

UNIVERSITY OF NAIROBI

Peacekeeping and Protection of Civilians in African Conflicts: A Case Study of MONUC in the Democratic Republic of Congo (DRC) from 1999 to the Present

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**A Dissertation Submitted in Partial Fulfillment of the Requirements for Award of Masters of Arts Degree
in International Studies at the Institute for Diplomacy and International studies (IDIS), University of
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DECLARATION

This project is my original and has not been submitted for a degree at any other University.

Sign 

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Date.....*20th May, 2011*.....

This project has been submitted for examination with my approval as University Supervisor.

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Date.....*27th May, 2011*.....

DEDICATION

This work is dedicated to my family; wife Francine and children Carmel, Keza, and Keisha who missed my company for the whole year.

ACKNOWLEDGEMENT

It is not possible to acknowledge by name all those who have contributed in one way or another to the completion of this study. However, I would like to take this opportunity to express my special gratitude to all of them.

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MAP OF THE DRC



TABLE OF CONTENTS

DECLARATION.....	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
MAP OF THE DRC.....	v
TABLE OF CONTENTS.....	vi
ABBREVIATIONS	viii
ABSTRACT	x
CHAPTER ONE.....	1
1. INTRODUCTION.....	1
1.1 Background	1
1.2 Statement of the Research Problem.....	5
1.3 Objectives of the Study	7
1.4 Justification	8
1.5 Limitation	8
1.6 Literature Review	9
1.7 Analytical Framework.....	21
1.8 Hypotheses	26
1.9 Methodology	26
CHAPTER TWO.....	27
2. EVOLUTION OF UN PEACEKEEPING AND CIVILIAN PROTECTION	27
2.1 The Protection Dilemma in the Traditional Context of UN Operations.....	27
2.2 Origins of the Contemporary Protection Agenda.....	30
CHAPTER THREE.....	47

3. THE CASE STUDY	47
3.1 Introduction	47
3.2 Overview of the DRC Conflict.....	48
3.3 The nature of civilian vulnerability in DRC.....	52
3.4 Come MONUC	60
CHAPTER FOUR	69
4. CRITICAL ANALYSIS: DOES MONUC REALLY REFLECT THE EMERGENCE OF A NEW PARADIGM ON CIVILIAN PROTECTION?	69
4.1 Introduction	69
4.2 The DRC Case Confirms the General Trends	70
4.3 What is the Problem?	71
4.3.3 MONUC/MONUSCO and the Multinational Character of peacekeeping	86
4.4 CONCLUSION	89
CHAPTER FIVE	90
5. CONCLUSION AND RECOMMENDATIONS	90
5.1. Conclusion.....	90
5.2 Recommendations	96
BIBLIOGRAPHY	100
ANNEX I	108

ABBREVIATIONS

AU: African Union

CNDP: Congrès National pour la Défense du Peuple (National Congress for the Defense of the People)

DFS: Department of Field Support

DRC: Democratic Republic of Congo

DDRRR: Disarmament, Demobilization, Repatriation, Resettlement, and Reintegration

ECOWAS: Economic Community of West African States

EU: European Union

FC: Force Commander

FDLR: Forces Démocratiques de Libération du Rwanda (Democratic Forces for the Liberation of Rwanda)

FRDC: Forces Armées de République Démocratique du Congo (Congolese Armed Forces)

GBV: Gender-Based Violence

ICISS: International Commission on Intervention and State Sovereignty

IDP: Internally Displaced People

LRA: Lord Resistance Army

JMC: Joint Military Commission

JPT: Joint Protection Teams

MINURCAT: Mission des Nations Unies en République Centrafricaine et au Tchad (United Nations Mission in Central African Republic and Chad)

MONUC: Mission des Nations Unies au Congo (United Nations Mission in the Democratic Republic of the Congo)

MONUSCO: Mission des Nations Unies pour la Stabilisation du Congo (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo)

NGO: Non Governmental Organization

NATO: North Atlantic Treaty Organization

OCHA: Office for the Coordination of Humanitarian Affairs

ROE: Rules of Engagement

RUF: Revolutionary United Front

SOFA: Status of Force Agreements

TCC: Troop Contributing Countries

UPC: Union des Patriotes Congolais (Union of Congolese Patriots)

UN: United Nations

UNAMSIL: United Nations Assistance Mission in Sierra Leone

UNDPKO: United Nations Department of Peacekeeping Operations

UNFPA: United Nations Population Fund Agency

UNEF: United Nations Emergency Force

UNOSOM: United Nations Operation in Somalia

UNSG: United Nations Secretary General

UNSC: United Nations Security Council

UNSCR: United Nations Security Council Resolution

ABSTRACT

The recorded history of mankind is a relentless succession of violent conflicts. The reality of many civilians caught up in armed conflicts and other situations of violence, especially in Africa, is desperate; they need protection. This is particularly true with regard to the DRC which has been in a state of war since 1994 when the Rwandan Genocide spilled across its borders. Consequently, the slaughter that has been taking place there represents what some have referred to as the greatest bloodletting since World War II¹.

The United Nations (UN) has had a long history of attempts to protect civilians but it was not long ago that civilian protection acquired international prominence at the UN Security Council and in other international organizations. One of the most important developments has been the rise to prominence of the 'Responsibility to Protect' principle which has dictated that peacekeepers are increasingly mandated to ensure that civilians are protected in armed conflicts. But in most cases, peacekeepers have not been able to protect them.

This study draws illustrations of the protection challenges from the United Nations Peacekeeping Mission in the Democratic Republic of the Congo (MONUC/MONUSCO), from 1999 to the present. This country has experienced both extensive international engagement and some of the

¹ David Rosen, "The Slaughter in the Congo: Obama's Rwanda?", *CounterPunch Print Edition* April 30 - May 2, 2010

most severe and sustained civilian protection challenges in Africa. The study presents recommendations on how civilians can be better protected in peacekeeping operations.

CHAPTER ONE

1. INTRODUCTION

1.1 Background

The recorded history of mankind is a relentless succession of violent conflicts. Wars and their hardships have plagued humanity since the dawn of time. In modern times, Africa is, to a greater extent than any other continent, afflicted by wars and conflicts; the notorious 1994 genocide in Rwanda, the ongoing conflicts in the Democratic Republic of Congo, Sudan and Cote d'Ivoire and the unending civil war in Somalia represent reference points of the turbulence in the African continent. These countries have had, or still have peacekeeping forces made up of troops from different countries across the world. As Hugo Slim rightly put, for planners of those wars and soldiers on front lines, civilians have often been an afterthought or even a nuisance; they live too close to 'enemy' strongholds and thus complicate efforts to kill that enemy². Due to their vulnerability, they usually suffer the most from wars; they are, in fact, what Hartigan has referred to as "the forgotten victim[s]"³ of wars.

When the United Nations was formed in 1945, its primary purpose was the maintenance of international peace and security, with the Security Council as the organ primarily responsible for this task⁴. The UN charter strongly provided for the protection and promotion of human rights. For example, Article 55 charges the United Nations to promote respect for and observance of universal human rights for all; Article 56 charges each UN member state to help the UN to

² Hugo Slim, *Killing Civilians: Method, Madness, and Morality in War* (New York: Columbia Univ. Press, 2008), p. 319

³ Richard Shelly Hartigan, *The Forgotten Victim: A History of the Civilian* (Chicago, IL: Precedent Publ. 1982) p. 18.

⁴ Charter of the United Nations, Art. 1, para 1

achieve goals set forth in Article 55; and Article 60 vests this power in the United Nations General Assembly.⁵ The UN Charter however, did not provide for any explicit legal basis for what later came to be known as peacekeeping. Peacekeeping was initially developed during the Cold War period as a way to resolve conflicts between states by deploying lightly armed military observers and peacekeeping forces from a number of countries between the armed forces of the former warring parties. The first mission was modelled according to the political and military aspects of the 1956 Suez Crisis and the United Nations Emergency Force (UNEF)⁶. Early peacekeeping missions were deployed with the consent of parties to the conflict in order to monitor and enforce peace agreements.⁷ The mandates were simple, the danger and controversy surrounding the missions were very low and, since peacekeepers were deployed when the ceasefire was in place and the parties to the conflict had given their consent, they were not expected to fight fire with fire. The principles of consent, impartiality and non-use of force except in self-defence were key to peacekeeping. It was because of these same principles, however, that protecting civilians proved to be a significant challenge to peacekeeping as deployed forces had limited or unclear authority to act, even in situations of mass killing and genocide.

Some peace enforcement provisions found in Chapter VII of the UN charter are worth mentioning because of the assumption that enforcement measures would normally imply incorporating aspects of civilian protection in the overall search for peace. Chapter VII deals

⁵ Charter of the United Nations, Art. 55, Art 56, Art 60

⁶ For a description and account of UNEF see *The Blue Helmets*, 2nd edn, United Nations, New York, 1990, Chapter 3

⁷ Jorgensen, T.M.. "You Do Need A Stick to Be Able to Use It Gently", in Buurs, L., Jensen, S. and Stepputat, F. (eds.), *The Security-Development Nexus: Expressions of Sovereignty and Securitisation in Southern Africa* (HSRC Press, Cape Town, 2007) p. 40-41

with actions with respect to threats to peace and generally describes the UN Security Council's power to authorize the use of force in specific circumstances. The enforcement measures under Chapter VII include Articles 39 which empowers the Security Council to determine the existence of any threat to peace and decide what measures to be taken; Article 41 which put emphasis on trying to first consider measures not involving the use of armed force; and Article 42 which allows the Security Council, should it consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, to take stronger military actions to restore peace. During the Cold War, however, the possibility for the use of force was tied clearly to the Super Powers' political and ideological competition. Their strategic interests revolved around preventing the other side from gaining undue influences in important places and this directly impacted on the UN's peace operations. In other words, the UN's cold war-induced paralysis had implications as to whether and how some important aspects of Chapter VII of the UN Charter could be used. But whatever the case, consent, impartiality, and non-use of force except in self-defence remained the defining features of UN peace operations during the Cold War

The end of the Cold War precipitated dramatic shifts in UN peacekeeping. The nature of conflict was changing, and intrastate conflicts, often with multiple internal armed groups, usually meant that one or more of the actors in the conflict did not consent to the involvement of peacekeepers.⁸ With conventional armies often replaced by militia groups, the chains of command became harder to track, the rules of combat were abandoned, the conflicts last longer, and more importantly, the civilians became only the victims of war but also the targets, with mass murder,

⁸ Chester Crocker. "Lessons on Intervention," in *Managing Conflict in the Post-Cold War World: The Role of Intervention*, Report of the Aspen Institute Conference (Aspen, Colorado: Aspen Institute, 1996) pp.77-88.

rape, ethnic cleansing, and other acts of aggression.⁹ The potential for peacekeepers to become targets of violence also dramatically increased and their impartiality was increasingly compromised by calls from concerned actors for them to engage in the protection of civilians, which often demanded that peacekeepers take action that might put them at odds with armed groups involved in the conflict. Peacekeeping, which had begun in the 1950s as an unplanned response to a particular set of problems at a particular time evolved beyond simple cease-fire monitoring to encompass a wide range of activities. As a result, the number of peacekeeping operations rose dramatically; while the UN ran only 13 peacekeeping operations in its first 42 years, it engaged in 48 more in its following 20 years.¹⁰ Civilian protection, however, has for most of the time been an implied goal of peace operations --the primary goals have usually been political in nature and, when civilian protection became an important aspect of peacekeeping operations, it proved to be difficult to achieve in practice.

In fact, the UN Security Council only began to mention the protection of civilians in its peacekeeping mandates from 1999. For more than a decade now, the UN talks of a paradigm shift in the name of the international 'Responsibility to Protect'. As a result, many peacekeeping operations have been authorized "to protect civilians under the imminent threat of physical violence," often qualified by the words, "within capabilities and areas of deployment."¹¹ Regrettably, civilian protection in practice is yet to be a success story in peacekeeping. The UN

⁹ Fetherston A. Betts, "Voices from Warzones: Implications for Training UN Peacekeepers", in Maxon-Browne (ed), *A future for Peacekeeping?* (PALGRAVE Publishers Ltd, Hampshire, 2002), 158-175, p. 163

¹⁰ United Nations, "List of Operations" <http://www.un.org/Depts/dpko/dpko/list.htm> (accessed July 16, 2010).

¹¹ See SC Resolution 1270 on Sierra Leone (1999); SC resolution 1299 on DRC (2000); SC resolution 1509 on Liberia (2003), SC resolution 1528 on Cote d'Ivoire (2004); SC resolution 1542 on Haiti (2004); SC resolution 1545 on Burundi (2004); SC resolution 1590 on Sudan (2005)

Mission in DRC (MONUC), for example, has revealed huge challenges in addressing civilian protection when this requires peacekeepers to engage in more violent situations as it is the case in most African conflicts. Today, MONUC is the UN's largest and most robust operation for which civilian protection is a central purpose and clearly defined in its mandate but it continues to struggle to turn that ambition into reality on ground.

This study identifies the major challenges of peacekeeping efforts to protect civilians in African conflicts using MONUC as a case study and suggests strategies towards effective protection of civilians by UN peacekeeping. The whole study will consist of five chapters. The first chapter gives the background of the study and serves to make the reader familiar with the problem of the study, its objectives and the methodology to be used. Chapter two provides an overview of peacekeeping, its evolution, and how it has performed in terms of civilian protection in various missions across the globe in general and in Africa in particular to draw lessons that informs the study. Thirdly, the study looks at how the UN peacekeeping mission in the DRC (MONUC) has performed and the challenges MONUC's peacekeepers have encountered when trying to ensure civilian protection. Chapter four builds on the case study and critically analyze whether MONUC really reflect the emergence of a new paradigm on civilian protection. The last chapter sums up the main findings in the form of a conclusion, gives recommendations on how civilians can be better protected in peacekeeping operations, and suggests possible future area for research

1.2 Statement of the Research Problem

People affected by conflicts and other situations of violence in Africa need protection. This underpins the Hague and Geneva conventions and various other laws of war, which aim to set limits on the use of military force and prevent excessive harm to non-combatants. However, the

reality of many civilians caught up in armed conflicts in Africa is desperate. As Kofi Annan once said, “the toll of dead and wounded - particularly among innocent civilians - has risen to levels that can be described, without any exaggeration, as appalling”.¹³ Annan’s statement was undoubtedly based upon the statistic that the majority of war casualties are civilians, not combatants. They are often specifically targeted by warring parties rather than merely caught up in the fighting. In most cases, peacekeepers have not been able to protect them.

Much has been written about the reasons why peacekeepers fail to protect civilians. Most researchers and other interested actors tend to attribute this failure to unclear/unrealistic mandates, limited resources, coordination problems, and limited numbers of peacekeepers and their low levels of training. All these are certainly serious challenges to the effectiveness of peacekeeping. But the UN has been addressing those issues without necessarily achieving the protection of civilians in practice. This raises more other questions than those already raised by previous researchers and addressed by the UN especially since peacekeepers are now frequently expected to use force to protect civilians but their willingness to engage in direct confrontation is not that automatic. For example, how forcefully can peacekeepers be willing to engage themselves in an internal conflict of a foreign country trying to protect local people? In other words, if peacekeepers come across militias attacking civilians, would they have a moral duty to protect the civilians under attack especially if the life of those peacekeepers is itself in danger? And when one tries to extend this question further to the very source of those peacekeepers, another question comes up: if the failure of any UN peacekeeping mission is to a large extent going to be attributed to the larger international community, why would troop contributing countries (TCCs) be eager to send their troops into harm’s way to engage with armed groups?

¹³ Muriuki M. A., “Developing a Framework for Protection for the African Child: the Basic Rights”, *Vulnerable Children and Youth Studies*, Volume 3, Issue 1 April 2008, p. 52 - 64

These two questions call for the most important question of the study: what practical measures can the United Nations take to improve the effectiveness of its peacekeeping operations with regard to civilian protection? In other words and in relation to this study, what is it that can be done to ensure that troop contributing countries are more willing to offer peacekeepers that would be ready to risk their lives in operations that need to use force to protect civilians?

This therefore has constituted lack of knowledge about the U.N forces in the protection of civilians in situations of violent conflicts. There is a need to understand why peacekeepers still fail to protect civilians even when their mandate about civilian protection is clear and their resources are increased. This study contributes towards filling that gap and MONUC provides a rich case study of peacekeepers' efforts to protect civilian and highlights the challenges of achieving the protection goal in practice despite the fact that MONUC has been expressly mandated and supported to protect civilians.

1.3 Objectives of the Study

Broad objective:

1. To identify major challenges of the peacekeeping efforts to protect civilians in African conflicts

Specific objectives:

1. To identify the challenges confronting UN peacekeeping attempts to protect civilians using MONUC in DRC in the last decade as a case study
2. To suggest strategies towards effective protection of civilians by UN peacekeeping in African conflicts

1.4 Justification

During any war situation, past or present, civilians bear the burden of violence. Direct targeting of civilians is often a blatant strategy and protection shortfalls are stark. Consequently, peacekeepers are now more often than before expected to use force to protect them. But their willingness to engage in direct confrontation in situations of violent conflict such as in Africa has become a challenge. There is therefore a need to understand why they fail to protect civilians. MONUC provides a rich case study as it illustrates the enormous difficulties of addressing the crucial aspect of civilian protection even when the mission has been expressly mandated and supported to protect civilians. Understanding the underlying issues will help decision makers concerned to make peacekeeping requiring civilian protection more achievable. The study will also contribute to the body knowledge of understanding the whole issue of addressing civilian protection in peacekeeping operations.

1.5 Limitation

The study is limited to the period between 1999 to the present and it is also limited to MONUC (now renamed MONUSCO by UN Security Council Resolution 1925 of July 1, 2010). This is because MONUC was created in 1999 and the situation is still continuing. The study is further limited to the use of secondary sources. The researcher would have liked to visit and interview the victims of violence and the peacekeepers in the country and mission used as case study but this could not be possible due to time and financial constraints.

1.6 Literature Review

What Does Civilian Protection Entail?

According to Paul Williams, there is a lack of clarity about who counts as a civilian and what civilian protection means in practice¹³. In abstract terms, some define civilians broadly as noncombatants¹⁴. But the challenge here is that modern peace operations in Africa have frequently deployed into situations where distinguishing civilians from combatants can be difficult. Moreover, when responding to the specific challenge of mass atrocities, the broad categories of 'victims' and 'perpetrators' are not always useful substitutes because the people who fall into each category can change over time as the balance of forces alters on the ground. With regard to 'protection', the main fault line tends to lie between Humanitarian Organizations, which think of protection in terms of the fulfillment of human rights and legal norms, and military institutions, which tend to see protection in more limited terms related to the physical defense of particular "individuals, communities and installations" or demilitarized safe areas¹⁵. The UN's official guidelines themselves offer little clarification as to the meaning of protection. For example, the Handbook on UN Multidimensional Peacekeeping Operations (2003) and the UN Principles and Guidelines (2008) contain no clear answers¹⁶. The latter did refer, in broad terms, to the need for peacekeepers to protect civilians but it did not go into useful specifics. The issue was so ambiguous that as recently as July 2009, the authors of an important DPKO/OCHA-

¹³ Williams D. Paul, *Enhancing Civilian Protection in Peace Operations: Insights from Africa*, *Africa Center for Strategic Studies, Research Paper No. 1*, National Defense University Press Washington, D.C. September 2010

¹⁴ *Ibid.*

¹⁵ NATO, *Peace Support Operations* (Allied Joint Publication 3.4.1, July 2001), paragraphs 0629c and 0640–1

¹⁶ Handbook on UN Multidimensional Peacekeeping Operations (DPKO Best Practices Unit, December 2003) and UN Peacekeeping Operations: Principles and Guidelines (DPKO, 2008).

commissioned study on civilian protection concluded that “no [Security] Council document offers an operational definition of what protection of civilians means for peacekeeping missions, nor has the Council tasked the Secretariat, which may be the most appropriate organ to develop such guidance, to do so¹⁷.” Consequently, the common complaint across the international peacekeeping landscape was that when it came to civilian protection issues, “at a very practical level, it is not always clear to peacekeepers and what is expected of them¹⁸.”

The International Committee of the Red Cross (ICRC) defines protection of civilians as “representing all activities aimed at obtaining full respect of the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., International Human Rights Law, International Humanitarian Law, and Refugee Law)”.¹⁹ However, given the elasticity of this definition to potentially include all programmes and activities that aim to strengthen basic rights, simple working definitions of civilian protection usually focuses on efforts that improve the safety of civilians exposed to widespread threats of violence, coercion or deliberate deprivation.²⁰ It is believed that this can be done by reducing the threat itself, people’s vulnerability to the threat, or the frequency of their exposure. OCHA, on the other hand, has outlined aspects of civilian protection in an *Aide Mémoire* and understands protection to mean

¹⁷ Victoria Holt and Glyn Taylor, with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: UN Department of Peacekeeping Operation (DPKO)/Office for the Coordination of Humanitarian Affairs (OCHA), November 2009), 57.

¹⁸ UK Government Strategy on the Protection of Civilians in Armed Conflict (London: FCO–DFID–MOD, 2010), 11, available at <www.fco.gov.uk/resources/en/pdf/about-us/our-publications/ukstrategy-protect-civilians-arms-conflict>.

¹⁹ R. Williamson, *Protection of Civilians: Bridging the Protection Gap*, Report on Wilton Park Conference 766, May 2005.

²⁰ See, for example, *Protection into Practice*, Oxfam International Humanitarian Dossier (January 2008), p.23, or OGB Humanitarian Handbook, section 3.9.2., and Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies*, ALNAP, 2005.

the provision of immediate or short-term security and safety to civilians, and considers peacekeepers roles as one (possible) component to achieve civilian protection²¹. Within the conflict scenarios where peacekeepers most commonly find themselves deployed, these threats usually take on one of more of the following forms, according to OCHA: violence, coercion, deliberate deprivation²²

In short, and as Paul Williams noted, it can indeed be said that there is a lack of clarity on the issue of civilian protection. But if the UN is also locked in this clarity confusion, then there are reasons to worry as to how achieving civilian protection will be possible without relative clarity about who counts as a 'civilian', what is meant by 'protection', and how protection can be achieved in practice. It will therefore be important to see whether the failure of peacekeepers to protect civilians in cases such as the DRC has anything to do with this problem.

The Evolution of Peacekeeping

From the perspective of the traditional peacekeeping, civilian protection was for long an implied goal of peace operations. The literature on the evolution of peacekeeping as provided by Fetherston (1994), Wiseman (1987), Durch and Vaccaro (1995) shows that the primary goals of traditional peacekeeping have been political in nature. Traditional peacekeeping, which predominated during the Cold War, only served the super powers' desires to avoid a direct clash

²¹ Security Council documents on civilian protection reveal a range of aims, concepts, strategies and operational parameters across all aspects of peace and security. See, for example, 1999 Secretary General Report to the UN Security Council on the Protection of Civilians.

²² Ibid

of arms in places of tension.²³ It was the 1956 Suez Crisis which led to the deployment of the first UN peacekeeping operation, the United Nations Emergency Force-UNEF-I²⁴ and it was this mission which established the basic standards and principles which came to be the basis for all other peacekeeping missions that followed it.²⁵ The document containing peacekeeping guiding principles (consent, non-use of force except for self-defence, impartiality, voluntary contribution of troops from neutral countries, and day-to-day control of the mission by the Secretary General) prepared by the then UN Secretary General was, according to Urquhart, a “conceptual masterpiece in a completely new field, the blueprint for a non-violent, international military operation”.²⁶ Since peacekeeping was designed on the assumption that it will operate in a non-violent environment, this had implications on civilian protection when the nature of conflicts changed and when peacekeepers had to face the challenge to protect civilians without necessarily the consent of parties to the conflict and when this required some degree of interference in internal state affairs.

But the practice of peacekeeping has been fluctuating, trying to adapt to the tasks and situations it has faced. Bellamy et al. (1987) attempt to contextualise peacekeeping in contemporary environment and evaluate the changing characteristics of the environment in which peacekeepers operate, what role peacekeeping plays in it, the growing impact of non-state actors, and the major challenges facing peacekeepers in the future. They identify two key questions which they try to answer: “what are the chief characteristics of the contemporary political environment in which

²³ Durch and Vaccaro, “The Environment and Tasks of Peace Operations”, in Antonia Handler Chayes and George T. Raach (ed.), *Peace Operations: Developing an American Strategy*, NDU Press, Washington DC, 1995, p. 25

²⁴ A.B. Fetherston, *Towards a Theory of United Nations Peacekeeping*, MACMILLAN PRESS LTD, 1994, p. 12

²⁵ Wiseman Henry, “The United Nations and International Peacekeeping: a Comparative analysis,” in *UNITAR*, p. 264-269, 1987

²⁶ Urquhart B., *A Life in Peace and War*, New York: Harper Row, 1987, p.133

peacekeepers operate, and how have peacekeepers come to understand their role within it?”²⁷ They argue that the difficulties that peacekeepers are experiencing today are mainly a result of the unresolved tension between those who continue to look at peacekeeping role in Westphalian terms and those who see it in more ambitious, post-Westphalian terms. The Westphalian belief in the primacy of sovereign autonomy and non- intervention determines its approach to peacekeeping and limits peacekeeping role in performing some specific and important tasks.²⁸ This approach has implications on the protection of civilians because of its emphasis on the respect of sovereignty. The post-Westphalian approach, on the other hand, suggests that threats to international peace and security may also be caused by violent conflicts within states and need to be countered²⁹. Indeed, today’s reality is shifting the debate in favour of the post-Westphalian interpretation of the role of peacekeeping; the environment in which peacekeepers operate has been changing with some important developments such as the increasing important role played by non- state actors and the emergence of new types of conflicts which Bellamy et al. refer to as ‘new wars’ that reflect the ongoing erosion of the state’s monopoly on legitimate organised violence³⁰. Those non-state actors identified by the authors have transformed the conflict environment and have made the job of peacekeepers more complicated and, in terms of civilian protection, more risky. According to Mats, peacekeepers have increasingly become unable to identify ‘front-lines’ or legitimate political authorities in the areas of operations.³¹ The general trend demonstrates that the physical environment in which peacekeeping is deployed has become

²⁷ Bellamy, A.J., Williams, P. and Griffin, S., *Understanding Peacekeeping*, Polity, Cambridge, 2004, p. 34

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Berdal Mats R., *Whither UN Peacekeeping?* Adelphi Paper 281, IISS/Brasseyes, London 1993

more volatile, more complex, and extremely dangerous and this means that there is a need to adapt peacekeeping to this environment to ensure that peacekeepers are able to confront it for the purpose of civilian protection. But Victoria Holt argues that peacekeepers still struggle to fit in the new conflict environment and have so far failed to protect civilians³².

In short, this part of the literature is important because it is not only informing the study about the evolution of peacekeeping in relation to civilian protection, but it is also showing how the initial design of peacekeeping could only have negative implication to the aspects of civilian protection which might require adjustments in the guiding principles of how peacekeepers used to operate. It is important to find out how the emergence of new concepts on civilian protection has dealt with those key principles or whether they still remain a challenge to the protection agenda

How does the Literature explain the failure to protect?

One of the arguments put forward by some such as Regan (1996) and Berman and Katie (2000) to explain the failure of peacekeeping to protect civilians has been the lack of resources. When trying to establish the conditions for a successful intervention, Regan argues that in violent conflicts such as in Africa, it is less likely that it will be possible to successfully intervene without the commitment of a massive amount of resources. Accordingly, the “lack of sufficient logistical and financial resources is the main reason for the failure of peacekeepers to protect civilians”.³³ For Berman and Katie, the United Nations lacks the resources to address all

³² Victoria Holt, *The Responsibility to Protect: Considering the Operational Capacity for Civilian Protection*, THE HENRY L. STIMSON CENTER *DISCUSSION PAPER*, January 2005, www.stimson.org (Accessed 06/11/2010)

³³ Patrick M. Regan, “Conditions of Successful Third-Party Intervention in Intrastate Conflicts”, *The Journal of Conflict Resolution*, Vol. 40, No. 2 (Jun., 1996), p. 347, (pp. 336-359), Sage Publications, Inc. Stable URL: <http://www.jstor.org/stable/174356>, Accessed: 21/07/2010 16:21

problems that may arise in African conflicts and the same might be said of African organizations which face many of the same challenges as United Nations peacekeeping operations.³⁴ But this view seems to be very simplistic if one considers that the UN Mission in Rwanda (UNMIR) failed to use even the resources it had at its disposal to protect people. According to Romeo Dallaire (2003), the issue in Rwanda was the lack of international community's willingness to engage UN troops in an extremely violent environment.³⁵ Similarly, Heje (2002) argues that peacekeeping is to a large extent dependent on the willingness of contributing countries. So, while resources are important in explaining the performance of any peacekeeping operation, they cannot guarantee peacekeeping protection success, especially when operations require engaging troops in risky situations such as in Rwanda.

But the issue of willingness proposed by Dallaire and Heje is also challenging given the violent nature of contemporary conflicts in Africa. Even Heje recognised that the trend towards the possibility of more death tolls within peacekeepers is causing some troop contributing countries to reassess their contributions and the type of missions in which they send their troops.³⁶ And according to Ekness (1993), there has been even an uneasiness concerning the expansion of peacekeeping among many troop contributing countries because of the nature of today's conflicts.³⁷ Brian Urquhart (1996) actually argues that troop contributing countries' willingness to provide adequate forces is unreliable because these countries are often unwilling to risk harm

³⁴ Eric G. Berman and Katie E. Sams, *Peacekeeping in Africa: Capabilities and Culpabilities*, Geneva, United Nations Institute for Disarmament Research and the Institute for Security Studies, 2000, 572pp.

³⁵ Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House, Canada, 2003

³⁶ Ibid

³⁷ Age Ekness, "Prepared for peacekeeping: the Nordic Countries and Participation in UN Military Operations", in Winrich Kuhne, *Blauhelme in einer turbeleten Welt*, Baden Baden: Nemus, 1993, p. 511

for their troops.³⁸ For example, the UN's difficulties in Sierra Leone revealed sharp differences in troop contributors to the mission as they were wary of becoming too confrontational and balked when the mission's mandate was revised to allow its troops to "deter and where necessary, decisively counter the threat of the RUF by responding robustly to any hostile actions or threat of imminent and direct use of force."³⁹ Although recent peacekeeping operations have evolved a certain degree of experimentation with the use of force to protect civilians, there is still a limit as to how peacekeeping can be engaged in the violence and moved away from its basic ideas of consent, impartiality and use of force. This is probably why some scholars have preferred to emphasize on issues related to the design of UN mandates while explaining the reasons behind most of the peacekeeping failure to protect people.

Holt and Berkman (2006), Urquhart (1996), and Johnstone, Tortolani, and Gowan (2005) are among those who explain peacekeeping failures to protect civilians in terms of how the UN mandates are designed. Holt and Berkman argue that an intervention designed expressly to protect civilians from mass killing would be fundamentally different from other peace operations with mandate to protect civilians from much lesser risks. Such peace operations typically balance their civilian protection tasks with numerous other goals, such as establishing long-term peace and security⁴⁰. Thus, Holt and Berkman distinguish between peacekeeping missions designed to halt mass killing and those which may have components of civilian protection in their mandates. For them, the latter types of peace operations exist today, including the UN operations in Haiti

³⁸ Brian Urquhart, "Current and Future Arrangements for Intervention," in *Managing Conflict in the Post-Cold War World: The Role of Intervention*. Report of the Aspen Institute Conference, August 2-6, 1995, (Aspen, Colorado: Aspen Institute, 1996) pp. 97-104.

³⁹ UN document S/RES/1313, 4 August 2000.

⁴⁰ Holt, V. K. and Berkman, T. C., *The Impossible Mandate: Military Preparedness, The Responsibility to Protect and Modern Peace Operations*, Washington DC: The Henry L. Stimson Center, 2006

and the peacekeeping operation in Darfur. But the former must cross the sovereignty aspect where the principles of consent, impartiality, and limited use of force must take a back seat and be replaced by the immediate goal of saving lives.⁴¹ Holt and Berkman suggest that such missions are not likely to be led by the United Nations. Holt and Berkman recognise that the presence of UN mandated forces in conflict zones has led to calls for their safeguarding of civilian lives, but they argue that such calls often compete with political imperatives. For them, UN peace operations have always straddled a troublesome and sometimes unstable divide between their protection goals and their political-oriented goals.⁴² Urquhart also sees the current U.N. peacekeeping problems in terms of unclear and/or unrealistic mandates. He relates the peacekeeping problems with the confusion over the goals and responsibility of the UN forces and the confusion between enforcement and peacekeeping tasks.⁴³ For him, since today's conflicts do not respond well to traditional peacekeeping operations, the U.N. must develop new techniques for it to be able to successfully operate in violent circumstances and, so far, UN's attempts to adjust and deal with new developments have proven unsuccessful and sometimes disastrous.⁴⁴ For sure, unclear or unrealistic mandates contribute to the unsuccessful nature of the outcome of peacekeeping operations especially when peacekeepers have to engage in protection tasks in violent environments. But as mentioned earlier, MONUC today is the UN's largest and most robust peace operation for which civilian protection is clearly defined in its mandate but it still faces huge challenges in achieving this in practice. So, however clear the mandate may be in

⁴¹ Ibid

⁴² Ibid

⁴³ Brian Urquhart. Op. Cit.

⁴⁴ Ibid

terms of civilian protection, MONUC shows that clearer mandates and more equipped forces do not necessarily result in better protection of civilians.

Some have actually used the mid 2002 killing of people by a rebel group in Kisangani-DRC as an example to explain how MONUC is unable to protect civilians despite the fact that the force is clearly mandated to do so. According to Bernath and Edgerton (2003), there were about 1,200 MONUC military personnel in Kisangani (approximately 650 Moroccans and 550 Uruguayans), but there was no response from MONUC to the attack, nor did they offer protection to civilians who even came to them.⁴⁵ From a MONUC's point of view, they argue, neither the Moroccans nor the Uruguayans were infantry units and therefore, their leaders did not "deem it within their capability" to protect civilians, even though the civilians were certainly under "imminent threat of physical violence."⁴⁶ But for Congolese in Kisangani, "they were being killed and were getting no help from 1,200 UN soldiers"⁴⁷. Bernath and Edgerton argue that while UN officials think that "there are some small problems with MONUC but, basically, everything is going according to plan, NGOs' say that there is a lot of frustration about how little MONUC is doing and how hard it is to do more and Congolese are wondering why armed soldiers either sit around in their bases or drive their UN vehicles and don't lift a finger to protect people".⁴⁸ But Bernath and Edgerton do not provide any explanation as to why they think the Moroccan and the Uruguayan units were indeed not the required units to deal with the prevailing problem and whether they were actually to be able to intervene and protect civilians if they were to be from

⁴⁵ Bernath C. and Edgerton A., "MONUC: Flawed Mandate Limits Success", Refugees International Report on the United Nations Organization Mission in the Democratic Republic of the Congo, May 2003

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

infantry as they claimed. The Pakistanis and Indians for example were infantry units when the militias killed hundreds of innocent civilians in Bukavu and they still failed to protect them.⁴⁹

Holt and Berkman also offer a basic account of MONUC since it started in 1999. They analyze how peacekeepers in DRC have been trying to protect civilians and evaluate their relative performance in doing so. At the onset, they recognize that the DRC is an extreme environment for peacekeeping when it comes to trying to engage in protection; they see the DRC as being in the 'too hard' category for civilian protection.⁵⁰ For them, MONUC demonstrates issues that arise when peacekeepers engage in coercive protection such as compelling armed groups to stop threatening the population and when even government troops themselves become threat to civilians. They argue that even as MONUC evolved into a Chapter VII operation with more troops and improved military materiel, its forces lack a common understanding of the mandate and rules of engagement and in many cases, troops arrive unaware of the difficult in the country environment, uninformed of their mandate to protect civilians, and unprepared for the tasks and risks ahead.⁵¹ Like Bernath and Edgerton, what Holt and Berkman do not try to explain is precisely the reason why troop contributing countries would send their peacekeepers unaware of the challenge ahead.

For Agada, the main problem is actually not whether peacekeepers know the challenges ahead, it the non-provision of adequate manpower by troop contributing countries. For him, the inability of UN to deploy adequate troop strength often gives room to militia groups to cheat on the

⁴⁹ Holt, V. K. and Berkman, Op. Cit., p. 156

⁵⁰ Ibid

⁵¹ Ibid, p. 157-158

mission and frustrate her efforts.⁵² But MONUC again challenges both Holt and Berkman and Agada given its strength and how its mandate is clear about its role to protect civilians. In sum, scholars tend to attribute the UN peacekeeping failure to protect civilians to unclear and unrealistic mandates, limited resources, insufficient numbers of peacekeepers, and their low levels of training. This has led the decisions-makers to concentrate on those issues while attempting to address civilian protection problems. As a result, the UN Security Council has increasingly added language calling for “protection of civilians” to its mandates for UN-led peace operations with some missions having explicit “civilian protection” mandates and increased logistical, financial, and human resources, such as MONUC in DRC. But MONUC still demonstrates huge difficulties in ensuring civilian protection. This raises the question as to what should be done to ensure that civilians in need of protection are protected.

In short, it is clear from this part that there is a tendency to attribute peacekeeping failure to protect civilians to issues such as unclear/unrealistic mandates, lack of resources, limited numbers of peacekeepers and their low levels of training. But for the last decade, the UN has been giving clearer and supported mandates, such as it did with MONUC in the DRC, without being able to protect people. This therefore means that there is lack of knowledge about U.N forces’ failure to protect civilians in situations of violence. There is a need to understand the reasons for this failure and this study is indeed meant to contribute towards filling that gap. The use of MONUC is important because it provides a rich case study of both efforts to protect civilian and challenges to achieve the protection goal.

⁵² Agada S., *The Challenges of United Peacekeeping in Africa*, A Thesis submitted to the United Nations Institute for Training and Research, 2008.

1.7 Analytical Framework

There has been a recent development in the area of civilian protection known as the international ‘**Responsibility to Protect**’ which has dictated that peacekeepers are increasingly mandated to ensure protection of civilians in armed conflicts especially in Africa. Edward Luck traces the conceptual evolution of the ‘International Responsibility to Protect’ in mid 1990s. According to him, the failure of the international community to respond in a timely and effective manner to the horrific violence of the 1990s – some under the watch of UN peacekeepers — raised disturbing questions about the credibility of the UN itself.⁵³ Since then, many actors concerned began to elaborate on the idea that there is a particular international duty to intervene in order to prevent, protect against, and rebuild communities in the wake of genocide, war crimes, ethnic cleansing or crimes against humanity. First was the Brahimi Report (2000). This report was compiled under a ten-member panel – and became known after the panel’s chair, Lakhdar Brahimi.⁵⁴ Because of the emphasis it put on the need for upgrading the aspect of civilian protection in UN peace operations, the Brahimi report had implications for its attitude to the use of force. It argued that the challenges presented in complex peace operations did not permit any easy distinctions between peacekeeping and enforcement. From its emphasis on the inherent fragility of peace operations, the Report argued that UN operations must be “able to pose a credible deterrent threat, in contrast to the symbolic and non-threatening presence that characterizes traditional peacekeeping.”⁵⁵

⁵³ Edward C. Luck, “The United Nations and the Responsibility to Protect”, *The Stanley Foundation*, August 2008

⁵⁴ The panelists are listed at http://www.un.org/peace/reports/peace_operations/docs/panel_members.htm)

⁵⁵ Brahimi Report, para. 51

In 2001, the International Commission on Intervention and State Sovereignty (ICISS) formally elaborated the concept which they named the 'Responsibility to Protect'.⁵⁶ The ICISS sought to lay out alternatives to the deeply criticized "humanitarian interventions" of the 1990s. More specifically, the mandate of the drafters of the ICISS report was "to try to develop a global political consensus on how to move from polemics – and often paralysis – towards action within the international system, particularly through the United Nations." In its report, the ICISS stated that "where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international 'Responsibility to Protect'..."⁵⁷ More importantly, the 'Responsibility to Protect' is not only the question of whether the international community should intervene militarily for human protection purposes; it is actually a broader responsibility to prevent, react, and rebuild.

The concept of the 'Responsibility to Protect' is now a central part of the wider effort to keep civilians safe. All the 192 UN member states endorsed it in the 2005 World Summit outcome document, which asserted both the right and the responsibility of the international community to intervene, with or without the consent of the host government, in cases where genocide, war crimes, ethnic cleansing, and/or crimes against humanity can be reasonably expected or are being committed⁵⁸. Many countries have already embraced the 'Responsibility to Protect' in principle but not always in practice. The bulk of the debate has been focussing on how to really achieve this commitment and on how to build a peacekeeping force that will actually put the international

⁵⁶ Report of the International Commission on Intervention and State Sovereignty, Ottawa: International Development Research Centre, December 2001

⁵⁷ Ibid

⁵⁸ UN General Assembly, *2005 World Summit Outcome* (UN doc. A/60/L.1, September 15, 2005), para. 139

'Responsibility to Protect' in practice especially when the environment is very hostile. Since the UN has no independent military capacity, it will continue to depend entirely on the voluntary troop contributions of states to make up that required task.

However, ensuring that a troop contributing country is willing to commit its men to such high risks and that a peacekeeper is willing to risk his life may require more than just a commitment to a collective international responsibility. It may require that a country finds, in a particular peacekeeping mission, some kind of interests that are beyond collective interests of the international community found in the 'Responsibility to Protect'. A peacekeeper may risk his life more for specific interests of his country than for collective interests of the international community. Soldiers are traditionally known to have fought and died for what they sometimes naively refer to as a 'national cause'. But the 'International Responsibility to Protect' is an international collective enterprise and as Weiss et al. demonstrate, any collective enterprise is often contrasted with the difficulties of its application⁵⁹. While Weiss et al. recognise that some forms of collective undertakings have worked at times, they argue that these tend to be the exceptional examples proving the general rule that collective enterprise is exceedingly difficult to achieve because states have numerous narrow national interests that they would prefer to pursue first.⁶⁰

The behaviour of many countries confirms that, in many cases, going for collective interests will only work when there are specific national interests involved. For example, the USA in 1991 was willing to disrupt its home front by putting almost half a million military personnel into the

⁵⁹ Weiss T. G., Forsythe D., Coate R., and Pease K-K., *The United Nations and Changing World Politics*, Westview Press, Colorado, 2007, p.5

⁶⁰ Ibid

liberation of oil-rich Kuwait in the name of a collective undertaking, but in 1994, it dithered about taking action and failed to halt genocide in Rwanda. As a result, decisive and forcible collective responsibility occurred through Desert Storm in 1991, but indecisive and mostly non-forcible collective responsibility efforts were tried in Rwanda as close to one million people were murdered in three months.⁶¹

It is indeed questionable whether a collective enterprise such as the 'International Responsibility to Protect' can be relied upon with confidence since experience with it indicates considerable gaps. And this is not a new phenomenon. It is an old problem even with hunters and the stag. As the hunters encircle the stag, one hunter defects to chase a rabbit which he will not have to share with others (expecting that others will continue encircling the stag). Another does the same. Soon, the stag escapes through the gaps in the collective efforts.⁶² It is therefore important to forge a framework in which a contributing country may find some kind of own interest to be more willing to commit its troops knowing very well that halting violent actors might require operations more akin to combat and entail coercion to prevent harm to civilians.

The scenario today is that countries A, B, C, and D contribute to a peacekeeping operation, but the failure to achieve the goals of the operation (such as the failure to protect people in danger) is mostly attributed to the larger UN or, more often, to the entire international community. So who in actual fact bears responsibility? In contrast, if country A was to be given full mandate to ensure successful achievement of a whole peacekeeping operation in country X, then the credibility of country A is put at stake. In other words, the success or failure of the mission is entirely to bring about pride or shame to country A. The blame on death of people in country X,

⁶¹ Ibid, p. 6

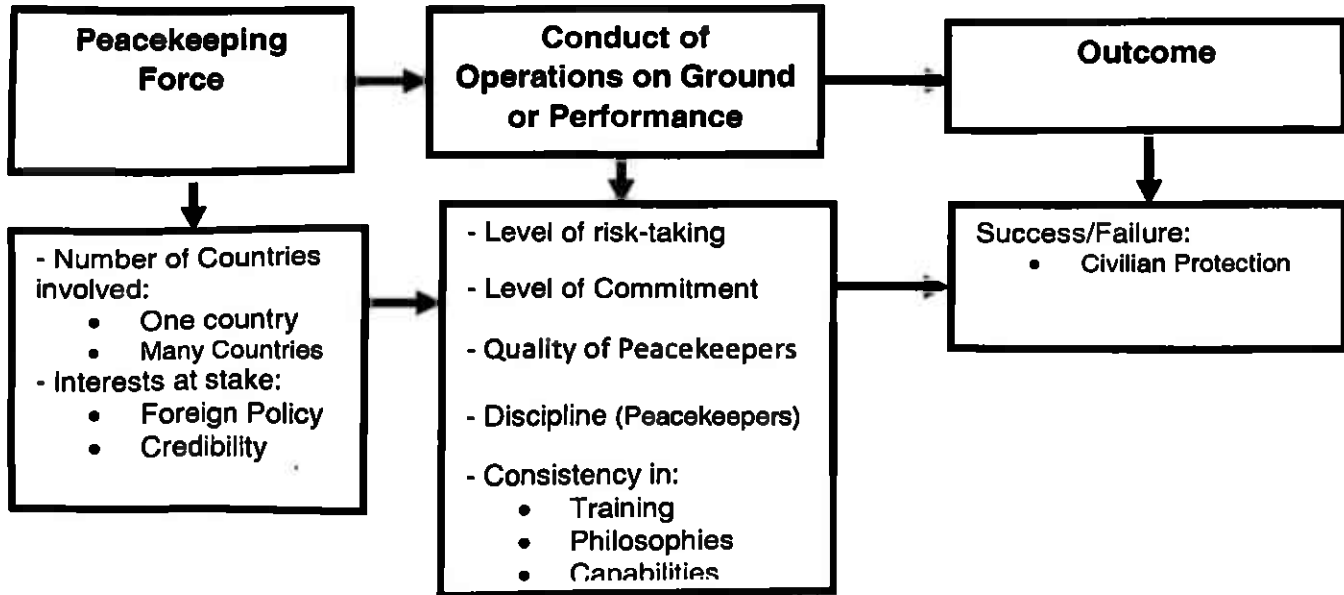
⁶² Lynn H. Miller, *Global Order: Values and Powers in International Politics*, 2nd ed. (Boulder, Colo., Westview Press, 1990), 46-50

like the victims of genocide in Rwanda, would therefore be almost exclusively oriented to country A. But the realization of the peacekeeping goals such as the ability to protect civilians who were otherwise to be killed in country X would be totally attributed to country A. Then country A has interests in achieving the goals of this kind of peacekeeping operations. The logic of what happens is like this: many countries with different interests, or even with already conflicting and sometimes confrontational interests, are put together and given a mandate in the overall interest of the international collective responsibility. In this case, thinking about the quality of the force to be sent by such a contributing country, the performance of the members of that force, and their willingness to take risk should start from there. For example, at some point in 1994 in Somalia, India and Pakistan were contributing two-third of the UN troops and, sometimes India was refusing to conduct joint operations with Pakistan.⁶³

This study is therefore a test case of non-fulfillment of the principle of the international 'Responsibility to Protect' as it applies to the UN peacekeeping mission in the Democratic of Congo (MONUC/MONUSCO)

⁶³ Bhatia Sidharth, "Somalis Get a Taste of Compassion," *India Abroad*, 5 August 1994, 4-5

Table 1: An illustration of the Analytical Framework:



- Peacekeeping Force = Independent Variable
 - Conduct of Operations on ground and Outcome = Dependent Variable

Source: Own Concept

1.8 Hypotheses

It is assumed that:

1. Building a peacekeeping force by generating troops from many different countries has negative effects on the performance of the force as a whole.
2. MONUC does not reflect the emergence of a new paradigm in the field of civilian protection known as the 'Responsibility to Protect'.

1.9 Methodology

This is a qualitative research, organized mainly into secondary sources. The secondary data consists of published and unpublished studies, journal articles, official documents and official statements, internet materials, texts, newspaper articles and opinion pieces.

CHAPTER TWO

2. EVOLUTION OF UN PEACEKEEPING AND CIVILIAN PROTECTION

2.1 The Protection Dilemma in the Traditional Context of UN Operations

The United Nations was founded, in the words of its Charter, in order “to save succeeding generations from the scourge of war”⁶⁴. Meeting this challenge has been the most important function of the organization and, to a very significant degree, the yardstick by which it has been judged by the peoples it exists to serve. Peacekeeping was not specifically mentioned as such anywhere in the Charter of the United Nations. It evolved as a pragmatic solution in the early years of the organization when it became apparent that some of the Charter provisions relating to the maintenance of international peace and security could not be implemented as envisaged. It began as an unplanned response to a particular set of problems at a particular time⁶⁵. Although the first UN peacekeeping mission was established in 1948 when the Security Council authorized the deployment of UN military observers to the Middle East to monitor the Armistice Agreement between Israel and its Arab neighbours⁶⁶, the UN peacekeeping mission which shaped the future of UN peacekeeping falls into the tenure of Dag Hammarskjöld as the UN Secretary General. Such a need arose with the Suez crisis in 1956. After Egypt nationalized the Suez Canal, which then belonged to British and French interests, and closed it to Israeli shipping, Israel and the two powers invaded Egypt and occupied large portions of its territory. In order to resolve this crisis, which necessitated the withdrawal of the invading forces and the establishment of a buffer zone,

⁶⁴ The United Nations Charter, Preamble

⁶⁵ Goulding M., *The Evolution of United Nations Peacekeeping*, *International Affairs* 69 (1993), 451 et seq

⁶⁶ www.un.org (accessed 19/12/2010)

the UN then created its first United Nations Emergency Force (UNEF I). The concept behind this force was the idea of Lester Pearson, then Canada's Foreign Minister. Hammarskjold took the practical measures to implement the concept, assembling the Force from scratch within two weeks. UNEF I became a great success of UN peacekeeping; it played a key role in resolving the Suez crisis and served as a role model for all later UN peacekeeping forces.⁶⁷ Hammarskjold and Pearson formulated a number of essential principles which constituted the basic patterns for future peacekeeping missions of the United Nations. A close analysis of those principles shows that Peacekeeping was designed primarily to help support and sustain the end of wars, rather than to intervene directly to save civilian lives.

These principles are contained in various legal documents concerning peacekeeping operations, such as the Status of Forces Agreements (SOFAs) and rules of engagement. They embody the essence of peacekeeping and permeate all aspects of an operation. The three main legal principles underlying traditional peacekeeping (consent of all parties concerned and the competent organ of the UN, usually the Security Council; impartiality; and non-use of force except in self-defense) were based on sound legal and practical reasoning. For example, Article 2(7) of the UN Charter prohibits the United Nations from intervening in the domestic affairs of a Member State except where Chapter VII enforcement measures are involved⁶⁸. In fact, Chapter VI of the UN Charter is generally the legal basis for peacekeeping activities under United Nations mandates. As an initial step in the resolution of disputes, Chapter VI sets out methods for the pacific settlement of disputes through mechanisms such as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or

⁶⁷ Ibid

⁶⁸ The UN Charter, Article 2(7)

arrangements, or other peaceful means of their own choice.⁶⁹ Accordingly, a UN peacekeeping force could only intervene into the domestic affairs of a State if the State concerned had consented to that intervention and to the peacekeeping operation as a whole. Similarly, if the UN was to effectively “keep the peace,” it had to be impartial and unbiased in its operations. The idea here was that it would be extremely difficult, if not impossible, for the UN to engage in coercive force and still be regarded as a neutral body. For this reason, the use of force by UN peacekeeping forces was limited to that used in self-defense. In sum, the mission was to be conducted in a strictly impartial manner; the deployment was not to lead to any change or prejudice concerning the political or military relations of power at work; the deployment of troops was to be subject to the consent of parties involved; the use of force was to be limited to self-defence; and the force’s functions were to be limited in time. So, since these initial missions were relatively small operations, involving a limited number of personnel and only adequate to supervise a ceasefire agreement, containing a wider complex conflict requiring multiple peacekeeping tasks, including civilian protection, was a practical impossibility.

Indeed, in the traditional design of peacekeeping, protection issues have always been a challenge for peacekeepers. In Africa, protection has usually focused on emergency relief to the affected population and at the political level, through the brokering of cease-fire agreements. Once an agreement was signed by the parties involved, a peacekeeping mission was sent to keep the peace and enforce the cease-fire agreement. However, the process could become tenuous when the belligerents and the state did not uphold the human rights of the citizens, and the state itself could be unwilling and sometimes unable to protect its own citizens⁷⁰. In the case of Rwanda for

⁶⁹ UN Charter, Arts 33-38

⁷⁰ Hitoshi Nasu, “Operationalizing the ‘Responsibility to Protect’ and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict”, *Journal of Conflict & Security Law*, Vol. 14, Issue 2, pp. 209-241, 2009.

example, the killing of people was happening in the watch of UN peacekeepers. To illustrate how civilian protection was not a big issue in traditional peacekeeping, the UN General Guidelines for Peacekeeping published by the UN Department of Peacekeeping Operations in 1995 —just few months after the Rwandan genocide— made only one reference to the protection of civilians, and this was to question the idea that peacekeepers should be in the business of creating “safe areas” to protect civilians because it would damage peacekeepers’ relationships with the conflict parties and tarnish their impartiality. The document did not mention genocide, massacres, or crimes against humanity and bluntly stated that “peacekeeping and the use of force (other than in self-defence) should be seen as alternative techniques and not as adjacent points on a continuum⁷¹.”

2.2 Origins of the Contemporary Protection Agenda

2.2.1 The Post-Cold War Context of UN Operations and the Protection Imperative

“... the time of absolute sovereignty, however, has passed; its theory was never matched by reality”⁷².

In spite of the long history of attempts to protect civilians, only recently has the topic been the subject of serious and sustained debate at the UN Security Council and other relevant international organizations, most notably the European Union (EU), the North Atlantic Treaty Organization (NATO), the African Union (AU), and the Economic Community of West African States (ECOWAS). According to Alex Bellamy and Paul William, contemporary interest in civilian protection stems from six interconnected streams of thought and policy that developed in

⁷¹ UN General Guidelines for Peace-Keeping Operations (DPKO: UN/210/TC/GG95, October 1995), para 29, 38

⁷² Boutros Boutros-Ghali, *An Agenda for Peace* (New York: Department of Public Information), 1992, p. 9.

reaction to different aspects of civilian suffering during wars across the world: developments in International Law, an increasing emphasis on protection activities by a range of Humanitarian Agencies, the readiness of the UN in general and of the Security Council in particular to discuss issues of civilian protection and make protection a core component of UN peacekeeping mandates, the willingness of a variety of Regional Institutions to engage in civilian protection, and, more importantly, the rise to prominence of the 'Responsibility to Protect'.⁷³ In the African context, the violent nature of new conflicts also played a major role in increasing the international interests in civilian protection. Indeed, one of the most disturbing aspects of conflict in Africa has been the increasing use of extreme forms of violence, particularly in the post-Cold-War period:

Violence is now deliberately targeted at civilians rather than armed groups, and at entire groups rather than individuals. In the conflicts in Liberia, Sierra Leone, Rwanda, Mozambique, Northern Uganda, Sudan, and Angola, violence took appalling forms. Mutilation, torture of women and children, violent rituals and the forcible involvement of relatives, children and spouses in killing and rape were used as a means of waging war primarily by militia groups and by some state proxies. In some instances, such violence was part of ritual that tied militia groups together. Extreme violence could be used as a means of humiliation or revenge. More frequently, it was used as a means of intimidation, as was the case with the Revolutionary United Front (RUF) in Sierra Leone.⁷⁴

Undeniably, the Africa's conflict zones in the 1990s became complex with many characteristics that started to complicate protection activities. Some warring groups often deliberately targeted segments of the civilian population either for political or economic reasons and there was increasingly a lack of clear frontlines, making traditional separation and interposition approaches

⁷³ Alex J. Bellamy and Paul D. Williams, "Protecting Civilians in Uncivil Wars," in Sara Davies and Luke Glanville (ed) *Protecting the Displaced* (Leiden: Brill, 2010), pp.131–137.

⁷⁴ The Department for International Development (DfID), *The Causes of Conflict in Africa, Consultation Document* prepared in consultation with Foreign and Commonwealth Office, Ministry of Defence, UK Government, 2000

difficult because conflict zones were now populated by multiple (sometimes battle-hardened) armed groups, militias, and criminal gangs, with no clear or effective chains of command⁷⁵. This made it difficult to elicit consistent compliance from these factions as well as rendering consent fragile and fluctuating. The new actors often displayed a wide variety of political strategies ranging from attempts to capture state power or a segment of territory to little more than the accumulation of resources. This meant that peacekeepers had to devise unique approaches for dealing with each conflict party. So, as the UN continued to face internal conflicts and to confront hostile and heavily armed internal factions, the traditional principles became slowly inadequate. And given the major setbacks that occurred in UN operations, it was becoming difficult for peacekeeping to justify its traditional emphasis on neutrality. In short, the 1990s and the traumatic experiences of that decade such as the genocide in Rwanda, the crimes against humanity in Yugoslavia, and the systematic use of rape as a weapon of war in what is now the Democratic Republic of Congo resulted in the push and pressure for the UN peacekeeping to take on a much more active role in the protection of civilians.

Indeed, humanitarian and political actors increased the pressure for more missions, more rapid deployment, and more difficult civilian protection tasks. As UN peacekeeping operations were being asked to be authorized under the more aggressive Chapter VII of the UN Charter and to be given explicit mandates for civilian protection and the necessary resources to enable this function, it meant that UN peacekeeping had to move beyond the three main legal principles upon which it was originally based. Expectations steadily increased for UN peacekeeping operations to be entrusted with ever more complex and dangerous missions. In 1999 and early 2000, the UN had to respond to serious critiques of its earlier performance. These included two

⁷⁵ Richard Jackson, "Violent Internal Conflict and the African State: Towards a Framework of Analysis", *Journal of Contemporary African Studies*, 20,1, 2002

internal reports on Srebrenica and Rwanda. In this context, the then UN Secretary General, Kofi Annan commissioned the Report of the Panel on UN Peace Operations (commonly known as the Brahimi Report). The resulting document duly reflected the complexities of the peacekeeping experience. Although it reaffirmed the bedrock principles, it nevertheless qualified all three as follows: consent is often unreliable because “local parties sign peace accords for a variety of reasons, not all of them favorable to peace”; impartiality does not mean neutrality, but rather “adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles”; and UN operations must sometimes use force to take on “spoilers” such as those who orchestrated the murder of no fewer than 800,000 people in Rwanda⁷⁶. According to the Brahimi Report, “the UN must be prepared to deal effectively with spoilers if it expects to achieve a consistent record of success in peacekeeping in situations of conflict”⁷⁷. And in relation to protection, the report offered an in-depth critique of the conduct of UN peace operations and made specific recommendations for change. It underlined the need for clear and specific mandates and adequate resources as minimum requirements for successful UN missions.

As a result, the UN initiated a number of reforms aimed at improving its peacekeeping, such as the establishment of a pre-mandate financing mechanism to ensure that adequate resources are available for new mission start-ups⁷⁸. UN peacekeeping mandates started to change and peacekeeping to shift well beyond its traditional role of monitoring the implementation of peace agreements. New peacekeeping missions became multidimensional, addressing the full spectrum

⁷⁶ Report of the Panel on United Nations Peace Operations (The Brahimi Report), para. 21.
http://www.un.org/peace/reports/peace_operations/ (accessed on 02/11/2010)

⁷⁷ Ibid

⁷⁸ The United Nations Department of Peacekeeping Operations, *The Challenges of Peacekeeping in the 21st Century*, Parliamentary Hearing at the UN (New York, 19-20 October 2004)

of activities, from providing secure environments to monitoring human rights and rebuilding the capacity of the state. More importantly, everything from the safe positioning of refugee camps to the intervention of military peacekeepers to prevent an attack on a village became part of the broader effort to keep civilians safe in conflict affected areas; UN mandates increasingly instructed peacekeeping missions to put an emphasis on the physical protection of civilians. As part of this evolution, UN peacekeeping operations have been explicitly mandated to “protect civilians under imminent threat of physical violence as well as to uphold other protection measures, ranging from ensuring security for vulnerable groups to supporting IDP returns.”⁷⁹ The first mission provided with this explicit mandate language, the UN peacekeeping operation in Sierra Leone, UNAMSIL, was authorized in 1999 *inter alia* “to afford protection to civilians under imminent threat of physical violence.”⁸⁰ By 2009, the majority of the nearly 100,000 UN peacekeepers deployed worldwide operated with such mandates. There are some who argue that even during the Cold War, the UN had long tasked particular peace operations with achieving specific protection goals, but it was rare during the Cold War for civilian protection to be explicitly considered the central objective of UN missions. Without a doubt, it was not until the publication of the Brahimi Report that it became an official UN doctrine that peacekeepers who witnessed violence against civilians should “be presumed to be authorized to stop it, within their means”⁸¹. Since the Brahimi Report, the UN Security Council has included a reference to protection of civilians regularly and has repeatedly invoked chapter VII of the UN Charter to create protection mandates. In fact, all UN peace operations that followed – Liberia, Haiti, Burundi, Cote d’Ivoire, and other missions – were established with mandates providing for protection to civilians “under imminent threat of physical violence.” Some mandates even

⁷⁹ Alex J. Bellamy and Paul D. Williams, *Op. Cit.*, pp137

⁸⁰ Security Council Resolution 1270 of 22 October 1999, para. 14.

⁸¹ The Brahimi Report, x

prioritize protection of civilians above all other objectives, such as the current mandate for the UN Mission in DRC (MONUC) and in Chad and the Central African Republic (MINURCAT). Some of the most significant characteristics of those mandates are summarized in table 2 below.

More importantly, the UN Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS) have been assessing the performance of peacekeeping operations and making the necessary institutional improvements to meet future protection challenges. In this context, the DPKO and the DFS have recently launched the 'New Horizons' reform process, which outlines eight key peacekeeping areas that require further attention and improvement. The fifth of these ('clarity and consensus on new tasks') proposes 'steps to build consensus on policy and requirements both for robust peacekeeping and for protection of civilians', which should provide an opportunity for much-needed policy development in this area. The DPKO has also published an independent study on the way its current peacekeeping operations have interpreted and implemented their protection mandates⁸². This provides key recommendations on how to make abstract concepts more concrete and actionable. There may be no consensus as to what extent have the fundamental characteristics of peacekeeping operations been changed from those of earlier operations, but there is no doubt that all three of the main legal principles underlying traditional peacekeeping were strained by the new demands placed upon these operations in the aftermath of the Cold War. As it became increasingly difficult to gain the consent and cooperation of all parties involved in UN peacekeeping operations, it necessitated an increased need for the use of force by peacekeepers in carrying out UN mandates and, for this reason, the perceived impartiality of operations similarly became more difficult to maintain. Today, the

⁸² Victoria Holt and Glyn Taylor with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: UN DPKO/OCHA, November 2009)

changing times and increasing demands for international “Responsibility to Protect” are transforming peacekeeping even more fundamentally than before.

Table 2. Characteristics of Mandates for UN-led peacekeeping missions in Africa since 1999

Mission	Date	Protect civilians under imminent threat of violence	Without prejudice to responsibility of host nation	Within capabilities and areas of deployment	“All means necessary”
UN Mission in Sierra Leone	October 1999–December 2005	Yes	Yes	Yes	No
UN Mission in the Democratic Republic of the Congo	November 1999–present	Yes	No	Yes	Yes
UN Mission in Liberia	September 2003–present	Yes	Yes	Yes (Partial)	No
UN Operation in Côte d’Ivoire	April 2004–present	Yes	Yes	Yes	Yes
UN Operation in Burundi	May 2004–January 2007	Yes	Yes	Yes	Yes
UN Mission in Sudan	March 2004–present	Yes	Yes	Yes	Yes
African Union/UN Hybrid Operation in Darfur	July 2007–present	Yes	Yes	Yes	No
UN Mission in the Central African Republic and Chad	September 2007–present	Yes	No	Yes	Yes
Percentage of mandates with component		100	75	100	62.5

Source: Adapted from Victoria Holt and Glyn Taylor with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: UN DPKO/OCHA, November 2009), 45

2.2.2 Changing Times: The Responsibility to Protect and the UN Peacekeeping

From September 1999, the United Nations Security Council took concrete steps towards explicitly recognizing the importance of protecting civilians in armed conflict. With the passing of resolution 1265, the Council also expressed its “willingness to consider how peacekeeping mandates might better address the negative impact of armed conflict on civilians”.⁸³ And in Kofi Annan’s report to the 2000 General Assembly, he challenged the international community to try to forge consensus, once and for all, around the basic questions of principle and process involved: when should intervention to protect people occur, under whose authority, and how. Consequently, an independent International Commission on Intervention and State Sovereignty (ICISS) was established by the Government of Canada in September 2000 to respond to that challenge. The Commission published a report entitled “*The Responsibility to Protect*” in December 2001 and raised important questions about sovereignty and the role of the state with regards to the protection of people within its borders. The Commission concluded that there are limits to the general rule of non-intervention for certain kinds of emergencies, namely, those involving a breakdown within a state such that “civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a large scale.”⁸⁴ In particular, the ICISS asserted that states have a responsibility to protect their own citizens from avoiding catastrophe – from mass murder and rape, from starvation – and when a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure or when

⁸³ S/RES/1265 (17 September 1999). The origins of this resolution lie in the first articulation of protection of civilians as a distinct thematic issue in two separate UN Secretary General Reports in 1998 (on Africa and on the protection of humanitarian assistance), as well as a UNSC debate and corresponding presidential statement on the protection of civilians in February 1999 – both of which led to the publication of the first UNSG report on the protection of civilians, in September 1999

⁸⁴ Report of the International Commission on Intervention and State Sovereignty (ICISS), Ottawa: International Development Research Centre, December 2001

state is unwilling or unable to protect own citizens, that responsibility must be borne by the broader community of states.⁸⁵ The 1994 genocide in Rwanda represents a typical case of the international community's irresponsibility to protect innocent civilians from genocide in a situation where the state was unwilling and unable to perform this basic function.

As UN Secretary-General Ban Ki-moon has stressed, the "Responsibility to Protect" is not to be equated with the earlier notion of "humanitarian intervention". Indeed, the nature, scope, tools, and emerging practice of the "Responsibility to Protect" need to be distinguished from those of the humanitarian intervention. In terms of tools for example, the "Responsibility to Protect" is much broader than humanitarian intervention⁸⁶. While the notion of humanitarian intervention was criticized by many states as a charter for powerful countries to interfere in their internal affairs, the "responsibility to protect" represents an attempt to deal with the problem by shifting the emphasis to states' responsibility toward their own citizens. The ICISS report argued for shifting the basis for action from the "right of humanitarian intervention" to the "responsibility to protect" civilians when the state failed to offer that protection and there was the risk of large-scale loss of life or ethnic cleansing. The Commission offered a number of specific principles justifying and compelling the use of military force to intervene to protect civilians: *right authority, just cause, right intention, last resort, proportional means, and reasonable prospects* (to be discussed later). It added that any intervention must be both "defensible in principle" and "workable and acceptable in practice."⁸⁷ In the ICISS report, military intervention for civilian protection is an exceptional and extraordinary measure. To be warranted, there must be serious

⁸⁵ ICISS report, Op. Cit., pp. viii.

⁸⁶ The Address of the UN Secretary-General, Berlin, July 15, 2008, UN document SG/SM/11701. Paragraph 139

⁸⁷ ICISS report, Op. Cit.

and irreparable harm occurring, or imminently likely to occur to civilians, under the following circumstances:⁸⁸

- a. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of a deliberate state action, or state neglect or inability to act, or a failed state situation; or*
- b. large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.*

Where protection of civilians in relation to the “Responsibility to protect” is concerned, peace operations can be categorized into two distinct types: (i) civilian protection as an important, but not primary mission objective through the execution of a set of tasks within a multidimensional peace operation; and (ii) protecting civilians is clearly the primary objective where missions are mandated to use all necessary means to prevent or halt genocide, ethnic cleansing or systematic and widespread abuses. Whilst the former embodies the full gamut of “Responsibility to protect” principles, the latter fits firmly in the “Responsibility to protect” component. From the time it was endorsed by all the 192 UN member states in the historic 2005 World Summit outcome document, in which heads of government recognized collective obligations to protect their populations, there has been growing acceptance of the International “Responsibility to Protect”. Today, NGOs often employ the language of “Responsibility to Protect” in their efforts to bring support and security to vulnerable populations. In fact, the African Union was a pioneer in attempting to implement the “Responsibility to Protect” because African states had already enshrined the principles of the “Responsibility to Protect” into law five years before the 2005 World Summit Outcome Document. In Article 4(h) of the founding document of the African Union, the Constitutive Act signed by Member States in 2000, AU member states accepted the

⁸⁸ Ibid

“right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity”.

While a political consensus around an obligation to protect civilians from serious threats has significantly grown, the full implications of this new thinking for peacekeeping operations are not yet fully developed. Ban Ki-moon has argued that the provisions of “Responsibility to Protect” will only be realized through practice and through its application to situations on the ground. According to the UN Secretary General, the journey from conceptualization to operationalization can be as difficult in the world body as it is essential⁸⁹. Indeed, the challenge for the UN, as the implementation vehicle, has been how to operationalise the “Responsibility to Protect” and harness the necessary political will for effective action. After the United Nations General Assembly’s Special Session on the “Responsibility to Protect” in 2009, and the General Assembly Resolution 63/308/2009 that decided “to continue its consideration of the “Responsibility to protect”, the international community, both at governmental and civil society levels, has been discussing ways to implement “Responsibility to Protect”. The UN Secretary General’s report - “Implementing the Responsibility to Protect” (2009) – has been the main conceptual reference guiding these discussions for the last year. This debate exemplifies the basic concern of the United Nations: the operational capacity within the international community to conduct missions to protect civilians in non-permissive environments. In the ongoing debate, some of the earlier mentioned ICISS principles have raised a number of operational questions themselves:

Just Cause: To prevent imminent or existing threat of large scale loss of life, the Commission made it clear that the use of military force “can be anticipatory” to respond

⁸⁹ Berlin Address, July 15, 2008

to “clear evidence” of likely large scale killings (better not to wait for genocide to justify acting against it)⁹⁰. Operationally, this has raised the question of how nations will find the evidence of potential mass death and organize intervention forces on those grounds. Which countries can take action if large scale loss of life has not happened? Which ones can only act, formally, if genocide or ethnic cleansing is declared?

Right Intervention: Under this criterion, the Commission identified one scenario as that of state collapse, and suggested that “there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities or, if that is not possible, administering it on an interim basis under UN auspices.”⁹¹ In facing a situation with either state collapse or where that is a possibility, the question has been whether the capacity of the UN to act as a transitional administrator should be considered prior to intervention?

Proportional Means: The Commission provided only two paragraphs in its summary report on the question of the scale, duration and intensity of the planned military intervention. Little was delineated, except for the need to minimize the intervention force to “the minimum necessary to secure the humanitarian objective in question. The means have to be commensurate with the ends, and in line with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention.”⁹² This

⁹⁰ ICISS report, Section 4.21, pp 33

⁹¹ Ibid, Section 4.33, pp 35

⁹² Ibid, Section 4.39, pp 37

criterion has raised a challenging proposition: what if proportional means do not exist? Is that the basis for rejecting the use of force for protection purposes?

Reasonable Prospects: This criterion established that a reasonable chance of success is required to justify military action to halt or avert the atrocities. Further, the intervention must both protect civilians and not make things worse. Accordingly, military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all. This test has raised operational questions as well: a) Is the military goal guaranteed to be achievable and to halt the atrocities? b) Can the consequences of action be worse or trigger a larger conflict? If either of these questions are not clearly answerable and involve some risk, is there a coin toss?

These have been very useful and fair concerns at the heart of the debate on how to achieve the “Responsibility to Protect”. Operationalising the Responsibility to Protect concept will therefore be an important step towards ensuring that civilians living in war-affected societies are spared further suffering as a consequence of the inability or unwillingness of the state to protect them.

2.3 Building a Peacekeeping Force to Protect

“When countries say their forces can only operate in certain ways and in a certain geographic space, it certainly impinges on my ability to mass forces⁹³.”

Former Secretary General Kofi Annan once called the UN the only fire brigade in the world that has to acquire a fire engine after the fire has started⁹⁴. Even when peacekeeping is the most

⁹³ Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House, Canada, 2003

appropriate protection tool, the UN has to always overcome significant challenges to deploy and support each new mission. Since the UN has no independent military capacity, it must depend entirely on the voluntary troop contributions of member states to make up the mission. The UN Charter stipulates that to assist in maintaining peace and security around the world, all member states of the UN should make available to the Security Council necessary armed forces and facilities. Since the beginning of peacekeeping missions, close to 130 nations have contributed military, police, and civilian personnel to peace operations and, even if detailed records of all personnel who have served in peacekeeping missions since the start of peacekeeping are not available, it is estimated that up to one million soldiers, police officers and civilians have served under the UN flag⁹⁵. Despite the large number of contributors, however, the greatest burden continues to be borne by a core group of developing countries. For example, the 10 main troop contributing countries to UN peacekeeping operations as of September 2010 were Bangladesh (10,736), Pakistan (10,691), India (8,935), Nigeria (5,709), Egypt (5,458), Nepal (5,044), Jordan (3,826), Ghana (3,647), Rwanda (3,635), Uruguay (2,489)⁹⁶. According to critics, there is a division of labor in UN peacekeeping missions; the countries that contribute troops cannot afford to provide equipment, logistics, and money; those contributions come from major donors, such as the U.S., European powers, Japan, and others.

Once the Security Council approves the creation of a peacekeeping mission, the UN Department of Peacekeeping Operations begins planning for the necessary elements. At this point, a senior

⁹⁴ Erin A. Weir, Testimony on the “New Challenges for International Peacekeeping Operations”, House Foreign Affairs Committee, (RHOB July 29, 2009)

⁹⁵ Erin A. Weir, Testimony on the “New Challenges for International Peacekeeping Operations”, House Foreign Affairs Committee, (RHOB July 29, 2009)

⁹⁶ UNDPKO, United Nations Peacekeeping Operations, Background Notes: 30 September 2010

leadership team is selected. The department will then seek contributions from member nations. As earlier mentioned, since the UN has no standing force or supplies, it must form ad hoc coalitions for every task undertaken. And as the peacekeeping force is being assembled, a variety of diplomatic activities is undertaken by UN staff, the 'Rules of Engagement' are developed and approved by both the parties involved and the Security Council to give the specific mandate and scope of the mission (e.g. when may the peacekeepers use force). With no standing commitment by member states, each operation requires individual negotiations across the spectrum--from questions regarding chain of command and responsibilities to rules of engagement and the rules on the use of force. When all agreements are in place, the required personnel are assembled, and final approval has been given by the Security Council, governments providing the peacekeepers hand over command and responsibility to the United Nations. The peacekeepers are then deployed to the area in question under a Force Commander, who is responsible for the military forces deployed. This is usually a senior officer of one of the contributing countries' armed services; he is often from the country committing the highest number of troops to the project.

This process usually encounters difficulties to form a suitable force. Romeo Dallaire, the force commander in Rwanda during the Genocide there, described the problems this may pose by calling the UN a 'pull' rather than a 'push' system which has absolutely no pool of resources to draw on⁹⁷. And with the post-Cold War environment and the growing concerns about the harm caused to troops as peacekeepers are now exposed to danger caused by the warring parties and often in an unfamiliar climate, each Troop Contributing Country dictates what its forces will be used for within the mission when negotiating its own agreement with the UN. This often limits

⁹⁷ Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House, Canada, 2003, pp 99-100

where particular contingents can be deployed in the field, and the level of danger that they can be exposed to. In fact, many of the nations contributing troops “impose tight restrictions, known as caveats, barring their troops from offensive operations or from deployment in the more dangerous areas”⁹⁸. In addition, forces acquired in this piecemeal manner have very different training standards and combat capabilities, and the philosophies of their commanding officers often differ greatly. In military terms the different capabilities, philosophies, training, and contractual limitations make peacekeeping action challenging. Moreover, it is not unusual to learn of divisions within peacekeeping forces over various matters, including the implementation of mandates. Cases have been reported of commanders consulting with their respective national governments on what course of action to follow in particular circumstances, disregarding the peacekeeping operation leadership. Such actions undermine the operation and render it susceptible to failure⁹⁹. At worst, the absence of coherence between the multinational forces in peacekeeping operations has put the lives of some of the contingents at risk. This scenario for example occurred during the UN operation in Somalia (UNOSOM II), where several Nigerian peacekeeping soldiers were actually killed in Mogadishu. It was reported that the Italian contingent watched the Nigerian elements get into trouble, but refused to come to their assistance because of instructions from the Italian government¹⁰⁰. This is indicative of national contingents acting out of self-interest at the expense of international community goals. Consequently, questions have been raised about multinational peacekeeping as an instrument capable of bringing an end to human suffering in conflict ravaged regions such as Africa.

⁹⁸ Erin A. Weir, *Op. Cit.*

⁹⁹ Kgomotso Monnakgotla, “The Naked Face of UN Peacekeeping: Noble Crusade or National Self-interest”, *African Security Review* Vol 5 No. 5, 1996

¹⁰⁰ *Ibid*

2.4 Conclusion

Early peacekeeping operations were authorized to fulfill UN mandates under Chapter VI of the UN Charter, the chapter dealing with pacific settlement of disputes. These missions were deployed with the consent of all parties to the conflict in order to monitor and enforce existing peace agreements. Peacekeeping had to be impartial in its operations and the use of force was limited to that used in self-defense. In this traditional design of peacekeeping, protection of civilian was a practical impossibility to peacekeepers.

Following the end of the Cold War, UN peacekeepers began to be deployed in new and more challenging environments, such as Somalia and Rwanda. The nature of conflict was changing; intra-state conflicts, often with multiple internal armed groups, usually meant that one or more of the armed actors did not consent to the involvement of peacekeepers. The potential for peacekeepers to become targets dramatically increased; their neutrality was also increasingly compromised by calls from concerned actors for peacekeepers to engage in the protection of civilians, which often demanded that peacekeepers take action that will put them at odds with armed groups involved in the conflict. In short, the principles of consent, impartiality and non-use of force except in self-defense were thrown into question by a changing security environment, especially the traumatic experiences of the 1990s and this resulted in the push for UN peacekeepers to take on a much more active role in the protection of civilians. Today, UN peacekeeping is no longer what it used to be; the 'Responsibility to Protect' has become a central part of wider efforts to keep no-combatants safe. UN mission's mandates routinely include authorization for peacekeepers to take measures to protect civilians under imminent threat of violence with some mandates even prioritizing protection of civilians above all other objectives.

CHAPTER THREE

3. THE CASE STUDY

3.1 Introduction

The DRC has been in a state of war since 1994 when the Rwanda Genocide spilled across its eastern border. Civil struggle, ethnic conflicts and battles over mineral wealth have repeatedly overwhelmed this fragile country. Estimates of those killed since the outbreak of the “First Congo War” in 1996 range from 3 million (Human Security Report) to 5.4 million (International Rescue Committee). No matter which estimate one accepts, the slaughter that has been taking place in the DRC represents the greatest bloodletting since World War II¹⁰¹. In 1999, the UN Security Council, through its resolution 1279, authorized the deployment of the United Nations Organization Mission in the DRC (MONUC). For many Congolese, their protection is the very essence of MONUC. But from the time of its deployment, MONUC has struggled to achieve this in practice. This chapter offers a basic history of peacekeeping in the DRC since 1999, looks at how peacekeepers have tried to protect civilians, and captures their relative success and/or failure in doing so. However, any attempt to understand the UN efforts to protect civilians in DRC requires an understanding of the DRC conflict itself and an understanding of the nature of civilian vulnerability in that conflict.

¹⁰¹ David Rosen, *The Slaughter in the Congo: Obama's Rwanda?*, *CounterPunch Print Edition* April 30 - May 2, 2010

3.2 Overview of the DRC Conflict

The Democratic Republic of Congo (DRC) is a nation divided against itself; it has had no strong central government for many years; it is a nation consumed by wars and conflicts. For quite some time now, the DRC's government has not effectively represented or protected its people, and all too often has served as a source of unchecked power and personal enrichment for few individuals. The ongoing crisis in DRC is rooted both in this history of predation and corruption, and the aftermath of the 1994 genocide in neighboring Rwanda. According to Mahmood Mamdani and Jordan⁸, if the roots of the conflict in the DRC are to be understood, one has to dig back into the Belgian colonial system of indirect rule¹⁰². Indeed, the DRC experienced a brutal colonial history. Beginning in the 1880s, King Leopold II of Belgium took personal control of the territory, ruthlessly exploiting its vast natural resources through harsh autocratic rule which included widespread slave labor. Under massive pressure following an international outcry against these practices, Leopold transferred control of the "Congo Free State" to the Belgian government in 1908. Following an upsurge in nationalist sentiment and growing demands for independence, Belgium accepted Congo's independence in June 1960. And from 1965, Mobutu Sese Seko began his 32-year rule. The long period of relative peace that Congo experienced under Mobutu is usually attributed to a national reaction to the bloody "muleliste" rebellion that claimed about 500,000 victims between 1960 and 1965¹⁰³. By the early 1990s, however, with a failed national economy and numerous local ethnic conflicts, tensions began to mount, causing bloody local wars in some parts of the country. But local bloodshed did not

¹⁰² M Mamdani & A Jordan, *Preliminary thoughts on the Congo crisis*, Centre for African Studies, University of Cape Town. 1998

¹⁰³ Ndaywel è Nziem, Isidore, *Histoire Générale du Congo: De l'Héritage ancien à la République Démocratique* (Paris/Bruxelles: De Boeck & Larcier, s.a), 1998

escalate to a national scale until after the Rwandan genocide and subsequent migration of Rwandan refugees into the DRC¹⁰⁴

The 1994 genocide in Rwanda was undoubtedly the first event in a series which transformed the Great Lakes Region in general and the DRC in particular into an arena of conflicts and wars in the last decade. Indeed, the end of the killings in Rwanda did not mean the end of a terrible chapter in the history of the region. On the contrary, it was the opening of an entirely new chapter, almost as appalling as the first, but enveloping the entire region in brutal conflict before becoming a war that directly or indirectly involved governments and armies from almost every part of the African continent. After the Rwandan Patriotic Front stopped the genocide, massive numbers of Rwandan peasants, ex-Rwandan military, and the *Interahamwe* militia poured across the Rwanda/Zaire border and established refugee camps in North and South Kivu. According to Kabamba and Lanotte, the transfer of Rwandan populations into the eastern province of Kivu also marked the transfer of the Rwandan war into then-Zaire¹⁰⁵. The already existing ethnic tensions between the Congolese Hutu and Tutsi were exacerbated by the presence of Rwandan refugees in the provinces of North and South Kivu and, over the following years, ethnic strife continued to erupt in local massacres and cause large internal population movements. With the militant and well-armed *Interahamwe* in the picture, an ethnic cleansing ensued, leaving thousands, perhaps tens of thousands of Congolese Tutsi, dead. The surviving Congolese Tutsi then fled across the border into Rwanda, where the RPF government had just seized power¹⁰⁶

¹⁰⁴ Terese Hart and Robert Mwinyihali, *Armed Conflict and Biodiversity in Sub-Saharan Africa: The Case of the Democratic Republic of Congo (DRC)* Washington, D.C.: Biodiversity Support Program, 2001

¹⁰⁵ Kabamba, B. and O. Lanotte, *Wars in Congo-Zaire (1996-1999)*, In: *Conflits et guerres au Kivu et dans la région des grands lacs*, Cahiers Africains. No. 39-40 CEDAF, Tervuren: ASDOC et l'Harmattan, 1999

¹⁰⁶ G Prunier, *The Great Lakes crisis*, *Current History*, 96(610), 1997, pp 196

To make matters worse, Mobutu provided protection and support to the Rwandan Hutu army and militias that had directed the genocide in Rwanda. The very people who were responsible for the genocide now controlled the refugee camps and used them as places to train militias that were used to make sporadic attacks into Rwanda. By late 1995 and early 1996, the former *Interahamwe* militiamen in the camps in eastern Zaire were well enough equipped to begin their attacks. According to the then OAU established International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, the political and military structures and personnel that were responsible for the genocide re-established themselves in the refugee camps in Zaire and transformed them into military reorganization and training wings, offering food, shelter, recruits, and human shields for former Rwandan forces and *Interahamwe* militias blamed for the massacres¹⁰⁷.

Mobutu was also sponsoring an anti-Ugandan rebel movement, consisting of disaffected Ugandan minorities. From their bases in north-eastern Zaire, the rebels embarked on a series of cross-border raids into Uganda. At the same time, Burundi's Forces for the Defense of Democracy (FDD), the military wing of the National Council for the Defense of Democracy (CNDD), established themselves in the same camps and the remnants of the *Interahamwe* in the refugee camps started to work with these Burundian guerrillas in an attempt to overthrow the government in Burundi. It was against this backdrop that Rwanda, Uganda and Burundi took the decision to support Laurent Desire Kabila and invaded Zaire in late 1996 and early 1997. In a rapid succession and with the active support of Rwanda, Burundi and Uganda the rebels eventually managed to remove Mobutu from power.

¹⁰⁷ OAU, Rwanda: The Preventable Genocide, The report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, 2000

But Kabila did not play the game fairly and his honeymoon with his allies was brief. According to Breytenbach et al., Kabila was an opportunist who concluded the right alliance at the right time¹⁰⁸. He tried to gain the support of the Congolese population by playing on their national feelings and their hate of the Congolese Tutsi (the Banyamulenge). Consequently, the Banyamulenge decided to rebel, pushed by a feeling of insecurity. On 3 August 1998, a new war started in the DRC aimed against Kabila, and fought by his former allies in Kivu and elsewhere in the eastern part of the country. With the dramatic increase in armed conflict, the whole of eastern DRC descended into chaos with civilians being the main victims. This conflict has been marked by a constant shift in alliances between a confusing array of belligerents. One-time enemies turn into allies and back into enemies again in swift succession, confusing Congolese citizens and political analysts alike. But at the core of today's crisis is the presence of over a dozen militia and extremist groups in eastern Congo. These include, among others: the Rwandan Hutu militia of Democratic Forces for the Liberation of Rwanda (Les Forces Démocratiques de Libération du Rwanda, FDLR), the Congolese National Congress for the Defense of the People (Congrès national pour la défense du peuple, CNDP), the Ugandan Lord Resistance Army (LRA) and the Mai-Mai. At different times, these groups have been either allies or enemies of the Congolese government depending on this government's relationship with Rwanda and Uganda.

In light of the involvement of so many African countries—and casualty estimates in the millions—the Congo War has been characterized as 'Africa's World War'¹⁰⁹. The conflict has been devastating for civilians, who have been systematically targeted by all sides at various points. Motivated by ethnic sectarianism, economic opportunism, political manipulation,

¹⁰⁸ Willie Breytenbach, Dalitso Chilemba, Thomas A Brown and Charlotte Plantive, Conflicts in the Congo: From Kivu to Kabila, *African Security Review* Vol 8 No 5, 1999

¹⁰⁹ Coghlan, Benjamin, et al.. 'Mortality in the Democratic Republic of Congo: A Nationwide Survey.' *The Lancet*, Vol. 367, Iss. 9504, pp. 44–51. 2006.

strategies of barbarism, and, in some cases, apparent nihilism as a consequence of societal breakdown, belligerents have subjected the Congolese population to looting, ethnic cleansing, torture, mass rape, and sporadic massacres. Against this background of a cycle of violence and intense armed conflict, the humanitarian consequences for the population have been horrific.

3.3 The nature of civilian vulnerability in DRC

3.3.1 General situation

The DRC is a country with many internally displaced people and many refugees in neighboring states; it is a country whose people, especially in the east, are under constant threat of being killed, raped, plundered, kidnapped, and driven from their homes and villages; it is a country with very few functioning schools and health centers. In short, the DRC is a country that has lost many people in one decade to the ravages of war; it is a country whose people pray for the international community and specifically the United Nations to protect them and to militarily impose peace in their country so they can return to their homes, make a living, and provide for their families. The following revelation of a 43 year old man in one of the Congolese refugee camps illustrates how bad the situation is and how it requires practical measures to protect innocent civilians:

"One month ago, my older brother appeared in Rushuro after having been unaccounted for six years. I had lost track of him when forces stormed the Rushuro area and in the panic, we both fled in different directions. Since then, he spent all his time living in the bush, fearful to come out in a territory controlled by different forces that could punish

him for his disloyalty. Deprived of health care for many years in the bush he was terribly sick and died one week ago¹¹⁰."

Indeed, the situation of human suffering in this country is of serious concern and continues to deteriorate, especially in the eastern part of the country. A clear picture of civilian suffering in the DRC has been painted in the 2009 second Cross-Cutting Report of the UN Security Council Report dealing with the Protection of Civilians. It was also highlighted by different reports such as the 2009 UN Secretary-General report, the Office of the High Commissioner for Human Rights (OHCHR) report, and the report of the Group of Experts on the Democratic Republic of the Congo of the Security Council's Sanctions Committee¹¹¹. All these reports have clearly indicated that both the DRC government security forces and armed rebel groups are responsible for serious abuses against civilians. The worst violations have been perpetrated by rebel groups, in particular the FDLR, LRA, and Mai Mai. These range from summary executions, sexual violence and related atrocities and enforced disappearances to forced recruitment and pillage."¹¹²

In addition to killings and rapes, thousands of civilians have been abducted and pressed into forced labor to carry weapons, ammunition, or other baggage across the treacherous terrain by government forces and FDLR militia as they deploy from place to place. Some civilians have been killed when they refused. Others have died because the loads they have been forced to carry

¹¹⁰ Mark Malan and João Gomes Porto, *Challenges of peace implementation: the UN Mission in the Democratic Republic of the Congo*, Institute for Security Studies, Pretoria, 2004

¹¹¹ Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2009/623; Report of the High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, A/HRC/13/64; Report of the Group of Experts submitted through the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, S/2009/603.

¹¹² The 2008 US State Department country report on Human Rights in the Democratic Republic of the Congo. Available at www.state.gov (Accessed 11/11/2010)

were too heavy. The US State Department's 2008 report has indicated that between January and September 2008, rebel and government attacks forced more than 900,000 people to flee for their lives, seeking safety in the remote forests, with host families, or in displacement camps.¹¹³ During the attacks or as they fled, FDLR combatants or Congolese army soldiers pillaged their belongings and then burned their homes and villages. The report also indicated that in 2008, over 9,000 houses, schools, churches and other structures have been burned to the ground in North and South Kivu. Many civilians, already poor, have been left with nothing.

3.3.2 Violence against women

Alarming levels of violence against women continue to be reported across the DRC, particularly in the east, as part of a broader pattern of Gender-Based Violence (GBV). The United Nations Population Fund recorded 7,500 cases of sexual violence against women and girls across North and South Kivu in the first nine months of 2009, nearly double the figures for the same period in 2008. An increase in cases of sexual violence is also reported by health counseling centers near conflict zones in DRC. Rape has specifically been an instrument of war, a tactic used to terrorize the noncombatant population¹¹⁴. Oxfam International recently released a study, "Now, The World Is Without Me," assessing the growing horror of violence being inflicted on the noncombatant population in the DRC, especially the systematic campaign of rape of women and young girls. During this Oxfam study, more than 4,000 rape victims were interviewed in hospitals in the eastern DRC. According to the Oxfam study, members of the Congolese army, Rwandan militias of FDLR and other armed gangs have raped tens of thousands of women. As

¹¹³ The 2008 US State Department country report on Human Rights in the Democratic Republic of the Congo, Available at www.state.gov (Accessed 11/11/2010)

¹¹⁴ See "'The Hard Hand of War': Rape as an Instrument of Total War," CounterPunch, April 4, 2008

reflected in the Oxfam report, there has been a 17-fold increase in civilian rape over the past few years. It was reported that more than 9,000 people were raped in Eastern DRC in 2009 only. According to the Oxfam's humanitarian policy director, Krista Riddley, "rape of this scale and brutality is scandalous; this is a wake-up call at a time when there are plans for UN peacekeepers to leave the DRC. The situation is not secure if a woman can't even sleep safely in her own bed at night"¹¹⁵ Sexual slavery was also reported, affecting many women and young girls with some being held captive and repeatedly raped for years¹¹⁶. A 23-year-old woman raped in late 2009 had this to say:

"....., I was at home with my husband and my four children. Suddenly, there was an attack on our village. My husband managed to escape, but I was eight months pregnant. I had no strength to run and my children were with me. I had to protect them and so I couldn't escape. Three armed men entered our house and tore off my clothes, as I remained naked in front of my children. They hit me with the butt of their guns and then raped me - all three of them, in front of my children. I lost consciousness. When my husband came back, he called the neighbours and they took me to the health centre. However, I still suffer from pain in the chest because of the knocks I received and in the vagina, too, inside, I feel something strange, as if it would sudden come out of my body. I am very afraid to have caught diseases and at night I suffer from insomnia. The baby I was carrying at the time of the rape survived, but he is always sick and has constant diarrhoea. Since what happened, my husband insults me every day calling me the wife of the militiamen who raped me and sometimes he doesn't even sleep at home. I have no joy, no peace of mind anymore."¹¹⁷

¹¹⁵ David Rosen, Op. Cit.

¹¹⁶ Ibid

¹¹⁷ Ibid

Indeed, in a traditional or patriarchal society, rape is a mark of shame often borne by the victim for years. Female rape victims feel stigmatized by the act of violation, that they are somehow responsible for the crime perpetrated against them. They are often rejected by their families and abandoned by their spouse. They often do not seek medical care for fear of being identified. The use of rape as a weapon of war in the DRC is well-documented. What happened to the above mentioned 23-year-old girl is not limited to young girls; a 70-year-old woman, also raped by militia groups last year, revealed that:

"It is the first time I am telling my story because of the shame and dishonour I am feeling inside. At the time of the incident, I was living in a bivouac in the bush, hiding from the war. One day, I had gone to the fields to collect some food to eat. As I was cultivating, I heard someone screaming loudly and the next minute armed men appeared in front of me. I tried to escape, but one of the men pulled me by the hand and knocked me over. He told me if I moved, he would kill me. He took the clothes I was wearing and he started to hit me. Then he raped me. He also introduced his fingers inside of me and he told me if he had a machete, he would cut me. I cried so much and I was so distressed to be forced to do such a thing at my old age. I went home at night, hiding in the dark my nudity. Because I am so old, I felt a lot of pain in the vagina and the abdomen pelvis. But most of all I am angry and I cry whenever the whole incident flashes back to my mind¹¹⁸."

In DRC, there are disturbing reports of women and girls being summarily executed and mutilated after being gang-raped. Some victims are found with guns, wood, sand or glue inserted into their bodies. Husbands, parents or children trying to stop the rape of their loved ones have also been attacked, killed or forced to rape their own family members. Accounts reveal that women and girls have been abducted and held as sexual slaves by members of the *Forces Armees de Republique Democratque du Congo* (FARDC) as well as other armed actors, and have been

¹¹⁸ Thematic Series "Building More Effective UN Peace Operations: The Political Dimensions of Peace Operations", Center on International Cooperation, Sept 2009

subject to collective rapes for weeks and months, often accompanied by additional atrocities. In North Kivu alone, an assistance provider for victims of sexual violence recorded a total of 3,106 cases between January and July 2009; half of these cases were perpetrated by FARDC members. According to Susan Bartels, “sexual violence has become more normal in civilian life in DRC. The scale of rape over Congo’s years of war has made this crime seem more acceptable.”¹¹⁹

3.3.3 The FDLR and the LRA: A Strategy of Deliberately Targeting Civilians

Before the DRC government (together with the Rwandan government) launched operations against the FDLR in DRC in January 2009 (operations known as Umoja Wetu and Kimia II), FDLR members lived in numerous towns and villages spread across Eastern DRC, intermixed with Congolese civilians. In many areas controlled by the FDLR, the Congolese state has been non-existent. FDLR commanders have often acted as local authorities and imposed a system of forced cohabitation, administration, and exploitation on Congolese civilians who have no choice but to live side-by-side with FDLR combatants. When operations Umoja Wetu and Kimia II were launched, the FDLR responded to the dramatic shift in the Congolese government’s policy toward them and the launch of joint Congo-Rwanda military operations by carrying out a strategy of unlawful retaliatory attacks against the civilian population. FDLR combatants deliberately targeted Congolese civilians with what they considered punishment for their government’s policy and for what the FDLR perceived as the population’s “betrayal.” The scale and ferocity of the attacks depended on the nature of the military operations against the FDLR. In some areas, FDLR combatants attacked civilians before the Congolese army and their allies had arrived, sometimes deliberately taking the civilians into their military positions as hostages,

¹¹⁹ David Rosen, op. cit

perhaps to be used as human shields. In other areas, the FDLR retreated, waited for the Rwandan or the Congolese army soldiers to come and go, and then returned to punish the civilian population for “welcoming” or “collaborating” with their enemies. Between late January and September 2009, FDLR forces deliberately killed at least 701 civilians¹²⁰. Many were chopped to death by machete or hoe. Some were shot. Others were burned to death in their homes. According to Human Rights Watch, more than half of the victims were women and children¹²¹. The FDLR also targeted and killed village chiefs and other influential community leaders, a tactic especially effective at spreading fear throughout entire communities. Some local authorities and health workers who have lived near FDLR positions for many years and know the group well told Human Rights Watch that the FDLR’s strategy of attacking civilians has been aimed at causing a humanitarian disaster with a high human cost so that the Congolese government would be forced to call off the military operations. A number of FDLR combatants who left the group in 2009 and entered the UN’s DDRRR program told UN officials that they had been given orders to create a humanitarian catastrophe with the intention of pressing the international community to call off its support for the military operations against them¹²².

Most of the worst and brutal FDLR attacks on civilians documented by different Human Rights Organizations (such as Human Rights Watch) occurred in the remote and mountainous region that straddles the border between North and South Kivu provinces, covering the areas of Ufumandu (Masisi territory), Waloaluanda (Walikale territory), and Ziralo (Kalehe territory). The FDLR had many bases in this region, including their main bases at Kibua and Kalonge in the

¹²⁰ Human Rights Watch interview with UN DDRRR official, Goma, October 21, 2009

¹²¹ Ibid

¹²² Ibid

Ufumandu area. The FDLR killed at least 135 civilians in the Ufumandu area, 253 civilians in Waloaluanda, and 84 civilians in Ziralo¹²³. Human Rights Watch also documented attacks by the FDLR in other areas of North and South Kivu provinces, including in Lubero and Rutshuru territories of North Kivu and Kalehe, Kabare, Shabunda, Mwenga and Uvira territories in South Kivu. According to Human Rights Watch, when the Congolese coalition forces who were engaged in operation Umoja Wetu advanced toward FDLR areas, the FDLR barricaded roads and blocked civilians from fleeing the area. When some civilians tried to flee, the FDLR attacked them, killing dozens with gunfire, rocket-propelled grenades, and machetes: “as I ran, I saw bodies everywhere,” said one person, “they had all been killed by the FDLR¹²⁴”

Like the FDLR, the Lord Resistance Army rebels (LRA) are renowned for their brutality, indiscriminate violence, and abduction of children to serve as soldiers, sex slaves, and porters¹²⁵. From 2005, the LRA sought sanctuary in the remote, largely ungoverned far north-east of the DRC¹²⁶. In September 2008, following failed peace talks between the LRA and the Ugandan government, the FARDC launched an operation to contain the LRA inside the national park, cut off supply routes, encourage defections, and prevent human rights abuses against Congolese civilians in the area¹²⁷. In the meantime, the LRA had launched at least ten attacks on Congolese

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Jackson Paul, ‘The March of the Lord’s Resistance Army: Greed or Grievance in Northern Uganda?’ *Small Wars & Insurgencies*, Vol. 13, No. 3, pp. 29–52, 2002

¹²⁶ Human Right Watch, *The Christmas Massacres: LRA Attacks on Civilians in Northern Congo*, February 2009, pp. 13–18, <http://www.hrw.org/sites/default/files/reports/drc0209web_0.pdf>, (Accessed 12/12/2010).

¹²⁷ Ibid, pp. 13-18

civilians between 17 September and 4 October 2008, killing 76 and abducting 177 children¹²⁸. Today, continued LRA attacks in Orientale province have created substantial new population displacements.

3.4 Come MONUC

3.4.1 The Mission's Creation

The origin of the United Nations military presence in the Democratic Republic of the Congo is found in the Lusaka Ceasefire Agreement and the following United Nations Security Council Resolution 1258 authorizing the deployment of liaison officers. On July 10, 1999, the DRC, Angola, Namibia, Rwanda, Uganda, and Zimbabwe signed the Lusaka Ceasefire Agreement, bringing the war in the DRC to a close, at least on paper. The African-led agreement, facilitated by the Southern African Development Community and then President Frederick Chiluba of Zambia, requested a Chapter VII UN peacekeeping force “to ensure implementation of this Agreement; and taking into account the peculiar situation of the DRC, mandate the peacekeeping force to track down all armed groups in the DRC.”¹²⁹ According to some critiques, this call for a robust peacekeeping force caught the United Nations off guard; the international community was skeptical about the Congolese parties' commitment to peace and aware of the massive difficulties of bringing stability to the DRC¹³⁰. Indeed, there was a general view that the UN did

¹²⁸ Fourth Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2008/728 of 21 November 2008, p. 7

¹²⁹ Lusaka Ceasefire Agreement, 10 July 1999, text available at the US Institute of Peace website, www.usip.org/library/pa/drc/drc_07101999.html (Accessed 23/11/2010)

¹³⁰ Holt, V. K. and Berkman, T. C., *The Impossible Mandate: Military Preparedness, The Responsibility to Protect and Modern Peace Operations*, Washington DC: The Henry L. Stimson Center, 2006

not own the agreement and thus was not responsible for its implementation. Some diplomats in the UN actually complained that the Congo file started in Africa, not in the United Nations; that people in the Lusaka Agreement didn't know what they were writing when they called for UN forces; that the UN came in with a framework that wasn't theirs¹³¹. Further, recruiting peacekeepers became a tough assignment. At that time, some even argued that "it would be difficult, if not impossible, to identify troop contributing countries willing to contribute contingents to be deployed in DRC for forcible disarmament of groups accused of genocide and other serious crimes against humanity, at least in sufficient numbers and with a sufficiently robust mandate¹³²,".

The United Nations Security Council, with its resolution 1258, first authorized the deployment of 90 United Nations Military Liaison personnel to the DRC in August 1999. Their mission was to liaise with all the warring factions, give a technical assistance and prepare the deployment of military observers¹³³. In November the same year, Security Council Resolution 1279 affirmed that the previously authorized United Nations personnel would constitute the United Nations Organization Mission in the DRC (MONUC). Over the following eleven years, the Security Council passed a number of resolutions to strengthen MONUC's force and its mandate, most of which emphasized the aspect of protection of civilians (**Annex I** contains a summary of the resolutions of the UN Security Council on MONUC). Although it will be discussed later, it is important to note here that as of July 1, 2010, the Security Council, in its resolution 1925, decided that the UN peacekeeping mission in DRC would comprise of 22,016 uniformed

¹³¹ Clifford Bernath and Anne Edgerton, *MONUC: Flawed Mandate Limits Success* (Washington, DC: Refugees International, May 2003), 5.

¹³² Peter Swarbrick, "DDRRR: Political dynamics and linkages," in Malan and Porto, eds., *Challenges of Peace Implementation*, 166. Swarbrick has headed MONUC's DDRRR Division.

¹³³ S/RES/1258 of 6 August 1999.

personnel (19,815 military personnel, 760 military observers, 391 police personnel and 1,050 members of formed police units). As it is the case in almost all UN peacekeeping missions, for such a force to be constructed, many countries have to contribute some numbers of troops and it is only after sufficient numbers are acquired that the units from different countries are put under one command. In the case of MONUC, contributing countries include: Bangladesh, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, China, Côte d'Ivoire, Czech Republic, Denmark, Egypt, France, Ghana, Guatemala, Guinea, India, Indonesia, Ireland, Jordan, Kenya, Madagascar, Malawi, Malaysia, Mali, Mongolia, Morocco, Mozambique, Nepal, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Poland, Romania, Russian Federation, Senegal, Serbia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Togo, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, Yemen and Zambia.

3.4.2 Continued Suffering of Civilians Despite the Coming of MONUC

“While the rebels are killing us, MONUC takes notes and makes reports. What good is that?”¹³⁴ Congolese citizen, Rushuro November 2009

MONUC's first major protection crisis occurred in May 2002 when rebels in Kisangani massacred at least 103 civilians in the process of suppressing a mutiny by some of their local commanders¹³⁵. Attacks on civilians continued through 2002. Between May and October 2002,

¹³⁴ Bernath C. and Edgerton A., “MONUC: Flawed Mandate Limits Success”, Refugees International Report on the United Nations Organization Mission in the Democratic Republic of the Congo, May 2003

¹³⁵ Bernath, Clifford and Anne Edgerton, *MONUC: Flawed Mandate Limits Success*. Washington, DC: Refugees International, 2003. P.2

there were a series of massacres by rebels in Kindu, claiming at least 77 lives¹³⁶. The UN Secretary General even warned in his 12th report on MONUC (18 October 2002) that “the number and scale of gross human rights violations is growing rapidly and the situation demands greater protection of civilians¹³⁷. But MONUC’s failure to protect Congolese was once again obvious just six months after this report, in early May 2003 in the Ituri region, when 563 civilians were deliberately killed by various militia groups in Bunia and more than 20,000 civilians (mostly Hema) left the town fearing a Lendu attack¹³⁸. The UN contingent there of 742 troops could only protect its headquarters. In the midst of the violence, the population of Bunia actually protested MONUC’s inability to protect them. During the same period, the International Crisis Group also documented a number of other incidents where MONUC failed to protect civilians in the Ituri region. According to the International Crisis Group,

Individuals were killed or kidnapped beside the UN compound. MONUC was asked on several occasions to escort or protect Hema individuals out of dangerous locations to more secure areas and it either failed to do so, or intervened too late. On 10 May, MONUC was informed of the likely assassination of Nyakasanza’s parish priest and other Hema clerics. It refused to intervene or even accompany the vicar general to the parish after the massacre. On 11 May, a man was kidnapped from the MONUC compound. [Contingent] officers were informed but refused to intervene. The person was then executed less than 100 meters away¹³⁹.

¹³⁶ Twelfth Report of the UN Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2002/1180 of 18 October 2002

¹³⁷ Ibid

¹³⁸ The UN Secretary-General’s letter dated 16 July 2004 to the President of the UN Security Council. S/2004/573 of 16 July 2004. pp. 25–26.

¹³⁹ ICG (International Crisis Group), Congo Crisis: Military Intervention in Ituri, Africa Report No. 64. 13 June 2003

MONUC's inability to protect civilians was manifest again in early October 2003 when the "Union des Patriotes Congolais" (UPC) massacred 65 people about 95 km north-west of Bunia. MONUC's failures to protect people continued during the following year and were documented in many other places, especially in North and South Kivu. For example, when rebels captured the town of Bukavu in June 2004, they instigated heavy looting and widespread violence. At the same time, government troops who retreated south to Walungu also pillaged the town. Despite MONUC having troops in the city at the time of the attack, the attack claimed the lives of at least 88 civilians; forced thousands of Bukavu residents to flee to Rwanda, and caused the border with Rwanda to close as tensions between Rwanda and the DRC mounted¹⁴⁰. Like it was in the case of Bunia, this also caused a widespread anger of Congolese across the country at MONUC's perceived failure to protect civilians. In his third Special Report on MONUC of August 16, 2004, the UN Secretary General also recognized the Bukavu crisis as a watershed requiring a major reassessment of the mission and requested major increases in the force size and capabilities¹⁴¹.

There were massacres again in May and July 2005 in the Kivus; the UN Secretary General himself, in his 20th report on MONUC (28 December 2005), described a new and disturbing trend in the Kivus. He also reported that the FDLR had targeted and attacked civilians in Walungu (South Kivu), killing 25¹⁴². The following two years were also characterized by many isolated attacks on civilians as MONUC was busy with elections in DRC. And in 2008, Human Rights Organizations reported that PARECO Mai-Mai had killed more than 100 civilians in the

¹⁴⁰ ICG, *The Congo's Transition Is Failing: Crisis in the Kivus*. Africa Report No. 91. 30 March 2005, p.6

¹⁴¹ 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

¹⁴² Twentieth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2005/832 of 28 December 2005.

Rushuro area between January and early April and that CNDP had deliberately killed other 27 during attacks on villages in the same area on 24–28 April 2008. The UN Secretary General's 26th report on MONUC submitted to the UN Security Council on 3 July 2008 also recognized an increase in attacks on civilians, especially by FDRL, in the Kivus during the same period. It also highlighted attacks by the LRA on Congolese civilians in and around Garamba National Park¹⁴³. This report actually quoted an April 2008 assessment mission led by retired Gen. Maurice Baril which had recognized that a willingness to use appropriate force by MONUC was required to protect civilians¹⁴⁴.

Unfortunately, Human Rights Watch again reported that more than 150 innocent civilians were killed by rebels in Kiwanja on 4 November 2008, despite the presence of MONUC troops within just 1 km of where the killings took place¹⁴⁵. According to Human Rights Watch, the Indian and Uruguayan contingents each sent a patrol out on 5 November, roughly two hours after the rebels had gained control of Kiwanja and begun summarily executing civilians, and both patrols found bodies in the streets, but 'no further action was taken by MONUC to stop the killings or to enhance protection of civilians in the town.'¹⁴⁶ The year 2008 continued to be violent. On 24 and 25 December 2008 for example, the LRA launched a coordinated series of attacks in which civilians were easy targets and MONUC soldiers could not be able to protect them. In fact, between 24 December 2008 and 17 January 2009, the LRA killed at least 815 Congolese and

¹⁴³ Twenty-sixth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo. S/2008/433 of 3 July 2008

¹⁴⁴ Ibid

¹⁴⁵ Human Rights Watch, *Killings in Kiwanja: The UN's Inability to Protect Civilians*. December 2008. <<http://www.hrw.org/sites/default/files/reports/drc1208web.pdf>>.

¹⁴⁶ Human Right Watch (2008, ch. VII)

abducted 160 children from the town of Faradje¹⁴⁷. Given this, and in an effort to overcome some of the protection challenges and bridge the divide between MONUC peacekeepers and the civilian population, MONUC established Joint Protection Teams (JPTs) in early 2009. Although this methodology and the actions that resulted from it have contributed to an enhanced protection of civilians, it has been argued that, in a number of cases, this system has been ineffective.

To make matters worse, MONUC's credibility has been undermined by the exploitative and abusive behavior of some of its own staff. Investigations carried out by human rights organizations found that MONUC personnel have themselves been involved in a pattern of sexual exploitation of Congolese women and girls. Human Rights Watch interviewed girls, some as young as 13 years old, who had been raped by MONUC soldiers. They also spoke to girls aged between 12 and 15 who engaged in what is called in DRC "survival sex"; this means sexual relations these girls enter into in order to get food, money or protection. These relations are frequently exploitative and are particularly easy to establish in environments of conflict and massive displacement where women and girls have no other options.

On July 1, 2010 MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). Unanimously adopting resolution 1925 (2010) under Chapter VII of the United Nations Charter, the UN Security Council decided that MONUSCO would be deployed until 30 June 2011, authorizing it to concentrate its military forces in eastern DRC while keeping a reserve force capable of redeploying rapidly elsewhere. But questions over peacekeepers' failure to protect people in DRC increased again when there was mass rape by armed rebels in late July and early August 2010, of more than 300 civilians in

¹⁴⁷ Human Right Watch, *The Christmas Massacres: LRA Attacks on Civilians in Northern Congo*, February 2009, pp. 29 <http://www.hrw.org/sites/default/files/reports/drc0209web_0.pdf>, Accessed 12/12/2010

villages in the East that lie close to a UN peacekeepers' base¹⁴⁸. According to the UN High Commissioner for Human Rights, "the scale and viciousness of these mass rapes defy belief ... Even in the eastern part of DRC where rape has been a perennial and massive problem for the past 15 years, this incident stands out because of the extraordinarily cold-blooded and systematic way in which it appears to have been planned and executed¹⁴⁹." The known victims include women, men, young girls and boys, some of whom were raped multiple times. In addition to the mass rapes in the Walikale region, the FDLR also attacked 19 villages north-east of Shabunda during the first three weeks of August 2010, allegedly committing a further 214 cases of rape. Peacekeepers' failure to prevent or stop the attacks was compounded by subsequent failings on the part of MONUSCO forces to protect Congolese.

3.5 Conclusion

The Congolese people have been suffering for long as a consequence of conflicts and wars in their country. Their government has been unable and unwilling to protect them. Sometimes, the government itself has targeted its own people. Rebels on the other hand, both Congolese and foreign rebels such as the FDLR and the LRA, have deliberately and regularly targeted civilians as part of their military strategy. To fulfill its international obligation in terms of the 'Responsibility to Protect', the United Nations has deployed a peacekeeping force in the DRC (MONUC) and has mandated it to ensure that Congolese are protected from such violence.

¹⁴⁸ David Smith, Congo rebels 'raped women and babies near UN base', the Guardian-UK, 24 August 2010, Available at www.guardian.co.uk (Accessed 01/12/2010)

¹⁴⁹ UN News Service, *Preliminary UN report confirms over 300 rapes by rebels in eastern Democratic Republic of the Congo*, 24 September 2010, available at: <http://www.unhcr.org/refworld/docid/4ca19fc52.html> [accessed 18 December 2010]

Unfortunately, the answer to the question as to how successful has MONUC been in protecting civilians is not encouraging. Civilian vulnerabilities in the DRC have not decreased despite MONUC's presence; the UN force has failed to protect civilians altogether and people live in insecure areas even where MONUC forces are deployed. Killings in Kisangani, Bunia, Bukavu, Walungu, Rushuro, Garamba, Kiwanja, Faradje, Walikale, and Shabunda are just few of the examples of the continuing failure of MONUC, the world's largest international peacekeeping force, to protect Congolese people. It is therefore important, in the following chapter, to critically analyze the real reasons behind MONUC's inability to protect the Congolese and find out whether MONUC really reflect the emergence of a new paradigm in the area of civilian protection known as the 'Responsibility to Protect'.

CHAPTER FOUR

4. CRITICAL ANALYSIS: DOES MONUC REALLY REFLECT THE EMERGENCE OF A NEW PARADIGM ON CIVILIAN PROTECTION?

4.1 Introduction

The cases highlighted in the previous chapter demonstrate that the targeting of civilian has become an essential part of the military tactics of different factions in the DRC conflict. Those cases also showed that the UN peacekeeping force in this country has not been able to protect Congolese. Does the reality tell us that MONUC/MONUSCO's mandate is still too weak as some have continued to justify it when talking of this force's failure to protect civilians? Does it tell us that peacekeepers still lack capacity to be able to protect Civilians? Does it not simply question whether the UN actually understands the real issues that undermine its Forces' performance? Does it not tell us that the 'Responsibility to Protect' has been said more than it has practically been achieved; that efforts to adjust the mandate and increase the scope and strength of UN forces mandated to protect civilians should go hand in hand with attempts to operationalize the 'Responsibility to Protect'? This chapter builds on the previous one to argue that the UN peacekeeping operation in the Democratic Republic of Congo does not, at least in practice, reflect the emergence of a new paradigm in the field of civilian protection known as the 'Responsibility to Protect'.

4.2 The DRC Case Confirms the General Trends

The intensity of Congolese suffering leads one to agree with those who argue that warfare had historically lower casualty levels among civilians than it is the case today (casualties of the first and second world wars notwithstanding). Indeed, while past cases show that most of the dead and wounded were combatants (those fighting as organized and trained forces), the Congolese case confirms that some important aspects in the evolution of warfare blurred the distinction between those taking part in hostilities and non-combatants and have meant that an increasing majority of conflict-related casualties would be civilians. This evolution also shows an increase in unconventional conflicts which involve irregular armed groups such as guerrilla movements or paramilitary forces and may also involve organized criminals and other irregular groupings—not necessarily politically motivated—fighting against the incumbent government. A common feature of this type of conflict, as also found in the DRC case, is that militias prey on the civilian population and seek cover by living among civilians. As former Secretary General Kofi Annan noted, there is a dilemma that “has often forced us to provide food and clothing not only to victims of conflict, but also its architects” and “allows combatants to use humanitarian aid and its recipients as tools in war.”¹⁵⁰

Some of such groups, like the FDLR and the LRA in Eastern DRC, have increasingly made use of terrorist-type tactics, which by their very nature require them to hide among civilians and to target them. A close look at the FDLR and the LRA in DRC proves that in these new wars, violence can be directed against civilians and not another army; that population displacement,

¹⁵⁰ Johnstone, Ian, Dilemmas of Robust Peace Operations, in: Ian Johnstone (ed.): Annual Review of Global Peace Operations, 2006. Boulder, CO: Lynne Rienner.

massacres, and widespread atrocities are not just side effects of war, but a deliberate strategy by different actors. The various parties finance themselves through loot and plunder and any other forms of illegal trading; they are closely linked and help to generate organized crime networks. These various actors in conflicts such as in the DRC depend on continued violence for both political and economic reasons. Finally, the DRC case has highlighted that this kind of warfare not only creates enormous humanitarian crises as noted above, but it also poses huge challenges for humanitarian interventions and peacekeeping operations designed to protect affected civilians. In circumstances such as the DRC, peacekeepers face difficulty when trying to separate those taking part in hostilities from non-combatants in order to protect them and at times, attempts to do so even leads to higher 'collective' civilian casualties.

4.3 What is the Problem?

4.3.1 The Unmet Congolese Expectations

The link between peacekeeping operations and the protection of civilians is very important. The safety and security of civilians is critical not only to the legitimacy and credibility of a particular peacekeeping mission, but also to the legitimacy and credibility of the entire United Nations system. Indeed, wherever peacekeepers deploy, they raise expectations among the local population—and among those who view missions from afar—that one of the reasons for their intervention, and perhaps even the most important, is to support people at risk. But a peacekeeping operation that fails to address large-scale violence directed against civilians cannot claim any legitimacy. More importantly, UN peacekeeping operations are among some of the most high-profile manifestations of UN action and their conduct has implications for the

organization as a whole. As it was noted in the Brahimi report, the inability of peacekeeping missions to address violence against civilians in the past has damaged the standing of the United Nations and threatened to discredit the practice of peacekeeping in general: “No failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its failure to distinguish between victim and aggressor.”¹⁵¹

Indeed, the challenge of protecting civilians cuts to the core of the purpose of the United Nations: “to save succeeding generations from the scourge of war.”¹⁵² In an era of complex conflicts in which civilians continue to be targeted by both governments and rebel groups, the UN can neither avoid its duty to protect them, nor afford to be discredited by failing to live up to its own ambitions. This is certainly the reason behind the UN increased focus on civilian protection in almost all Security Council mandates in the last decade or so. In the case of DRC, as clearly found in the previous chapter, MONUC (today MONUSCO) has seen the scope of its mandate and the strength of its force vastly increased over the last eleven years and at the core of the current mission’s mandate is the ‘Responsibility to Protect’ the Congolese people. But while there is no doubt that the UN’s concern for protecting civilians has become an important aspect of peacekeeping mandates and increasingly entrenched in high-level rhetoric and political language, UN forces deployed in peacekeeping missions, such as in DRC, are still struggling to translate protection concepts into comprehensive strategies and concrete action to meet their mandate for protection of civilians. With MONUC, this has become both the most difficult and most controversial aspect of the force and one that many observers easily point to as a major gap in its performance.

¹⁵¹ Brahimi Report , A/55/305–S/2000/809 of 21 August 2000, p. ix.

¹⁵² UN Charter

The very presence of UN peacekeepers in the DRC and the fact that the protection of civilians lies at the core of the UN force had created expectations among local people that they will be protected if violence erupts. In a Testimony on the UN peacekeeping force in the Democratic Republic of Congo before the U.S House Committee on International Relations, Subcommittee on Africa, Anneke Van Woudenberg of Human Rights Watch said:

"I lived in the Congolese capital Kinshasa when the U.N peacekeeping forces (MONUC) first arrived there. I remember the Congolese people lining the streets cheering and dancing as the first contingent of blue helmets drove down one of Kinshasa's main boulevards. I shared the hope of many Congolese people that the arrival of U.N peacekeepers would bring an end to the horrific atrocities that have characterized the war in the Congo, a war that has cost the lives of nearly four million people since 1998. In later years, I also shared the frustrations of the Congolese when the U.N. did not intervene (or were still not able) to protect them, as was the case in Bunia, Bukavu, Kiwanja, Kisangani, etc. To add to these frustrations have been the actions of some U.N. peacekeepers involved in sexually abusing women and girls in the DRC, a fact that is deeply saddening. For many Congolese people, and for myself, these mixed feelings of both hope and frustration remain today¹⁵³"

Indeed, and as we have seen, from the time of its deployment as the Joint Military Commission in 1999, MONUC has really not succeeded in protecting the Congolese people. And with its peacekeepers behavioral record, it even seems quite a stretch to imagine this force as capable of maintaining peace in the DRC when it is unable to prevent its own members from committing grievous crimes against the very people it was meant to protect. Given the sexual scandals, what expectation of safety would Congolese women have in MONUC/MONUSCO protection? It is

¹⁵³ Human Rights Watch, MONUC: A Case for Peacekeeping Reform, Testimony of Anneke Van Woudenberg before the U.S. House Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, March 1, 2004, <http://www.hrw.org/en/news/2005/02/28/monuc-case-peacekeeping-reform> (Accessed 13/12/2010)

therefore not surprising to learn that furious and frightened Congolese civilians sometimes decide to attack UN offices in the DRC. And even when MONUC was able to protect some civilians in a few cases, its reputation in the country has been seriously damaged by the behavior of its members that any efforts to save civilian lives go unnoticed. Unfortunately, this failure to meet Congolese expectations is resulting in a breakdown of wider mission legitimacy, a fact that has even made it extremely difficult for the force to accomplish other, long-term peace-building objectives. Surprisingly, whenever it becomes obvious that peacekeepers are unable to intervene or to protect people, the UN Security Council always responds by looking at how to strengthen the force's' capacity and mandate. This means that the UN Security Council, like many other commentators in the area of civilian protection, interprets peacekeepers' failure and inability to protect civilians exclusively in terms of mandate's designs and resource constraints (both human and material). It means that the operationalization of the 'Responsibility to Protect' is limited to the understanding that robust mandates are enough to ensure protection. But if a force as robust as MONUC/MONUSCO fails to enforce protection, why are members of the UN Security Council not bothered to look at the root causes of its inability to perform?

4.3.2. Validity and Invalidity of the Justification for the failure to Protect

4.3.2.1 *Limited Capacity?*

As noted earlier, most explanations wrongly attribute MONUCs' failure to protect Congolese to what they call its "limited capacity". Undoubtedly, the capacity of any peacekeeping force impacts on its protection ability. And too often, UN peacekeeping missions lack even basic capabilities and equipment such as adequate maps, equipped vehicles, armored personnel carriers, etc. In the case of MONUC, the mission started when its military capacity was indeed

well below the requirements of a robust operation, which contributed to frustrations and false expectations regarding the force. As highlighted earlier, the Security Council initially authorized a small deployment of only 90 military liaison officers in 1999 and increased it to 5,537 the following year. These numbers were certainly far short of the Lusaka Ceasefire Accord's request for 15,000 to 20,000 troops especially if one considers the size of the area these peacekeepers were supposed to deploy. Moreover, with these few numbers, MONUC was asked to embark on many different activities that included, in addition to civilian protection, issues such as disarmament, demobilization, repatriation, resettlement and reintegration program (DDRRR) and oversee the withdrawal of foreign forces. Given this, and even with a mention in the mandate that peacekeepers will "protect civilians under imminent threat of physical violence," MONUC initially behaved more like an observer mission, using force only in self defense and doing little to physically protect civilians. As Victoria Holt notes:

"... during its early phases, the mission was designed and structured as an observer force. UN forces were not initially recruited with an expectation that they would intervene to defend civilians. Indeed, UN peacekeepers faced obstacles in supporting the political peace, let alone providing support to humanitarian assistance or improving security for civilians. MONUC forces were not deployed in large numbers, nor were they adequately mobile."¹⁵⁴

During the Kisangani massacre, MONUC declined to oppose the killings forcefully arguing that it lacked sufficient capacity to confront the rebels. When many concerned Human Rights Organizations called for the Security Council to review MONUC's actions during the Kisangani massacre and, in particular, asked for an inquiry to determine whether it had the military means to carry out its protection mandate, it came to be acknowledged by the UN Headquarters in New

¹⁵⁴ Holt V. and Glyn Taylor with Max Kelly, Op. Cit.

York that MONUC not only lacked sufficient strength in terms of numbers of troops, but also in terms of other logistical requirements to be able to protect civilians.¹⁵⁵ Responding to criticism from Human Rights Organizations on these massacres for example, the Special Representative of the UN Secretary General to the DRC (SRSG) argued that “MONUC did what it could at the time”¹⁵⁶. The UN Secretary General also agreed with this initial capacity limitation of MONUC when he warned the Security Council that:

*While MONUC will do its utmost, it does not have the means to provide broader protection to civilians at large. Despite the deployment of additional MONUC troops to Kisangani [. . .] MONUC faces a significant dilemma, since public expectations that MONUC will protect civilians at risk of violence will also rise. Yet MONUC troops currently deployed in the Democratic Republic of the Congo are not equipped, trained or configured to intervene rapidly to assist those in need of protection. If MONUC is to take the steps necessary to enable it to protect more effectively civilians under imminent threat of physical violence, it will be necessary for the Security Council to consider adjusting the strength of MONUC with a view to reconfiguring and re-equipping the contingents considerably to permit them to intervene more actively.*¹⁵⁷

Here, the Secretary General was telling the Security Council that even though it mandated MONUC to protect civilians under imminent threat, the contingents sent by troop contributing countries were inadequately equipped, poorly trained and improperly configured to achieve their protection mandate. But while it is true that MONUC started with insufficient troop strength, equipment, and firepower to engage in coercive protection, the incident of Kisangani cannot be convincingly explained in terms of limited capacity. At the time of the killings for example, not

¹⁵⁵ Human Rights Watch, War Crimes in Kisangani, HRW Publications, August 20, 2002

¹⁵⁶ IRIN, ‘DRC: UN Responds to HRW Criticism over Kisangani Massacre’, 22 August 2002. <<http://www.irinnews.org/Report.aspx?ReportId=33841>> (Accessed 12/12/10)

¹⁵⁷ Cited in Evans, Gareth and Mohamed Sahnoun, The Responsibility to Protect, in: Foreign Affairs 81/6, 2002

only MONUC's Deputy Force Commander, Brig. Gen. Roberto Martinelli, was in Kisangani, but there were also more than 1,100 fully equipped UN troops in this area (approximately 650 Moroccan and 550 Uruguayan soldiers)¹⁵⁸. And according to Joshua Marks, MONUC had witnessed the arrival of the rebels' reinforcements from Goma, observed gunfire in the city, and received word of violence from numerous sources, including from an international aid worker but protected a handful of people.¹⁵⁹ From MONUC's point of view, "neither the Moroccans nor the Uruguayans were infantry units and therefore, its leaders did not 'deem it within [their] capability' to protect these civilians, even though the civilians were certainly under 'imminent threat of physical violence'..."¹⁶⁰ With this, the UN should have wondered why troop contributing countries decided to send non-infantry battalions to engage in combat operations before asking the same countries to add more troops. Furthermore, questions such as how willing would UN forces be to engage in violent civilian protection operations becomes important here given their behavior in this case.

More importantly, these events of Kisangani led to intense discussions in the UN on the meaning of civilian protection as a military task for MONUC, its implications for the 'Rules of Engagement', and the suitability and willingness of MONUC to carry out civilian protection tasks.¹⁶¹ And over the following years, the UN Security Council passed many resolutions to strengthen MONUC, not only in terms of numbers of troops, but also in terms of other related material resources. For example, while the UN Security Council Resolution 1291 had put

¹⁵⁸ *Ibid*

¹⁵⁹ Marks, Joshua. 'The Pitfalls of Action and Inaction: Civilian Protection in MONUC's Peacekeeping Operations.' *African Security Review*, Vol. 16, No. 3. 2007.

¹⁶⁰ Bernath and Edgerton, Op. Cit.

¹⁶¹ *Ibid*

MONUC to 5,537 soldiers, Resolution 1493, passed in 2003, expanded it to almost 11,000 troops, only to expand it again to more than 17,000 troops through resolution 1756 passed in 2007.¹⁶² This troop increase came with an increase in military equipments such as helicopters, armored vehicles, weaponry, and other equipments but this did not prevent massacres to occur. Surprisingly, no indication of the Security Council trying to look at other reasons why MONUC's increased capacity was not in actual fact making significant difference and whether it was worth it to keep strengthening it instead of looking for alternative strategies. In the case of Ituri for example, the UN had organized a force with heavy armaments and combat helicopters but people were still killed. This force included personnel from Morocco, Bangladesh, Nepal and Pakistan; an Indian aviation unit; and a Bangladeshi and Indonesian engineering unit. Brigadier General Jan Isberg, commander of the Ituri Brigade, confirmed the force's capacity:

*The force's capacity is enormous. We have all the necessary means—we have helicopters, APCs and the weapons each soldier has. We are capable of countering any attack... we must act according to our new mandate of Chapter Seven immediately and without hesitation, to be ready to use force when the situation dictates.*¹⁶³

And in the case of Bunia, one wonders why the statement made by the first MONUC's Force Commander regarding the conduct of MONUC during the Bunia incident did not inform the UN that there was a more serious issue on the side of troop contributing countries than to ask these same countries to increase their troop numbers:

¹⁶² Res 1493 (2003), Res 1756 (2007)

¹⁶³ Boshoff, Henri, "Overview of MONUC's Military Strategy and Concept of Operations", In *Challenges of Peace Implementation: The UN Mission in the Democratic Republic of the Congo*. Mark Malan and Joao Gomes Porto, eds. Pretoria: Institute for Security Studies, 2004, pp 142

the tactical ability of the contingent proved very limited due to the presence in its ranks of a good proportion of reservist,...The behavior of the contingent, which was moreover meant to be an intervention battalion, which the troop-contributing country deployed in full knowledge of the situation in DRC, and which raised objections and backed out of certain of its crucial obligations, was totally and utterly unacceptable. The DPKO must ensure that Troop Contributing Nations fully understand and fulfill their commitments when they sign up to providing troops¹⁶⁴

The presence of big numbers of reservists in a battalion designed to be an intervention force? What else would one expect? And instead of making sense of such an advice, the Security Council went on to endorse more expansion of MONUC in many resolutions that came after Bunia. One of these was resolution 1843 of 2008 which increased MONUC's financial and material capacity, its military equipment, and over 3,000 soldiers. With around 21,000 peacekeepers, MONUC became the largest UN peacekeeping mission in the world. But as it was seen, the reality on ground showed that it still faced the same challenges when the need arose to engage in forceful civilian protection.

With such a force, attributing the protection failures of MONUC to anything related to its strength makes the whole capacity argument questionable. What seemed to make the "limited capacity" argument credible at the beginning of the mission had more to do with the size of the DRC but this argument loses credibility when one finds that the bulk of this huge force was actually sent to the Eastern part of the country and it is exactly in that part of DRC where most of the civilian suffering has been taking place. Indeed, a lot of questions arise from the fact that the Security Council kept expanding MONUC without realizing that this expansion was practically not adding sufficient value to the civilian protection agenda. Yet, civilian protection was the

¹⁶⁴ MONUC (United Nations Organization Mission in the Democratic Republic of the Congo), *End of Tour Report*. 31 December 2003

most, if not the only, reason advanced for consistently expanding MONUC. And if any other argument in line with this so-called “limited capacity” was to make sense, it could probably be the force’s limited capacity to communicate with the local population in the language they understand as most of the soldiers, who are drawn from countries around the world, don’t speak French or Kiswahili. One of the implications of such a gap is that proactive protection and the prioritization of patrols are made difficult by poor intelligence gathering capacity, not because the intelligence staffs are few or lack professional skills, but because they must go through translators to gather, interpret, and analyze information, some of which would require urgent attention and action.

In the case of the crisis in Bukavu, Holt and Berkman argued that the UN forces there had firepower that might have allowed them to protect civilians...¹⁶⁵. But they didn’t!! This illustrates how the lack of dedication to collective responsibility on the part of troop contributing countries and their forces might jeopardize international commitment to civilian protection. In addition, it is important to note that many countries even refuse to submit their troops to foreign command.¹⁶⁶ And even after supposedly submitting to a supranational command structure, peacekeeping forces often resort back to national chains of command when directives are unclear¹⁶⁷

¹⁶⁵ Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, The Responsibility to Protect And Modern Peace Operations*, The Henry L. Stimson Center, 2006

¹⁶⁶ Berdal, Mats, *The UN’s Unnecessary Crisis*, *Survival* 47/3, 2005, pp. 7 – 32.

¹⁶⁷ Hillen, John, *Blue Helmets: the Strategy of UN Peacekeeping* (Washington D.C.: Brassey’s, 2000), pp. 148

4.3.2.2 Weak Mandate?

MONUC's failure to protect Congolese has also been justified on the basis of its mandate. Accordingly, without a clear and well-designed mandate, MONUC will continue to be incapable of protecting civilians. As in the case of the so-called "capacity" explanation, if MONUC's performance was to be analyzed on the basis of its early phases of deployment, one would again support the argument of a weak mandate because, indeed, the U.N Security Council initially committed a force with too limited a mandate to achieve its objectives. At first, MONUC was only supposed to observe compliance with the Lusaka Ceasefire Agreement and its mandate was not very clear about forcibly protecting civilians although it indicated the possibility of protecting them. The fact that the UN was not part of this agreement to weigh in on what the signatories were actually asking for certainly impacted on the mandate that MONUC was going to get from the UN Security Council. The dichotomy between the mandate which the Congolese initially believed MONUC should have been given, and the actual mandate that the UN Security Council had imposed, and was willing to support, became key to people's assessments of this force.

Surprisingly, many of MONUC's own officers also voiced frustration during its early phases of operations. A senior MONUC official in Kinshasa summarized their frustration in this way: "Look, people shouldn't throw stones at MONUC if they haven't given us the mandate; DPKO needs to take MONUC seriously. If they wanted, they would have provided people, money and a mandate. DPKO does not think Congo is a priority. People here know the world is aware of what is happening, but no one takes it seriously; the question of Chapter 6 or Chapter 7 is a big issue

in trying to protect civilians. We actually can't do it. DPKO can't define 'imminent threat' or 'protection.' The Chapter 7 part is unclear. No one will commit troops to accomplish the mission."¹⁶⁸ This was a very strong message from a senior mission official!! But he was also right because the force was first given its mandate mainly on the basis of Chapter VI of the UN Charter, though there were some small mention of Chapter VII. At the heart of the problem was exactly that Chapter VII portion of the mandate which allegedly allowed MONUC to protect civilians "under imminent threat". The mandate was very ambiguous and open to interpretation. Thus, it is interesting to read how the UN in New York justified MONUC's inaction in the Kisangani rebel attack mentioned earlier. A senior military official in the Department of Peacekeeping Operation had this to say:

*"Mandates are political. Mandates are the result of taskings. The wishes of a commander on the ground are different from those in New York."*¹⁶⁹

In short, if the justification of MONUC's failure to protect Congolese were to be looked at from the perspective of its original mandate, it would be easier to know where to put the blame. But MONUC's mandate also kept expanding. The UN Security Council consistently expanded MONUC's role in an effort to protect people. Just one month after the Ituri crisis for example, the Security Council revisited MONUC's mandate and clearly authorized it, under the Chapter VII part of the mandate, to use all means deemed necessary to protect civilians and to contribute to the improvement of their security conditions.¹⁷⁰ And after the Bukavu incident, its mandate

¹⁶⁸ Jones, Bruce, *The Limits of Peacekeeping*, Los Angeles Times, 1 March 2006.
<http://www.latimes.com/news/opinion/commentary/ia-oe-jones1mar01,0,6474643.story> (accessed 23/01/2011).

¹⁶⁹ Ibid

¹⁷⁰ S/RES/1493 of June 2003

was re-emphasized again through Resolution 1565 of late 2004 and resolution 1592 of early 2005 which specifically directed MONUC to engage in robust operations to protect Congolese:

Emphasizing 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 ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-FAR and Interahamwé, encourages MONUC in this regard [...] to make full use of its mandate under resolution 1565 in the eastern part of the Democratic Republic of the Congo, and stresses that, 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 areas¹⁷¹.

But of most importance in terms of mandate clarification were two Security Council resolutions:

(i) resolution 1756 of mid 2007 which now transformed the entire force mandate into a Chapter VII peace operation and made the protection of civilians its top priority and (ii) Security Council resolution 1856 of 2008 which gave MONUC the strongest prioritization to the protection of civilians of any Council mandate to date.¹⁷² For sure, the United Nations peacekeeping operations in the DRC cannot claim to lack clear Security Council mandate directing it to protect civilians; the protection of civilians is an obvious aim for this mission. The U.S. State Department has even made it clear that there shouldn't be any doubt about whether MONUC is mandated to protect Congolese. According to its 2008 country report on Human Rights in the Democratic Republic of the Congo, MONUC's mandate is robust and clear enough to accomplish its mission and to protect citizens.¹⁷³

¹⁷¹ S/RES/1592 of 30 March 2005

¹⁷² S/RES/1756 (2007) and S/RES/1856 (2008)

¹⁷³ The 2008 US State Department country report on Human Rights in the Democratic Republic of the Congo, available at www.state.gov (Accessed 11/01/2011)

The question those who doubt the clarity of the mandate should be asking is whether it is the mandate which is weak and unclear or the UN force's leadership still interpreting the mandate too conservatively? In fact, when MONU was being blamed over its failure to protect people, the debate about its mandate boiled down to those two questions. Surprisingly, MONUC personnel were also divided into those who classified protection as a primary mission objective in view of wide-scale and extreme cases of civilian insecurity in the area of deployment and those who referred to protection of civilians as secondary to other mission objectives. Even after UN Security Council resolution 1756 and Security Council resolution 1856 which made protection a primary goal, personnel were still struggling to set priorities and draw up mitigation strategies. The UN Secretary General, complaining of MONUC not using its Chapter VII mandate, also acknowledged that "... while the establishment of the peacekeeping mandate of MONUC under Chapter VII of the Charter of the United Nations has raised expectations that the Mission will enforce peace throughout the country, the interpretation of Security Council resolutions has been a major challenge for MONUC over the past years"¹⁷⁴ As a result of that confusion, coupled with a lack of conceptual clarity on other key issues, MONUC is unfortunately yet to develop contingency plans for protection crises up to today.

But why would a mandate which seems very clear to everybody become only unclear to the very experts who are meant to implement it? It was definitely not a mandate confusion which prevented Pakistani peacekeepers to intervene when massacres took place near their base in Hombo in 2009. It was because the area where the killings took place fell under the Indian

¹⁷⁴ Report of the Secretary-General on MONUC, S/2009/623

contingent responsibility at the time of the incident.¹⁷⁵ Indeed, this remote area in North Kivu called Hombo, which is located close to the border of South Kivu, fell under the Indian contingent's area of responsibility, but it was physically impossible to access due to many destroyed bridges. In contrast, the area was near and accessible from South Kivu, where the contingent of peacekeepers from Pakistan had a base close to the North and South Kivu border, less than three miles away: "the Pakistani base was at Irangi, just a few kilometers south of Hombo."¹⁷⁶ But the only excuse the Pakistanis were able to come up with to justify their refusal to intervene was that this place was not in their area of responsibility¹⁷⁷. In fact, debates over which peacekeepers had responsibility for ensuring that civilians are protected in that area persisted for months and created a perception that this area was like a 'no man's land' for MONUC's troops. In May 2009, a MONUC joint assessment mission even acknowledged that there was lack of protection in this area due to what it called "jurisdictional confusion". The assessment mission lamented the "peacekeeping vacuum," concluding that civilians had not seen any MONUC presence "in the last many months in spite of the area being a place of displacement with a high incidence of violence."¹⁷⁸ So, it did not matter whether the Pakistani peacekeepers were more close to the area or not, what prevented them to protect the Congolese civilians was just because the Indians were the ones in charge of the area and were not there.

¹⁷⁵ Joe Bavier, "UN soldiers row over Congo civilian protection," Reuters, June 12, 2009, Available at <http://af.reuters.com/article/topNews/idAFJOE55B0K820090612> (accessed on 01/12, 2010)

¹⁷⁶ "MONUC Joint Assessment Mission Report – Hombo- Busurungi," May 12-15, 2009, on file with Human Rights Watch

¹⁷⁷ Ibid

¹⁷⁸ Ibid

This situation raises very disturbing concerns and one wonders why it has never been subject to UN Security Council concern. How practical is it to find two troop-contributing countries that are originally not only in a state of conflict at home but also basically in a state of war between them defending the same cause? The experience of Hombi is for sure a result of putting two enemies together to defend civilians unknown to both of them. Why would Pakistani peacekeepers risk their lives for a task that fall in the area of responsibility of their most enemies ever? The UN Security Council should have realized that giving such two countries a shared responsibility might undermine the achievement of their mission and put civilians they were supposed to protect at risk. This is not the only UN mission in which the Pakistani and the Indian troops are required to participate. Given the fact that India and Pakistan are among the UN largest troop contributing countries, if Pakistani peacekeepers participating in two different UN operations were to be put together in one mission and the same is done to Indian peacekeepers, their numbers will still be the same and there will be fewer blame-games that only result in their poor performance. In short, there are contingents which would serve better if they were not mixed in one peacekeeping mission. Otherwise, what would one expect when enemies are forced to serve in such conditions? At the best, they will behave the way they behaved in Hombi, but at the worst, they will even exchange fire and it is not difficult to imagine what would be the consequences on the very civilians they were sent to protect.

4.3.3 MONUC/MONUSCO and the Multinational Character of peacekeeping

It is an inescapable reality that the UN will continue to depend on troop contributions from different countries to make up its peacekeeping operations requirements. During the creation of MONUC, each troop contributing country negotiated its own agreement with the UNDPKO,

which at the end dictated what its forces would be used for within MONUC. These countries were certainly in stronger bargaining positions when negotiating with the UN. This because, even if critics say that troop contributing countries gain financially from their contribution, there are no clear material and financial gains they get from participating in multinational peace operations. They get back what is known in the UN as “reimbursement” and this is just a gradual refund of the equipments these countries provide to their troops participating in peace operations. This is therefore not a financial gain for sacrificing a country’s young men and women in environments as dangerous as the Eastern DRC. Yes, countries may take national pride in their military role in humanitarian and peace operations and other efforts to act in a multinational manner, but when these operations explicitly require civilian protection in violent environments such as in the DRC, it adds a potential deterrent with some troop contributing countries not being eager to provide their contingents for missions beyond traditional operations. In fact, most troop contributing countries have national guidelines that determine the conditions under which they will provide forces to participate in multinational peace operations. Some prohibit their national contingents from using force beyond self-defense, which can affect their participation in operations with civilian protection mandates; others are even constrained from providing troops to any Chapter VII operation. As clearly seen in the case of MONUC in DRC, contingents acquired in such a manner certainly have very different operational standards and philosophies.

The argument here is easy to understand if one tries to look at it from the perspective of typical “military-operations” and to relate it to the situation in DRC. As it was found in the previous chapter, the fact that as many as 60 troop contributing countries had to combine to make one force called MONUC implies lack of cohesion in terms of command and control. The contingent commanders defer in instructions they get from their respective countries rather than yielding

entirely to the direction of their Force Commanders on ground, a fact which can only compromise the Force Commanders' authority, and a fact which would not arise in any classic military operation. What happened in Rwanda in 1994 was probably an extreme case. After 10 Belgian peacekeepers were killed, the Belgians did not require the Force Commander's view for their contingent to pack and go back home. They just received instructions from their government and immediately left the Canadian Force Commander on ground. In the cases such as in the DRC, for peacekeepers to act, too many players have to be consulted and it takes a long time for some consensus to be reached. Despite the fact that command and control of UN peacekeeping operations must, at least in theory, reside with the UN Secretary General, on behalf of the Security Council, the U.N seems to have accepted that, for missions involving the use of force, it does not have the capacity to exercise adequate command and control and has, in practice, left the contributing countries to continue exercising some powers to their contingents with all the consequences that come with a lack of full and effective command and control. In short, and in military terms, different capabilities, philosophies, training, and contractual limitations not only make robust military actions extremely challenging, but sometimes even practically impossible. And as we saw with MONUC/MONUSCO, the force is made of many small contingents from several countries and this means that they differ very much in training, equipment, and philosophy. Without coherence, such a force can simply not function in an actual fighting situation. As a consequence, and this is the case with MONUC/MONUSCO, even inadequately trained and poorly equipped militias such as the various rebel groups in Eastern DRC have little respect for the blue helmets. They just decide to attack civilians and do it with little, if any, resistance from the UN force.

4.4 CONCLUSION

Today's peacekeeping operations do not resemble those of the 1950s, 1960s and 1970s which were comprised of forces interposed between previously warring parties that had achieved some measure of peace that could be kept. By contrast, UN peacekeeping operations are typically in the midst of civil wars and insurgencies and, as a consequence, have become very difficult and risky, especially when they are required to engage in civilian protection in war-torn environments like in the Democratic Republic of the Congo.

In the DRC, it is undisputable that there is increased attention in the UN Security Council to ensure that Congolese are protected from violence. But it is also undeniable that the UN peacekeeping mission there is a complex mission operating in a violent and unstable environment, involving a multitude of factions. It has been mandated to ensure that civilians are protected and the Security Council has consistently strengthened and called on this mission to implement fully its mandate, in all its aspects, in particular by robust actions to protect civilians at risk and to deter any attempt to threaten them by any armed group. But as said above, it is a risky operation and peacekeepers are often required to resort to force to protect civilians. This means that troop contributing countries must ensure that the type of force assigned to peacekeeping operations is appropriate. A country that intends to provide forces to protect civilians must ensure a full understanding of the environment it is entering.

And more importantly, if UN peacekeeping operations requiring civilian protection are to be successful, troop contributing countries must not transfer their bilateral issues and conflicts, such as India and Pakistan, in an already volatile environment that normally requires the forces from different countries to combine their efforts in the conduct of civilian protection operations

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

5.1.1 The Contemporary Civilian Protection Agenda is a Good Step Forward

"No legal principle -- not even sovereignty -- can ever shield crimes against humanity." -- Kofi Annan, UN Secretary-General

The reality of civilians caught up in different armed conflicts across the world, particularly in Africa, is a grim one. They are the main casualties; they are not just affected by wars and conflicts, but often specifically targeted for violent attacks. This has led to an unacceptably high toll on human life and livelihoods. When Kofi Annan warned that the numbers of civilian casualties in world conflicts has risen to inexcusable levels, he highlighted many cases across the world where wars have taken a heavy toll on the population and where conflicts have caused the death, by violence, of uncountable numbers of people and millions of others are locked in states of almost permanent insecurity.

But more disturbing were many cases in African conflicts cited by Kofi Annan in his warning about the increasing level of civilian suffering. These include, among many other cases, Sudan and the DRC. In Sudan, he noted, the international community "has collectively been dismayed by the pattern of attacks on civilians."¹⁷⁹ And in the DRC, according to him, the humanitarian consequences of war have been horrific. In the five eastern provinces of the DRC alone, the

¹⁷⁹ Quoted in Muriuki M. A., "Developing a Framework for Protection for the African Child: the Basic Rights", *Vulnerable Children and Youth Studies*, Volume 3, Issue 1 April 2008

number of deaths directly attributable to the war has been between 3 million and 5.4 million people.¹⁸⁰ Overall, the message by Annan was simple and straightforward: noncombatants remain at the mercy of civil wars, insurgencies, state repression, and state collapse. The African environment is complicated by the fact that most of today's armed groups don't have any standard command and control functions thereby operating without standard military rules of procedures. It is further complicated by the fact that combatants in those conflicts are sometimes child soldiers who are on drugs or who have been kidnapped. As warring parties fight over territorial control (as a means to weaken enemy forces by targeting host or supportive communities) or to access natural resources, more and more conflicts involve the targeting or forced displacement of civilians

For some, the answer to the question as to what has been the role of the international community and of the United Nations in this long history of civilian suffering is that the UN has also had a history of attempts to protect civilians. These attempts notwithstanding, it was not long ago that civilian protection issues acquired international prominence at the UN Security Council and in other relevant international organizations especially in the area of peacekeeping. In its traditional form, Peacekeeping was more of a symbolic protection force than anything else. It was a way to overcome the security dilemma between two parties whereby neither side would disarm for fear that the other side would not do the same. In this traditional form, Peacekeepers only deployed in conflicts that had peace agreements to allow rival factions to disarm without losing face while also holding them to their agreements. In short, although the UN has, in the past, tasked particular peace operations with achieving specific civilian protection goals, it was rare for civilian protection to be explicitly considered as a central objective of a peacekeeping mission.

¹⁸⁰ David Rosen, *The Slaughter in the Congo: Obama's Rwanda?*, *CounterPunch Print Edition* April 30 - May 2, 2010

Present-day interests in civilian protection are attributable to many interconnected streams of thought and policy that developed in reaction to different aspects of civilian suffering in wars and conflicts across the world.¹⁸¹ But one of the most important developments has been the rise to prominence of the 'Responsibility to Protect' principle in the last decade. Theoretically, the principle of the 'Responsibility to Protect' has been central to the wider effort to keep civilians safe. An important aspect underlying the 'Responsibility to Protect' is that state sovereignty implies responsibility. Accordingly, the primary responsibility for the protection of people lies with the state itself. Above this however, and fundamental to the 'Responsibility to Protect', is that where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, then the principle of non-intervention yields to the international community's 'Responsibility to Protect'.

This has been an important undertaking! It has implied an international responsibility to respond, through the UN, in a timely and decisive manner when national authorities are manifestly failing to protect their population from violence. Given these developments, the UN Security Council has regularly invoked chapter VII of the UN Charter to create protection mandates. And as a result, peacekeeping operations have, for the last decade, deviated significantly from their predecessor missions because, as clearly highlighted earlier, the central characteristics of traditional peacekeeping missions - the use of force for self defense only, the interposition of troops after a ceasefire and the maintenance of tactical and strategic impartiality - no longer provided the delimiting boundaries for presumed mission success and, more importantly,

¹⁸¹ Alex J. Bellamy and Paul D. Williams, "Protecting Civilians in Uncivil Wars," in *Protecting the Displaced*, ed. Sara Davies and Luke Glanville (Leiden: Brill, 2010), 131–137.

because the character of new conflicts proved to be decidedly more complex and often more deadly, not only for the belligerents and peacekeepers, but more for ordinary citizens caught in the fray. MONUC/MONUSCO in the Democratic Republic of Congo has been one of the UN missions with such a mandate. With a force of more than 20,000 troops, MONUC/MONUSCO is now known as the largest and most robust UN peacekeeping operation in the world with an explicit mandate for affording protection to civilians.

5.1.2 But the Civilian Protection Agenda still has Enormous Challenges

"In the 21st century, peace depends on securing people. If the Security Council is still unable to practically adapt, it will seriously undermine its credibility as a guarantor of peace, a credibility that is essential to maintaining the moral authority of the UN as a whole." -- Former Canadian Prime Minister Jean Chrétien

There can be no doubt that the international community in general, and the United Nations in particular, are more aware than ever of the dangers to which victims of armed conflicts, mostly noncombatants, are exposed when the laws that are supposed to protect them are ignored. And there is also no doubt that the actions undertaken by the United Nations aimed at protecting civilians in contexts where peacekeeping operations are deployed benefit, to some extent, those affected by armed conflicts. But, while the 'Responsibility to Protect' has been at the heart of the issues which the international community has been struggling with since the report of the International Commission on Intervention and State Sovereignty (ICISS) was released a decade ago, and subsequently endorsed by all UN member countries, protecting civilians from the negative effects of armed conflicts has continued to raise huge challenges to peacekeepers, especially in Africa, but also across the world.

However shocking it was, the experience and outcome of cases such as Somalia and Rwanda, as well as the interventions and non-interventions in many places in the 1990s and before, had provided a clear warning that the tools, devices, thinking, and protection ability of international peacekeeping, in the framework of the so-called 'Humanitarian Interventions', needed to be comprehensively reassessed, in order to meet the protection requirements of the contemporary era. Unfortunately, the international 'Responsibility to Protect', which had sought to lay out alternatives to the deeply criticized 'Humanitarian Interventions' of the 1990s, has not yet been operationalized to be able to respond effectively to the real problem. At stake should therefore be how to move from theoretically talking of the 'Responsibility to Protect' to practically, and perhaps urgently, deliver protection to people who, because their states are unwilling or unable to protect them, still find their lives at risk of being killed, raped, forced out of their homes, or find themselves subjected to many forms violence that have come to characterize contemporary armed conflict.

In this study, illustrations of the continuing protection challenges were drawn from the United Nations Peacekeeping Mission in the Democratic Republic of the Congo, from 1999 to the present, because this country has not only experienced extensive international engagement, but also some of the most severe and sustained civilian protection challenges in Africa. Indeed, since it was established in 1999, the UN mission has adapted many times following the political evolution and responding to the nature of civilian suffering in the DRC. It was first conceived as a traditional peacekeeping operation in which military observers were deployed with the aim of monitoring and supporting the implementation of the Lusaka Ceasefire Agreement. But in the course of the years, as a consequence of many crises in the eastern part of the country, particularly in Ituri and in the two Kivu provinces, it was eventually granted, by the United

Nations Security Council, the mandate and means commensurate with the requirements of the situation on the ground. And, more importantly, it was given the right to use force to implement its mandate, a mandate that prioritized the protection of civilians.

Despite this, Congolese have continued to suffer from attacks, sometimes even a few meters away from the UN peacekeeping force which was meant to protect them. Why? Either because troop contributing countries had decided to send battalions that were not ready to engage in fighting, or because different troop contributing countries had other deep rooted conflicts at home that prevented them from supporting each other. This has been particularly true with regard to India and Pakistan and has led to the UN force failure to protect people.

In short, while the case of MONUC/MONUSCO in the DRC has confirmed that the protection of civilians in armed conflicts has become increasingly necessary and more complex, it has also confirmed that despite evolving consensus on the need for protection of civilians in armed conflicts, there is much less understanding of how to do protection in practice. The UN peacekeeping mission in the DRC, therefore, cannot be said, at least in practice, to reflect the emergence of a new paradigm in the field of civilian protection.

5.2 Recommendations

Given the centrality of civilian protection to UN peacekeeping operations' success, a number of recommendations are made. Those recommendations are addressed to:

1. The academic researchers because of the need for further research
2. The UN because of the unique role and capabilities that UN peacekeeping missions can offer in protecting civilians
3. The Troop Contributing Countries because of their importance in providing the right contingents at the right place
4. The African governments because of the need for these governments not only to avoid the abuse of the 'Responsibility to Protect', but also to support its practical achievability in the same way they have supported its conceptual evolution

5.2.1 Academic Recommendation

Recommendation 1: Further Research. If the researcher had time, he would supplement the study with primary source by oral interviews of peacekeepers and victims. It is therefore important that further research and work in the area of civilian protection consider conducting such interviews to capture the feeling of both the civilians in need of protection and the peacekeepers mandated to protect them.

5.2.2 Policy Recommendations

5.2.2.1 To the UN

Recommendation 2: Be proactive rather than reactive. The 'Responsibility to Protect' does not start from reacting to violence. It starts from preventing it. Indeed, the UN needs to first and

foremost invest in preventing mass killings of civilians rather than in intervening to stop it. This will require investments in the strengthening of existing norms that restrain armed violence against civilians. It requires a norms-based approach that would involve powerful actors reinforcing certain values to the point where it is well understood that they must not be violated. The key norm in question here is the 'Responsibility to Protect'.

Recommendation 3: *Look at the root causes of the protection failures.* The UN in general and the Security Council in particular seem not to have been looking at the root causes behind the failure of peacekeepers to protect civilians. This is justified by their consistent actions, geared towards wrong assumptions, whenever peacekeepers appeared failing to provide protection to innocent Congolese. There is a need to re-orient the focus and put more efforts in searching for the root causes for such failures. For example, the case of Pakistani peacekeepers refusing to protect people being killed in their vicinity should guide the decision-makers in New York on how to deploy contingents from countries with deep-rooted conflicts more effectively and efficiently. And the case of Uruguayans and Moroccans sending non-infantry battalions to environments requiring combat-like troops should also inform the decision-makers about the level of interests that troop contributing countries attach to the collective international responsibility and adjust accordingly.

Recommendation 4: *Operationalize the 'Responsibility to Protect'.* Achieving the goal of protecting civilian will remain a challenge until there is relative clarity about how protection can be achieved in practice. If the UN and the Security Council cannot clearly define what protection practically means in addition to its conceptual meaning, there will be little chance of achieving it. Indeed, the 'Responsibility to Protect' seems to have remained more of a conceptual than an operational tool to protect civilians. It is therefore important to move it to another level and

design strategies that will ensure its practical attainability since the major challenges revolve around how best to achieve protection in concrete contexts. It is not enough to deploy peacekeepers with a protection mandate, however strong they might be, and hope that they will figure out an effective protection strategy once they arrive. The practical aspect of civilian protection requires an operational conception to guide troops in facing up to questions on the ground and a strategic framework for addressing these questions as quickly and effectively as possible. It requires, in short, that the UN and the Security Council operationalise the 'Responsibility to Protect' by addressing how UN peacekeeping operations with protection tasks as part of their mandates, or those with full-scale responsibility to protect, should be conducted.

5.2.2.2 To troop contributing countries

Recommendation 5: Invest in peacekeepers. Sending peacekeepers to protect civilians in Africa's conflict zones requires them to take considerable risks. It is therefore extremely important that troop contributing countries not only provide the right contingents, but also provide their troops with sufficient and adequate pre-deployment information on the dangers that civilians may face and their vulnerability to attacks from armed factions. In this case, peacekeepers need to be aware of the fact that protection of civilians, however risky it may be, is as important to the international community's interests as it is to the national interests of their own countries. In other words, troop contributing countries must ensure that enough political will is garnered to promote the 'Responsibility to Protect' in violent conflicts.

5.2.2.3 To African Governments

Recommendation 5: Understand what the first pillar of the 'Responsibility to Protect' entails. The very first pillar of the 'Responsibility to Protect' principle clearly expands the view of

sovereignty as responsibility: “state sovereignty implies responsibility and the primary responsibility for the protection of people lies with the state itself.”¹⁸² With this, there is definitely a re-characterization “from sovereignty as control to sovereignty as responsibility”. In other words, states take on obligations as members of the international community and the authority of a state is no longer regarded as absolute. More importantly, the declaration by all Heads of State and Government, including those from the African continent, in the 2005 UN Summit Outcome that “we accept that responsibility and will act in accordance with it” is the bedrock. In short, pillar one of the ‘Responsibility to Protect’ presents an appeal for the prevention of, and end to, human suffering in individual states. African governments should and understand this and take their sovereignty as a responsibility

¹⁸²The International Commission on Intervention and State Sovereignty (ICISS) report, 2001, synopsis p. xi

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ANNEX I

Summary of the Resolutions of the UN Security Council on MONUC

1999

- The Security Council called for the immediate signing of a ceasefire agreement (9 April 1999)
- The Security Council welcomed the Ceasefire Agreement and authorized the deployment of UN liaison personnel (6 August 1999)
- The Security Council extended the mandate of the UN liaison personnel (5 November 1999)
- The Security Council decided that personnel authorized under its previous resolutions would constitute the United Nations Organization Mission in the Democratic Republic of the Congo (30 November 1999)

2000

- The Security Council authorized the expansion of MONUC (24 February 2000)
- The Security Council, among other things, called on all parties to cease hostilities throughout the territory (16 June 2000)
- The Security Council, among other things, decided to extend the mandate of MONUC until 15 October 2000 to allow time for further diplomatic activities and for Council reflection on the future mandate of MONUC (23 August 2000)
- The Security Council extended the mandate of MONUC until 15 December 2000 (13 October 2000)
- The Security Council extended the mandate of MONUC until 15 June 2001 (14 December 2000)

2001

- The Security Council, among other things, demanded that the parties begin disengaging and that the signatories to the Lusaka Agreement adopt plans for the complete withdrawal of all foreign troops, and endorsed proposals put forward by the Secretary-General in his report of 12 February (22 February 2001)
- The Security Council, among other things, noted that the ceasefire among the parties to the Lusaka Ceasefire Agreement had been respected, and reiterated its call on all parties to Agreement to implement this agreement (para. 1); decided to extend the mandate of MONUC until 15 June 2002 (para. 29); and approved the updated concept of operations put forward by the Secretary-General in paragraphs 84 to 104 of his report of 8 June 2001 (para. 31) (15 June 2001)
- The Security Council, among other things, affirmed that the implementation of phase III of the deployment of MONUC required a number of steps from the parties and requested the Secretary-General to report on progress thereon (9 November 2001)

2002

- The Security Council, among other things, condemned the resumption of fighting in the Moliro pocket and reminded RCD-Goma and all other parties that they must comply with their obligations with regard to the Ceasefire Agreement, the disengagement plan and relevant resolutions of the Security Council (para. 31) (19 March 2002)
- The Security Council, among other things, extended the mandate of MONUC until 30 June 2003; took note of the recommendation by the Secretary-General for a troop ceiling increase and expressed its intention to consider authorizing it as soon as further progress had been achieved and the steps referred to in paragraph 12 of resolution 1376 (2001) had been taken (14 June 2002)
- The Security Council, among other things, endorsed the recommendations of the Secretary-General in his special report, endorsed the new concept of operations outlined in the report and authorized the expansion of MONUC to consist of up to 8,700 personnel (4 December 2002)

2003

- The Security Council, among other things, requested the Secretary-General to give a new mandate of six months to the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (24 January 2003)
- The Security Council, among other things, welcomed the agreement on transitional arrangements, requested the Secretary-General to increase the number of personnel in MONUC's human rights component and expressed its support to the broad orientations set out by the Secretary-General in his last report on the role of MONUC in support of the peace process (20 March 2003)
- The Security Council, among other things, authorized the deployment until 1 September 2003 of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC (30 May 2003)
- The Security Council, extended the mandate of MONUC until 30 July 2003 (26 June 2003)
- The Security Council, among other things, extended the mandate of MONUC until 30 July 2004, increased the military strength to 10,800 and authorized MONUC to use all necessary means to fulfil its mandate in Ituri and North and South Kivu (28 July 2003)
- The Security Council, among other things, authorized the States members of the Interim Emergency Multinational Force to provide assistance to the MONUC contingent deployed in Bunia and its immediate surroundings, if MONUC requests them to do so and if exceptional circumstances demand it (26 August 2003)

2004

- The Security Council, among other things, welcomed the efforts currently undertaken to set up the first integrated and unified brigade in Kisangani (15 January 2004)

- The Security Council, among other things, decided to establish a committee to monitor compliance with the arms embargo imposed last July against all armed groups operating in the eastern region of the Democratic Republic of the Congo (12 March 2004)
- The Security Council, among other things, decided to renew its arms embargo against irregular forces in the Democratic Republic of the Congo until 31 July of 2005 "in light of the failure by the parties to comply" with previous demands and called for the re-establishment of an expert group to analyze any further violations (27 July 2004)
- The Security Council, among other things, extended the mandate of MONUC until 1 October 2004 (29 July 2004)
- The Security Council, among other things, extended the mandate of MONUC until 31 March 2005 and authorized the increase of MONUC's strength by 5,900 personnel (1 October 2004)

2005

- The Security Council, among other things, extended the mandate of MONUC until 1 October 2005, reaffirmed its concern regarding acts of sexual exploitation and abuse committed by UN personnel against the local population and urged troop-contributing countries to take appropriate action to prevent such acts by their personnel in MONUC (30 March 2005)
- The Security Council, among other things, condemned the continuing illicit flow of weapons within and into the DRC and decided that the arms embargo imposed by resolution 1493 of July 2003 would apply to any recipient within that country's territory, and imposed a travel ban and assets freeze on those violating the embargo (18 April 2005)
- Reissued for technical reasons on 3 May 2005 (18 April 2005)
- The Security Council, among other things, reiterated its serious concern regarding the presence of armed groups and militias in the eastern DRC, condemned the continued illicit flow of weapons within and into that country and decided to maintain the existing sanctions regime in the DRC for another year in light of the parties' failure to comply with its demands (29 July 2005)
- The Security Council, among other things, authorized an increase of 841 personnel in the strength of the Mission, including additional police personnel, and up to five formed police units of 125 officers each. Underlining the temporary character of such deployment, it requested the Secretary-General to start downsizing or repatriating the additional personnel from 1 July 2006 at the latest (6 September 2005)
- The Security Council decided to extend the mandate of MONUC until 31 October 2005 (30 September 2005)
- The Security Council, among other things, extended the mandate of MONUC until 30 September 2006 and authorized an increase of 300 personnel in its military strength. The Council underlined the temporary character of this increase and requested the Secretary-General to take the necessary steps with a view to downsizing or repatriating this additional strength from 1 July 2006 at the latest (28 October 2005)

- The Security Council, among other things, demanded that foreign fighters in DRC disarm by 15 January or face sanctions (21 December 2005)

2006

- The Security Council, among other things, requested the Secretary-General to re-establish the Group of Experts, for a period expiring on 31 July 2006, to continue fulfilling its mandate as defined in resolutions 1533, 1596 and 1649 (31 January 2006)
- The Security Council decided to authorize the Secretary-General to redeploy temporarily a maximum of one infantry battalion, a military hospital and up to 50 military observers from ONUB (UN Operation in Burundi) to MONUC, until 1 July 2006 (10 April 2006)
- The Security Council authorized, for a period ending four months after the date of the first round of upcoming presidential and parliamentary elections, the temporary deployment of a European Union reserve force ("Eufor R.D.Congo") to support MONUC in the DRC (25 April 2006)
- The Security Council decided to extend the increase authorized by resolutions 1621 and 1635 until 30 September 2006 (30 June 2006)
- The Security Council decided to extend until 30 September 2006 the strength authorization contained in resolution 1669 (30 June 2006)
- The Security Council decided to renew the existing sanctions regime in the DRC for a further year, in light of the failure by the parties to comply with its demands (31 July 2006)
- The Security Council decided to extend the mandate of MONUC until 15 February 2007; extended until the same date the increase in the military and civilian police strength authorized to assist in the electoral process and, until 31 December 2006, an authorization to redeploy a maximum of one infantry battalion, a military hospital and 50 military observers from ONUB to MONUC, underlining the temporary character of those arrangements (29 September 2006)
- The Security Council authorized, from 1 January 2007, until the expiry of MONUC's than current mandate on 15 February 2007, an increase in the military strength of MONUC of up to 916 military personnel, to allow for the continued deployment to MONUC of the infantry battalion and the military hospital authorized under the ONUB mandate (22 December 2006)

2007

- The Security Council decided to extend the mandate of MONUC until 15 April 2007 (15 February 2007)
- The Security Council decided to extend the mandate of MONUC until 15 May 2007 (13 April 2007)
- The Security Council decided to extend the mandate of MONUC until 31 December 2007 (15 May 2007)
- The Security Council decided to extend the arms embargo for another 10 days (31 July 2007)

- The Security Council decided to renew the arms embargo until 15 February 2008 (10 August 2007)
- The Security Council decided to extend the mandate and capacity of MONUC for one year, until 31 December 2008 (21 December 2007)

2008

- The Security Council authorized MONUC to assist the Congolese authorities in organizing, preparing and conducting local elections (30 January 2008)
- The Security Council demanded that armed groups and militias in the eastern part of the DRC immediately lay down their arms and turn themselves into Congolese and MONUC authorities for disarmament, demobilization, repatriation, resettlement and reintegration (13 March 2008)
- The situation concerning the Democratic Republic of the Congo [S/RES/1807(2008)] (31 March 2008)
- The Security Council authorized a temporary increase of MONUC's authorized military strength and the strength of its formed police unit by up to 300 personnel (20 November 2008)
- The Security Council extended MONUC until 31 December 2009 (22 December 2008)
- The Security Council, condemning the continuing illicit traffic of weapons in the DRC, decided to extend the arms embargo there and its related sanctions regime, with some modifications, until 30 November 2009 (22 December 2008)

2009

- The Security Council extended arms embargo and related sanctions regime until 30 November 2010, and extended the mandate of the Group of Experts dealing with the DRC for the same period (30 November 2009)
- The Security Council extended the mandate of the MONUC until 31 May 2010 and requested the Secretary-General to conduct a strategic review of the situation in the DRC and of MONUC's progress toward achieving its mandate (23 December 2009)

2010

- The Security Council extended the mandate of MONUC until 30 June 2010 and also decided that from 1 July it would bear the title "United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)", in view of the new phase reached in the country (28 May 2010)