reaction, including the shortcomings of civilian components, the mission as a whole, and the Secretariat. To some extent, and especially when led by an independent person and made public, special investigations can be considered to hold missions accountable to the general public and the broader community of member states.

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

Scope and objective

According to the guidelines, “Recommendations by special investigations should explore all avenues that would help the peacekeeping operation, concerned T/PCCs, and offices at [UN headquarters] effectively carry out their respective responsibilities.”¹⁵

Collect best practices and lessons learned	X	Over the course of the investigation, special investigation teams can identify lessons learned and good practices.
Track performance	X	Special investigations assess performance.
Establish facts and circumstances	X	Special investigations seek to review and record the facts or circumstances surrounding a particular incident. They are delegated the task of identifying the specific causes of the incident in question.
Establish responsibility	X	While special investigations can determine responsibility for performance failures, including failures to adequately protect civilians, “special investigations are not a judicial process and do not consider questions of compensation, legal liability or disciplinary action for civilian staff.” ¹⁶ Special investigations also gather information that could serve to engage the concerned troop- and police-contributing countries (T/PCCs) on the need to launch their own investigation to determine responsibility for actions or for the failure of their personnel to carry out their duties in a peacekeeping operation.
Identify structural and systemic issues	X	Recommendations focus on operational, policy, and systemic issues affecting effective mandate implementation.

¹⁵ Ibid.

¹⁶ Ibid.

Type of accountability

Special Investigations contribute to performance accountability, as incidents that arise from performance failures or that have implications for a mission's mandate fall under the scope of special investigations. Furthermore, special investigations can provide a form of organizational accountability, as recommendations are geared toward addressing operational, systemic, and policy issues regarding mandate implementation.

To some extent, a special investigation can contribute to political accountability by publicly highlighting the causes of failure.

Outcome

Learn	Disseminate and integrate internally	X	It is not clear who within the mission and Secretariat receives the findings. However, in order to implement the recommendations, a task force is created, and an office within DPO is tasked with coordinating among peacekeeping missions, T/PCCs, and the Secretariat and tracking their implementation.
	Account for publicly	X	It is rare for the findings of special investigations to be released publicly. In some cases, a summary of the findings, instead of the full report, is publicly released. When the findings have been released, the UN Secretariat has faced more public pressure.
Correct	Improve internal processes	X	Recommendations are geared toward addressing internal processes.
	Inform the selection of personnel	X	Special investigations may form the basis for other accountability measures, as appropriate, including decisions by the Secretariat on the repatriation of uniformed units or personnel.
Sanction	Recommend sanctions	X	Special investigations may form the basis for other accountability measures, including decisions by the Secretariat to repatriate uniformed units or personnel. However, they do not consider questions of compensation, legal liability, or disciplinary action for civilian staff. ¹⁷
	Establish incentives		

¹⁷ The disciplinary process for civilian staff members is governed by the Staff Regulations and Rules and the Administrative Instruction on Unsatisfactory Conduct, Investigations and the Disciplinary Process.

Independence and impartiality

The composition of a special investigation team consists of a team leader, appointed by either the secretary-general or the under-secretary-general for peace operations (depending on who authorized the special investigation), and at most four other individuals, appointed by the under-secretary-general. Depending on the nature of the incident, the special investigation team is expected to include political, military, or police experts. Any perceived conflicts of interest are taken into consideration. For example, representatives of T/PCCs or other member states cannot be members of the investigation team, and team members should not be from the same nationality as the T/PCCs under review. Additionally, no one who has worked directly on the subject matter of the investigation should be appointed to the investigation team.

The team leader is allowed to be a former senior UN military, police, or civilian official or other eminent person with relevant experience. The director of the Office for Peacekeeping Strategic Partnership (OPSP) may also lead the investigation.

Given that only the secretary-general and under-secretary-general for peace operations can establish a special investigation and that there are no clear criteria for what qualifies as a “grave incident,” special investigations are launched in a case-by-case manner and can be subject to internal or external political considerations. Moreover, the secretary-general or under-secretary-general, depending on who called the investigation, is allowed to accept or reject the recommendations made by the special investigation team.

Inclusivity

Special Investigation teams generally comprise experts from diverse backgrounds, including civilian and uniformed experts. Although they are led by an independent senior expert—preferably someone who served in a UN peacekeeping operation—teams also include representatives from the Secretariat.

Transparency

The newly released guidelines on special investigations require that the secretary-general or under-secretary-general for peacekeeping operations be consistent in their level of transparency for special investigations. Special investigations are classified as strictly confidential, and the Secretariat may, but does not have to, release a public executive summary of the findings. The criteria for releasing information on the findings and recommendations of a special investigation are unclear. In the past, there has been inconsistency with regards to transparency and public reporting.¹⁸ For example, an executive summary of the Cammaert report was made public, and a short summary of findings and recommendations of the Amoussou report was made public in a note to

¹⁸ Cinq-Mars, “Special Investigations into Peacekeeping Performance in Protecting Civilians.”

correspondents. For the Obiakor report, no findings or recommendations (or even a note that the report was completed) were made public.

Follow-up mechanisms		
Possible follow-up mechanisms	X	The under-secretary-general for peace operations is supposed to assign an office within DPO responsibility for following up on and tracking the implementation of recommendations through the creation and coordination of a task force.
Available enforcement measures	X	While special investigations are not judicial processes, they can call for remedial actions such as the repatriation of troops or police who failed to uphold a peacekeeping mission's mandate. A task force is established by the DPO office appointed by the under-secretary-general to track and monitor the implementation of the recommendations from a special investigation.
Transmissibility to other mechanisms	X	<p>According to the policy on special investigations, "Special investigations can also gather or confirm information that could serve to engage the concerned TCC/PCC on the need to launch their own national investigation on determining responsibilities for actions or failure of their personnel to carry out their duty in a peacekeeping operation."¹⁹</p> <p>The Secretariat should provide detailed reporting on the findings and implementation plans of special investigations to the Security Council and relevant member states. The under-secretary-general for peace operations should verbally brief the council during a closed informal session following the submission of the report. The briefing should focus on recommendations to address all factors contributing to identified failures and accountability measures taken.</p> <p>If any findings indicate misconduct, the matter shall be referred to the relevant accountability mechanisms, including the Office of Internal Oversight Services (OIOS) or T/PCCs.</p>

¹⁹ UN DPO, "Guidelines: Special Investigations."