

## The UN Mission to the Democratic Republic of Congo

The United Nations Organization Mission in the Congo (MONUC) was established in August 1999 as a small, unarmed observer force to monitor a cease-fire signed between the Democratic Republic of Congo (DRC), one rebel group and five regional States in Lusaka, Zambia.<sup>1</sup> The Lusaka Accord officially brought an end to the Second Congo War, which is sometimes referred to as the ‘African world war’ because it involved nine African nations and some twenty armed groups. It was also one of the world’s deadliest recent conflicts, killing up to six million people, although the vast majority of deaths have been from conflict-related diseases, rather than direct violence.

President Mobutu’s autocratic rule from 1965 faced increasing challenges by the early 1990s as economic decay and political repression mounted. Following the 1994 genocide in Rwanda, some two million Rwandese Hutus — including elements that had taken part in the genocide — fled to the neighbouring Kivu regions of eastern Congo. Hutu Power militias began to launch cross-border attacks from the refugee camps and IDP camps inside Rwanda. The new Rwandan army responded by forcibly closing IDP camps, killing up to 20,000 people in the process.<sup>2</sup>

In mid-1996, the new Rwandan government sponsored a rebellion to overthrow Mobutu, who had close ties with the previous regime. Laurent Désiré Kabila, aided by Rwanda and Uganda, took the capital city of Kinshasa in 1997 and forcibly closed many refugee camps as well. Relations between President Kabila and his foreign backers deteriorated, however, and, in July 1998, nationwide fighting erupted as fresh Rwandan and Ugandan troops entered the country. The creation of a newly-formed group, the Congolese Rally for Democracy (RCD), was announced and Rwandan troops prepared to march on Kinshasa in its support. Angolan, Zimbabwean, and Namibian troops intervened on behalf of President Kabila, while the Hutu Power groups and Mai-Mai ‘self-defence’ militias also

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<sup>1</sup> UN Security Council Resolution 1258 of 6 August 1999.

<sup>2</sup> For further discussion see De Waal, Alex, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, London: James Currey, 1997, pp. 204-13; Samantha Power, *Chasing the Flame, Sergio Vieira de Mello and the fight to save the world*, London: Penguin Books, 2008, p.191-222; and Ian Martin, ‘Hard choices after genocide’ in Jonathan Moore, (ed) *Hard Choices, moral dilemmas in humanitarian intervention*, Maryland and Oxford: Rowman & Littlefield, 1998, pp.157-77. See more generally. Fiona Terry, *Condemned to repeat? The paradox of humanitarian action*, Ithaca: Cornell University, Press, 2002; Sadako Ogato, *The turbulent decade: confronting the refugee crises of the 1990s*, New York: W. W. Norton & Co., 2005. The support which UNHCR and a large number of humanitarian agencies initially gave to the ‘killers in the camps’ and then subsequently rapidly withdrew from remains a deeply controversial episode.

rallied to his support. The Rwandans and the RCD withdrew to eastern DRC, while a new group, the Movement pour la Liberation du Congo (MLC), sponsored by Uganda, took control of the north east. Kabila was assassinated, in January 2001 and succeeded by his son Joseph.

Widespread fighting continued after the signing of the Lusaka Accord and the parties failed fully to implement its provisions. In January 2000 one of the mission's first reports warned that UN forces 'would not have the capacity to protect the civilian population from armed attack'.<sup>3</sup> The following month the Security Council increased the mission's strength and gave it a Protection of Civilians (POC) mandate using language similar to that agreed for UN mission to Sierra Leone the previous October.

The general understanding of the language adopted was that POC was not a main part of the mandate but that it would be needed under certain circumstances.<sup>4</sup> A mission report in early 2001 emphasized that UN forces could guard UN facilities, equipment and supplies but that they will 'not be able to extract other United Nations personnel at risk, or accompany humanitarian convoys, nor will they be able to extend protection to the local population'.<sup>5</sup> A new concept of operations (CONOPS) in October 2001 focused on monitoring and investigating ceasefire violations and encouraging disarmament, demobilization, repatriation, resettlement, and reintegration (DDRRR). Mission reports contained no specific references to POC either as a planning objective or military task and an underlying assumption seems to have been that the best protection of civilians would come from the overall success of the mission.

In May 2002, however, the Rwandan-backed RCD-Goma militia troops in Kisangani massacred over 100 civilians in the process of suppressing a mutiny by some of their local commanders. MONUC had around 1,000 troops in the city, but failed to oppose the massacres forcefully or send patrols to deter abuses during what Human Rights Watch described as a 'wave of killings, rapes and looting'.<sup>6</sup> Attacks on civilians continued through 2002. A mission report in June 2002 insisted that, 'MONUC troops . . . are not equipped,

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<sup>3</sup> *Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2000/30 of 17 January 2000, para. 67

<sup>4</sup> Victoria Holt and Glyn Taylor, *Protecting Civilians in the Context of UN Peacekeeping Operation*, OCHA/DPKO, United Nations, 2009, p.244.

<sup>5</sup> *Sixth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2001/128 of 12 February 2001, para. 77. UN Security Council Resolution 1341 of 22 February 2001 actually reduced the number of troops deployed to guard UN military observers.

<sup>6</sup> Human Rights Watch, *War crimes in Kisangani: the response of Rwandan-backed rebels to the May 2002 mutiny*, HRW, August 2002.

trained or configured to intervene rapidly to assist those in need of protection’,<sup>7</sup> while a special report of September contained no reference to POC.<sup>8</sup> However the following month’s report warned that human rights violations had ‘far surpassed the worst expectations’, that their ‘number and scale . . . is growing rapidly’ and that ‘the situation demands greater protection of civilians under imminent threat of physical violence.’<sup>9</sup>

Rwandan troops officially withdrew from the DRC in October 2002, while Ugandan troops withdrew in May 2003. However, the latter withdrawal created a security vacuum in Bunia, which led to a series of massacres that killed hundreds and drove tens of thousands from their homes.<sup>10</sup> Two UN military observers were also killed in a nearby village and around 2,000 civilians sought refuge at the MONUC base.<sup>11</sup> A subsequent report by the UN Department of Peacekeeping Operations (DPKO) concluded that the troops stationed there did what they could within the extremely limited constraints of their capabilities and mandate.<sup>12</sup> An internal report by MONUC’s first Force Commander stated more bluntly that:

Faced with the band of killers who were sowing death and devastation in town, [the contingent] refused to react by opening fire after proper challenge and in accordance with the mandate to protect the population and in accordance with quite unambiguous rules of engagement. Instead, they persisted in only firing into the air, declaring that they could only act under Chapter VII and engage in combat with prior authority of [their parliament].<sup>13</sup>

The UN authorized the deployment of an Interim Emergency Multinational Force (IEMF), under European Union auspices in response.<sup>14</sup> The IEMF was well-armed and provided with air support, although it was only authorized to operate within Bunia, and massacres continued outside the town. It enforced a ‘weapons-free zone’ in Bunia and responded aggressively to provocations by the militia groups. Thousands of internally

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<sup>7</sup> *Eleventh Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2002/621 of 5 June 2002, para 71.

<sup>8</sup> *Special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2002/1005, 10 September 2002

<sup>9</sup> *Twelfth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2002/1180 of 18 October 2002, para 49

<sup>10</sup> International Crisis Group, *Africa Briefing, Pulling Back from the Brink in the Congo*, Brussels: ICG, 7 July 2004; International Crisis Group, *Africa Briefing, Back to the brink in the Congo*, Brussels: ICG, 17 December 2004.

<sup>11</sup> *Letter Dated 16 July 2004 from the Secretary-General Addressed to the President of the Security Council*. S/2004/573 of 16 July 2004, pp. 25–26. See also Victoria Holt and Glyn Taylor, *Protecting Civilians in the Context of UN Peacekeeping Operation*, OCHA/DPKO, United Nations, 2009, p.250-3. The total death toll was 663 civilians.

<sup>12</sup> *Operation Artemis: The Lessons of the Interim Emergency Multinational Force*. New York: Best Practices Unit, Department of Peacekeeping Operations, October 2004, p.7.

<sup>13</sup> End of Tour Report. 31 December 2003, pp. 8-10, cited in Holt and Taylor, 2009, pp.251-2

<sup>14</sup> UN Security Council Resolution 1484, Adopted of 30 May 2003.

displaced persons (IDPs) were able to return home from June to August 2003. Responsibility for the security of the region was handed back to MONUC in September 2003, which gradually also began to patrol more remote villages.

### **The Ituri and Kivus Brigades**

The UN responded to the perceived success of the IEMF operation by organizing an Ituri Brigade with heavy armaments, and combat helicopters and increasing MONUC's overall troop ceiling.<sup>15</sup> The situation in Ituri became the subject of considerable international legal attention<sup>16</sup> and MONUC also increased its civilian staff carrying out monitoring and reporting violations. Paradoxically, this may have emphasized MONUC's weaknesses, since comparable atrocities were also taking place in areas where MONUC had fewer resources. MONUC's more aggressive stance also provoked a reaction from the rebel groups and between December 2003 and March 2004 there were 20 attacks on its soldiers in Ituri alone.<sup>17</sup> This doubled to 40 attacks between September and December 2004.<sup>18</sup>

A Kivus Brigade was also formed to carry out high visibility patrols.<sup>19</sup> However, security in North and South Kivu deteriorated in late 2003 and early 2004 as clashes grew between RCD-Goma and the Congolese national army around Bukava. Although MONUC forces did succeed in briefly cantoning one rebel group and halting the advance of another, it subsequently put up no resistance when the rebels seized Kavumu airport and Bukava itself in June 2004, again displacing tens of thousands of people.

A special mission report acknowledged that the events 'represented the most serious challenge to date' in its transition strategy.<sup>20</sup> The combined impact of the Bunia and Bukava crises seriously damaged MONUC's reputation and there were violent demonstrations against it in many parts of the country. International aid agencies also condemned the UN's inability

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<sup>15</sup> UN Security Council Resolution 1493, of 28 July 2003.

<sup>16</sup> *International Criminal Court, Press Release*, 'Communications Received by the Office of the Prosecutor, 16 July 2003. 'The Office of the Prosecutor has selected the situation in Ituri, Democratic Republic of Congo, as the most urgent situation to be followed' announcing its first ever investigation. See also *DRC v Uganda*, ICJ Report, 2005, paras 176 and 178-9 and 209-10, which focussed on the situation in Ituri.

<sup>17</sup> *Fifteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/251 of 25 March 2004,

<sup>18</sup> *Sixteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/1034 of 31 December 2004, para 11.

<sup>19</sup> *Fifteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/251 of 25 March 2004. See also International Crisis Group, *Maintaining Momentum in the Congo: The Ituri Problem*, Brussels: ICG, 26 August 2004. Critics argued that civilians remained at risk when patrols withdrew from an area.

<sup>20</sup> *Third Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/650 of 16 August 2004, para 2.

to protect their staff and ensure the delivery of relief supplies. The mission's reputation suffered further due to revelations of sexual exploitation at an IDP camp in Bunia. A mission report again complained about the gap between the expectations created by the mandate and its capacity to fulfil them. The Security Council approved a modest increase in MONUC's size, and a new mandate, which gave greater emphasis to POC tasks listing them as second in priority only to deterring violence that might threaten the political process.<sup>21</sup>

A mission report of December 2004 stated that: 'MONUC, with its increased presence in the Kivus, will proactively support the FARDC [Congolese armed forces] in disarming FDLR [Hutu Power militia] and, in this connection, will use force to protect civilians.'<sup>22</sup> The following mission report noted 'a stronger emphasis has been put on bringing United Nations agencies and MONUC together in the development of common security arrangements and expanding humanitarian space.'<sup>23</sup> Almost 5,500 MONUC combat-capable troops were re-deployed to the Kivus and Ituri between October 2004 and February 2005 and undertook a number of military operations to 'enhance security', including by disarming and arresting militia members. In February 2005 an ambush by a militia group killed nine Bangladeshi soldiers on a routine patrol to protect an IDP camp.<sup>24</sup> MONUC troops responded with an operation that killed 50 - 60 militia members.<sup>25</sup> A subsequent UN Security Council resolution extended MONUC's mandate and stated that:

MONUC is authorized to use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group . . . in accordance with its mandate, MONUC may use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in those areas.<sup>26</sup>

MONUC adopted a new CONOPS in April 2005, which set out the envisaged approach in more detail.<sup>27</sup> A succession of mission reports over the next few years showed

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<sup>21</sup> UN Security Council Resolution 1565 of 1 October 2004.

<sup>22</sup> *Sixteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/1034 of 31 December 2004, para 34.

<sup>23</sup> *Seventeenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2005/167 of 15 March 2005, para 81. It also stated that 'MONUC, under its mandate to protect civilians, will also strengthen its action to reduce acts of aggression against the civilian population'.

<sup>24</sup> *Seventeenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2005/167 of 15 March 2005, para 16.

<sup>25</sup> *Ibid.*, para 19

<sup>26</sup> UN Security Council Resolution 1592 of 30 March 2005.

<sup>27</sup> *Divisional Commander's Initial Campaign Plan for Operations in DRC East*, 4 April 2005 and *Military Concept of Operations for MONUC*, 2005, Annex C

that POC was now being treated as a civil-military objective to be achieved through the neutralization of Congolese militias and ‘foreign armed groups’. These did not, however, indicate that the UN considered itself to have become a party to the conflict. Mission reports stressed, for example, that while ‘some Congolese and Member States continue to call on MONUC to forcibly disarm the foreign armed groups’ this was not MONUC’s responsibility.<sup>28</sup> The CONOPS also stated that: ‘While MONUC can use force to protect civilians, and, in this connection, will do so against the foreign armed groups, the very nature of peacekeeping prohibits peacekeepers from engaging in targeted warfare.’<sup>29</sup>

Following the elections of 2006, which dominated much of MONUC’s work for the period, the mission’s strategic objectives were once again reviewed and a report in March 2007 stated that the focus of the mission should now be the protection of civilians and the extension of the authority of Congolese government throughout the country.<sup>30</sup> MONUC’s strength was again increased, to just over 17,000 troops. The wording of the mandate suggested that POC be a top priority and this was confirmed in December when a subsequent resolution stated this explicitly.<sup>31</sup> The ‘Protection of Civilians’ began to appear as a specific section in mission reports from April 2008 onwards.

Major fighting broke out in North Kivu in August and September 2007 with MONUC troops taking direct action against rebel militia groups. Despite a peace agreement between the government and a number of militia groups in January 2008, the year was marked by fresh crises, which continued into 2009. Between July and November 2008 MONUC supported the Congolese armed forces in a major operation against one militia group, which retaliated by attacking civilians and looting villages. In September MONUC and the Congolese army launched another offensive, this time against the Lord’s Resistance Army (LRA), which had infiltrated from neighbouring Uganda.

In November 2008 clashes between the Mai Mai and the CNDP led to a massacre of more than 150 people in the town of Kiwanja despite the presence of MONUC troops who were within 1 km of where the killings took place.<sup>32</sup> According to Human Rights Watch the MONUC troops were well armed and equipped with 4 BMP-2 armoured vehicles. They sent

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<sup>28</sup> *Sixteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2004/1034 of 31 December 2004, para 34.

<sup>29</sup> *Military Concept of Operations for MONUC*, 2005, Annex C, p. 14. On file with author

<sup>30</sup> *Twenty-third Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2007/156 of 20 March 2007

<sup>31</sup> Security Council resolution 1794 of 21 December 2007, para 5. ‘The protection of civilians must be given priority in decisions about the use of available capacity and resources’.

<sup>32</sup> Human Rights Watch, *Killings in Kiwanja: The UN’s Inability to Protect Civilians*, New York: HRW, December 2008.

a patrol roughly two hours after the CNDP had regained control of Kiwanja and begun summarily executing civilians. Although the patrol found bodies in the streets, ‘No further action was taken by MONUC to stop the killings or to enhance protection for civilians in the town.’<sup>33</sup>

### **Operation Kimia II and Human Rights Due Diligence**

The Security Council renewed MONUC’s mandate in December 2008 and in the same month the Congolese government signed an agreement with Rwanda for a joint operation against the FDLR. The government also signed agreements with the CNDP and other smaller armed groups in the Kivus, who were granted amnesties and integrated into the Congolese armed forces. The CNDP’s then Chief of Staff, Bosco Ntaganda, announced that he had replaced Laurent Nkunda as leader of the group on 5 January. Ntaganda had been indicted by the International Criminal Court (ICC) for alleged crimes committed in Ituri in 2002 and 2003 and this indictment was unsealed in April 2008. However, no effort was made to arrest him and he assumed the rank of General in the Congolese armed forces.<sup>34</sup>

Around 4,000 Rwandan troops crossed into the DRC in January 2009 for a month long combined operation with the newly integrated Congolese armed forces.<sup>35</sup> The FDLR retaliated with massacres of the civilian population that killed 201 people, including 90 in a single village.<sup>36</sup> The LRA also launched a series of attacks between 24 December 2008 and 17 January 2009, in which they killed almost a thousand people and abducted 160 children.<sup>37</sup> In February 2009 it was reported that MONUC’s previous Force Commander had resigned from office because he believed that the plan adopted the previous October to provide protection for civilians was ‘divorced from reality’.<sup>38</sup>

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<sup>33</sup> Ibid.

<sup>34</sup> Human Rights Watch, ‘ICC: Congolese Warlord to go to trial’, New York: HRW, 9 June 2014; Human Rights Watch, *DR Congo: Arrest Bosco Ntaganda for ICC trial*, New York: HRW, 13 April 2012; Human Rights Watch, ‘You will be punished’: Attacks on civilians in Eastern Congo New York: HRW, December 2009

<sup>35</sup> Michael Deibert, *The Democratic Republic of Congo, between hope and despair*, London: Zed Books, 2013, pp.149-51

<sup>36</sup> Institute for War and Peace Reporting, *Hutu Militia Rampages Across North Kivu*, IWPR, AR No. 212. 11 May 2009; Human Rights Watch, *DR Congo: Brutal Rapes by Rebels and Army*, HRW, 8 April 2009

<sup>37</sup> Human Rights Watch, *The Christmas Massacres: LRA Attacks on Civilians in Northern Congo*, New York: HRW, February 2009. This states that the fatalities included at least 815 Congolese civilians and 50 Sudanese civilians

<sup>38</sup> *El País* ‘El informe del militar español que dirigió las tropas de la ONU en Congo.’. 8 February 2009.

In May and July 2009 the Congolese armed forces, with MONUC support, again launched a military operation against the FDLR, known as Kimia II.<sup>39</sup> MONUC assisted the operation through ‘planning’ and ‘logistical support, including tactical helicopter lift, medical evacuation, fuel and rations.’<sup>40</sup> The mission ‘also provided fire support to FARDC [Congolese armed forces] operations when deemed essential by MONUC commanders.’ The mission report of this operation claimed that it had pushed the bulk of the FDLR away from population centers and mining sites and resulting in the repatriation of large groups of FDLR members and their dependents to Rwanda. However, it acknowledged that:

Despite the enhanced and innovative measures taken by MONUC to protect civilians, the operations also took a heavy toll on civilians, who were displaced and subjected to reprisal attacks by retreating armed groups. Furthermore, the actions of undisciplined and recently integrated FARDC elements seeking to settle old ethnic scores resulted in serious violations of international humanitarian law, including killings of civilians.

A Human Rights Watch report estimated that more than 1,400 civilians had been killed in North and South Kivu between January and September 2009.<sup>41</sup> Half the victims were killed by the FDLR and half by the Congolese and Rwandan armed forces and allied militia.<sup>42</sup> It also claimed that 7,500 women had been raped and 900,000 people forced from their homes during the course of the operations.<sup>43</sup> The MONUC mission report acknowledged that: ‘international non-governmental organizations reported alleged or confirmed massacres and gross human rights violations committed by elements of FARDC against civilian populations. . . . some components of the United Nations system called for an immediate end to Kimia II and for the withdrawal of MONUC support for FARDC.’<sup>44</sup>

In October 2009 the UN Special Rapporteur on Extrajudicial Executions described the results of the military operations that MONUC had supported as ‘a disaster’.<sup>45</sup> He said that in many areas the Congolese armed forces ‘posed the greatest direct risk to security’ and

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<sup>39</sup> For an overview see: *Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2009/623, 4 December 2009.

<sup>40</sup> *Ibid.*, para 5

<sup>41</sup> Human Rights Watch, ‘*You will be punished*’: *Attacks on civilians in Eastern Congo* New York: HRW, December 2009

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2009/623, 4 December 2009, para 9

<sup>45</sup> *Press statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions.*

*Mission to the Democratic Republic of the Congo, 5–15 October 2009*, 15 October 2009, OHCHR website, [http://www2.ohchr.org/english/issues/executions/docs/PressStatement\\_SumEx\\_DRC.pdf](http://www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DRC.pdf), accessed 19 November 2013

noted that ‘the Security Council’s mandate has transformed MONUC into a party to the conflict in the Kivus.’<sup>46</sup> In the same month the UN’s Legal Counsel issued an internal memorandum, which stated that if the mission had reason to believe that the Congolese armed forces were committing violations of IHL, international human rights law or refugee law:

MONUC may not lawfully continue to support that operation, but must cease its participation in it completely. ... MONUC may not lawfully provide logistic or “service” support to any FARDC [Congolese armed forces] operation if it has reason to believe that the FARDC units involved are violating any of those bodies of law. . . . This follows directly from the Organization’s obligations under customary international law and from the Charter to uphold, promote and encourage respect for human rights, international humanitarian law and refugee law.<sup>47</sup>

This legal advice was endorsed by the UN Secretary-General’s Policy Committee, in June 2009, which prompted MONUC officials to develop what was to become known as a ‘conditionality policy’.<sup>48</sup> On this basis it announced that it would be suspending military aid to units of the Congolese armed forces implicated in human rights violations a position endorsed by the Security Council in December 2009.<sup>49</sup> The Security Council further called on the Secretary General to ‘establish an appropriate mechanism to regularly assess the implementation of this Policy’.<sup>50</sup> After consultations with humanitarian and human rights in the country a review mission from DPKO in the spring of 2010 subsequently recommended that the ‘conditionality policy’ be extended to other UN missions and that it should bind all UN missions, offices, agencies, funds and programmes in their dealings with non-UN security forces.<sup>51</sup>

In late 2010, the UN Policy Committee decided that the conditionality policy should apply globally and system-wide, and launched an internal inter-agency process led by DPKO and OHCHR, which was to result in the adoption of the Human Rights Due Diligence Policy

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<sup>46</sup> Ibid.

<sup>47</sup> Confidential note, leaked by the New York Times, from the UN Office of Legal Affairs to Mr. Le Roy, Head of the Department of Peacekeeping Operations, 1 April 2009, para.10. Cited in *Eighth report on responsibility of international organizations*, A/CN.4/640, 14 March 2011, para 47

<sup>48</sup> For a more detailed description see Jeremie Labbe and Arthur Boutellis ‘Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces’, *International Review of the Red Cross*, Volume 95 Number 891/892 Autumn/Winter 2013, pp.539-59

<sup>49</sup> *Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2009/623, 4 December 2009, para 2; UN Security Council Resolution 1906 of 23 December 2009.

<sup>50</sup> UN Security Council Resolution 1906 of 23 December 2009, para 23

<sup>51</sup> Jeremie Labbe and Arthur Boutellis ‘Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces’, *International Review of the Red Cross*, Volume 95 Number 891/892 Autumn/Winter 2013, pp.539-59

on UN support to non-UN security forces (HRDDP) in July 2011.<sup>52</sup> This was publicly endorsed by the Security Council in March 2013.<sup>53</sup>

The HRDDP requires UN missions to carry out early risk assessments when considering whether to give support to or undertake joint operations with national forces to ‘take fully into account the need to protect civilians and mitigate risk to civilians, including, in particular, women, children and displaced persons and civilian objects’.<sup>54</sup> Missions are required to regularly monitor the compliance of these forces with IHL and international human rights law and actively intervene to draw attention to violations while ensuring that its own forces lead by example.<sup>55</sup>

It has been noted that the debate about human rights conditionality ‘remains largely theoretical due to the lack of enforcement mechanisms and judicial remedies.’<sup>56</sup> However, the HRDDP shows that, first of all, the UN does consider itself legally bound by the positive and negative provisions of international human rights law and, secondly, that it is possible to create effective monitoring mechanisms to track compliance with them.

### **Protection strategies and the Force Intervention Brigade**

In January 2010 MONUC and UNHCR published a UN system-wide strategy for the protection of civilians.<sup>57</sup> This built on previous strategy documents and lessons learned reports from both the field and DPKO headquarters, which as well as attempting to define ‘protection’ also marked the first attempts by a UN mission as a whole to define what it understood by and how it intended to implement its POC mandate. ‘Protection’ was defined as:

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<sup>52</sup> UN Secretary-General, Decision No. 2011/18, 13 July 2011.

<sup>53</sup> *Human rights due diligence policy on United Nations support to non-United Nations security forces*, UN Doc. A/67/775-S/2013/110, 5 March 2013

<sup>54</sup> See, for example, UN Security Council Resolution 2100, adopted on 25 April 2013, para. 26. MINUSMA take fully into account the need to protect civilians and mitigate risk to civilians, including, in particular, women, children and displaced persons and civilian objects in the performance of its mandate ...where undertaken jointly with the Malian Defence and Security Forces, in strict compliance with the Human Rights Due Diligence Policy.

<sup>55</sup> *Human rights due diligence policy on United Nations support to non-United Nations security forces* UN Doc. A/67/775-S/2013/110, 5 March 2013

<sup>56</sup> Jeremie Labbe and Arthur Boutellis ‘Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces’, *International Review of the Red Cross*, Volume 95 Number 891/892 Autumn/Winter 2013, pp.539-59

<sup>57</sup> UN Organization Mission in the Democratic Republic of Congo (MONUC) & UN High Commissioner for Refugees, ‘UN System-Wide Strategy for the Protection of Civilians in the Democratic Republic of the Congo’, January 2010

all activities aimed at ensuring the safety and physical integrity of civilian populations, particularly children, women, and other vulnerable groups, including IDPs; preventing the perpetration of war crimes and other deliberate acts of violence against civilians; securing humanitarian access; and ensuring full respect for the rights of the individual, in accordance with relevant national and international bodies of law, i.e. human rights law and international humanitarian law.<sup>58</sup>

The strategy stressed, however, that it ‘takes into account the need to reconcile and integrate MONUC's mandate to protect civilians with its mandate to support the operations of FARDC integrated brigades. It recognizes the primary responsibility of the State to protect its own citizens, and incorporates the various humanitarian, security and human rights dimensions of protection in DRC.’<sup>59</sup> It also noted that: ‘MONUC does not have the operational capacity to position troops in every locality . . . and must maintain its ability to intervene decisively through a balance between concentration of forces to keep strategic and tactical reserves, and extensive deployments in priority areas to protect civilians at risk.’<sup>60</sup> The strategy asserted that ‘sustainable protection’ could only be achieved ‘through the restoration of a functional justice system and civilian administration’,<sup>61</sup> but that the mission ‘may need to modulate its support to the FARDC based on the latter’s behaviour and respect of IHL and human rights law’.<sup>62</sup>

The Congolese army and MONUC conducted another joint operation in January 2010, but MONUC claimed to have been more selective in its targets and mission reports stressed that there had been far more focus on holding re-captured territory and developing State institutions in them.<sup>63</sup> The mission also announced a number of initiatives to increase outreach to local communities, gather more information about potential threats and the development of a database to identify ‘must-protect’ areas.<sup>64</sup> Subsequent reports detailed the increased use of Joint Protection Teams (JPTs) Community Liaison Advisers (CLAs), Community Alert Mechanisms (CANs) and the formation of Mobile Operating Bases. The Security Council subsequently encouraged the further use of such ‘innovative measures implemented by MONUSCO in the protection of civilians’. Taken together these measures indicate both a far more proactive interpretation of the mission’s POC mandate, but also a different way of thinking about how to fulfil it, with an emphasis on civil rather than military

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<sup>58</sup> Ibid., para 15

<sup>59</sup> Ibid., para 2

<sup>60</sup> Ibid., para 12

<sup>61</sup> Ibid., para. 13

<sup>62</sup> Ibid., para 21

<sup>63</sup> *Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2010/164, of 30 March 2010, para 2

<sup>64</sup> Ibid., para 70

strategy. Deploying forces with the aim of ‘protecting civilians’ rather than ‘defeating the enemy’ draws on some contemporary counter-insurgency theory,<sup>65</sup> but also on the type of robust community policing strategies used in ‘pacification’ operations such as those conducted in the *favelas* of Rio de Janeiro.<sup>66</sup>

In mid-2010 MONUC was transformed into MONUSCO, with a reference to ‘stabilization’ added to the mission’s title intended to ‘reflect the new phase reached in the country’.<sup>67</sup> Although attacks on civilians and human rights violations continued with regularity, mission reports became more optimistic from 2011. The capture and defections of significant FDLR commanders, coupled with the arrests of key leaders in Europe, reduced its active membership to a small rump. An increasing number of Mai Mai militia and rebel groups also reportedly opted for negotiated surrender and integration into the Congolese armed forces.

In April 2012, however, a new armed rebel group, comprised principally of former CNDP militia and led by Ntaganda, emerged, known as the M23. This claimed that the government had failed to respect the terms of this peace agreement, signed on 23 March 2009 and was failing to take sufficient measures against the FDLR. A UN appointed investigative panel found considerable evidence to show that Rwanda had provided direct support to the rebellion.<sup>68</sup> On 20 November 2012 the rebels briefly seized control of Goma after it was abandoned by government troops. MONUSCO’s peacekeepers did not attempt to prevent the rebels entering the town and some senior officials expressed uncertainty as to whether their Rules of Engagement (RoE) permitted the use of force to prevent the rebel advance if they were not directly threatening civilians at the time. No attempt was made to detain the rebel fighters either because of similar uncertainty about the legal situation.

On 2 December 2012, the M23 withdrew from the city following strong diplomatic pressure on Rwanda from other countries in the region. This was coordinated by the International Conference on the Great Lakes Region (ICGLR), strongly supported by the

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<sup>65</sup> See, for example, David Kilcullen, *The Accidental Guerrilla: fighting small wars in the midst of a big one*, London: Hurst & Co., 2009, which reflects on his experiences designing the ‘surge’ in Iraq in 2007 and subsequent similar operations in Afghanistan.

<sup>66</sup> For a description see Conor Foley, *Pelo telefone: rumours, truths and myths on the pacification of the favelas of Rio de Janeiro*, Rio de Janeiro: Humanitarian Action in Situations Other than War, Pontificia Universidade Católica do Rio de Janeiro, March 2014

<sup>67</sup> UN Security Council Resolution 1925, Adopted on 28 May 2010, para 1. See also MONUSCO website, background <http://www.un.org/en/peacekeeping/missions/monusco/background.shtml>, accessed 19 November 2013

<sup>68</sup> *Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council*, UN Doc S/2012/843, 15 November 2012.

African Union (AU) Peace and Security Council, and the Southern African Development Community (SADC). The ICGLR had previously, largely at Rwanda's behest, called for the AU and UN to work together to establish 'a neutral International Force to eradicate M23, FDLR and all other Negative Forces in the Eastern DRC'.<sup>69</sup> The M23 rebellion gave added impetus to this demand, although the question of which countries troops should comprise its membership was controversial.

In March 2013, after consultations with the AU, SADC and ICGLR the UN Security Council authorized a Force Intervention Brigade to undertake military operations against armed groups in the DRC.<sup>70</sup> In announcing its formation the UN stated that the Security Council had 'approved the creation of its first-ever "offensive" combat force, intended to carry out targeted operations to "neutralize and disarm" the notorious 23 March Movement (M23), as well as other Congolese rebels and foreign armed groups'.<sup>71</sup> In the same month, following a split within the rebel group, Ntaganda surrendered himself to the US Embassy in Rwanda and was taken into custody by the ICC. The M23 rebellion ended in November 2013 following heavy fighting in which the Intervention Brigade provided direct support to the Congolese armed forces, using artillery and attack helicopters, as well as taking defensive action to protect civilians in the area.<sup>72</sup> Around 6,000 rebels surrendered to MONUSCO and government forces.<sup>73</sup>

MONUSCO claims that the defeat of this rebellion had also led to overtures from 'several armed groups in North Kivu . . . seeking to either surrender or negotiate'.<sup>74</sup> Nevertheless, it noted almost 10,000 security related incidents, threatening civilians, within the terms of the mission's mandate, in October and November 2013,<sup>75</sup> including scores of

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<sup>69</sup> Declaration of the Heads of State and Government of the Member States of the International Conference on the Great Lakes Region (ICGLR) on the Security Situation in Eastern Democratic Republic of Congo (DRC)', Extraordinary Summit of the Heads of State and Government, Addis Ababa, Ethiopia, 15 July 2012

<sup>70</sup> UN Security Council Resolution 2098, 28 March 2013, para 12(b).

<sup>71</sup> 'UN News, 'United Nations, "'Intervention Brigade' Authorized as Security Council Grants Mandate Renewal for United Nations Mission in Democratic Republic of Congo', 28 March 2013, <http://www.un.org/press/en/2013/sc10964.doc.htm>, accessed 5 May 2015

<sup>72</sup> *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, S/2013/757, 17 December 2013, paras 17-20 and 37-40.

<sup>73</sup> *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, S/2014/450, 30 June 2014, para 88

<sup>74</sup> *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, S/2013/757, 17 December 2013, para 22

<sup>75</sup> *Ibid.*, para 36. 'In October and November, the United Nations protection cluster recorded 9,515 incidents in North Kivu, South Kivu and Orientale provinces, where six joint protection teams were deployed to assess the situation and identify protection needs. During October and November, MONUSCO received 504 protection alerts, 359 of them in North Kivu, through community alert networks. In response, MONUSCO deployed quick reaction forces and sent investigative patrols or, where appropriate, referred the alerts to national security forces.'

killings, rapes and abductions, some of which were carried out by members of the Congolese armed forces.<sup>76</sup> OHCHR also accused the Congolese armed forces of components of torture, mistreating M23 detainees, killing civilians looting and burning villages and carrying out mass rapes and other sexual violence.<sup>77</sup> Attacks on civilians have continued and the UN continues to face criticism for failing to prevent them.<sup>78</sup>

In March 2014, the Security Council extended MONUSCO's mandate by another year and included the Intervention Brigade within it, 'on an exceptional basis and without creating a precedent or any prejudice'.<sup>79</sup> The word 'imminent' was also removed from its POC mandate.<sup>80</sup> With the M3 rebellion defeated the Intervention Brigade, which is under the same force commander as MONUSCO as a whole, is turning its attention to other armed groups.<sup>81</sup> Some have praised the Intervention Brigade's robust mandate,<sup>82</sup> while others have warned that it sets a dangerous precedent of UN missions becoming an active party to conflicts and so changing from peacekeeping to war-fighting.<sup>83</sup>

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<sup>76</sup> Ibid., paras 47-53

<sup>77</sup> UN Office of the High Commissioner for Human Rights (OHCHR) and MONUSCO, *Report of the United Nations Joint Human Rights Office on Human Rights Violations Perpetrated by Soldiers of the Congolese Armed Forces and Combatants of the M23 in Goma and Sake, North Kivu Province, and in and around Minova, South Kivu Province, from 15 November to 2 December 2012*, May 13, 2013, pp. 9-10,

<sup>78</sup> Human Rights Watch, *DR Congo: Army, UN Failed To Stop Massacre*, New York: HRW, July 3, 2014. This reported that despite being alerted to a massacre in Mutarule on June 6, 2014, while killings were underway, the commander of a nearby MONUSCO contingent stated that he had been told by his national superiors to merely clarify the situation and gather more information rather than directly intervene. See also UN News Centre, 'DR Congo: UN boosts force in east after gruesome massacre of civilians', 16 December 2013. In December 2013 UN troops found the bodies of 21 civilians who had been brutally slaughtered by unknown attackers. The victims were killed with machetes or knives, and the youngest among the dead was only a few months old while three girls are reported to have been raped before being beheaded.

<sup>79</sup> UN Security Council Resolution 2147, of 28 March 2014 and 2211 of 26 March 2015. This gave an authorized troop ceiling of 19,815 military personnel, 760 military observers and staff officers, 391 police personnel and 1,050 formed police units. See also UN Security Council Resolutions 2198 (2015), 2147 (2014), 2136 (2014) and 2211 (2015). The overall troop ceiling level has been maintained although in 2015 the number of deployed troops was reduced by 2,000.

<sup>80</sup> Ibid., para 4 (a) (i): 'Ensure, within its area of operations, effective protection of civilians under threat of physical violence, including through active patrolling, paying particular attention to civilians gathered in displaced and refugee camps, humanitarian personnel and human rights defenders, in the context of violence emerging from any of the parties engaged in the conflict, and mitigate the risk to civilians before, during and after any military operation.'

<sup>81</sup> *UN News*, 'Secretary-General Appoints Lieutenant General Carlos Alberto dos Santos Cruz of Brazil Force Commander for UN Mission in Democratic Republic of Congo', 17 May 2013, <http://www.un.org/press/en/2013/sga1407.doc.htm>, accessed 5 May 2016

<sup>82</sup> *Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations* Report of the Office of Internal Oversight Services, UN Doc A/68/787, 7 March 2014, para 28

<sup>83</sup> Sheeran, Scott, and Case Stephanie, *The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo*, New York: International Peace Institute, November 2014. See also, Jeremie Labbe and Arthur Boutellis, 'Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces', *International Review of the Red Cross*, Volume 95 Number 891/892 Autumn/Winter 2013, pp.539-60.