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# United Nations Personnel in the Democratic Republic of Congo

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ADAM MOSCOE, FEB 16 2015

## **Offensive Neutralizing: The Status under International Humanitarian Law of Personnel in the United Nations Force Intervention Brigade in the Democratic Republic of Congo**

In late March 2013, the United Nations (UN) Security Council confronted the prospect that long-lasting stabilization efforts in the Democratic Republic of Congo (DRC) would amount to naught in the face of unyielding rebel groups such as the M23 and the Democratic Forces for the Liberation of Rwanda. Recognizing the threat posed by such groups to international peace and security — as well as the international community's responsibilities under Chapter VII of the UN Charter to respond to these threats — and noting the violations of international humanitarian and human rights law perpetrated by armed groups in the DRC, the Security Council unanimously adopted Resolution 2098. The resolution extended the mandate of the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and established a Force Intervention Brigade (FIB) with the mandate to “neutralize and disarm” rebel groups in partnership with the Armed Forces of the DRC (FARDC).<sup>[i]</sup> MONUSCO's mandate, including the FIB, has been further extended until March 2015.<sup>[ii]</sup> The creation of the FIB has been widely viewed as a major innovation that marks a move towards *peace enforcement*, which — unlike “robust peacekeeping” — may include the use of force at the strategic or international level, and not solely at the tactical level.<sup>[iii]</sup>

The status of FIB military personnel under international humanitarian law (IHL) — as distinct from that of MONUSCO personnel not involved in the FIB, including both military and civilian actors — has also been the subject of considerable debate. This paper will explore the evolution of IHL norms as applied to UN peace operations and will specifically examine whether the FIB renders MONUSCO a party to a non-international armed conflict (NIAC) in the DRC.<sup>[iv]</sup> A particularly useful principle will be the autonomy of *jus in bello* (conduct in war) from *jus ad bellum* (right to, or legitimacy of, war) in discussions of IHL.<sup>[v]</sup> This paper will not address the controversial issue of the FIB's use of drones, though the introduction of these belligerent technologies in fulfilling UN mandates further emphasizes the need to clarify the legal status of UN missions and their personnel. Moreover, that the transition to more offensive forms of peace operations is occurring at the same time as UN mandates are increasingly multidimensional — involving large civilian and police components engaged in peacebuilding<sup>[vi]</sup> — further illustrates the need to discern the legal status of combatants from that of civilians under a unitary UN mandate.<sup>[vii]</sup>

## **Evolving Norms regarding the Application of IHL to UN Peace Operations**

The normative framework for UN peace operations derives from three sources: the UN Charter, Human Rights and related customary legal instruments, and IHL.<sup>[viii]</sup> Peace operations missions have traditionally been grounded in Chapter VI of the Charter, though recent missions refer to Chapter VII with respect to resolving threats to international peace and security.<sup>[ix]</sup> The second normative source, human rights law, particularly emphasizes the obligation of peacekeeping personnel to avoid perpetrating abuses. IHL, the focus of this paper, regulates the conduct of hostilities and is enshrined in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. Neither the UN nor the missions it oversees can, as unitary actors, ratify these instruments of IHL, however *The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law* (1999) clarifies that IHL applies to UN forces when “they are actively engaged therein as combatants, to the

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extent and for the duration of their engagement.” IHL applies “in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.”<sup>[xi]</sup> The *Bulletin* specifically restricts UN forces’ means and methods of combat and it sets out provisions for the treatment of “civilians and persons hors de combat”; detainees, and; “the wounded, the sick, and medical and relief personnel.” The obligation of UN personnel to respect IHL is further enshrined in UN Security Council resolutions pertaining to women, peace and security (1325); children and armed conflict (1612), and; the protection of civilians in armed conflict (1674). In another example of peace operations conforming with IHL, the UN Secretary-General recently instituted a *Human Rights Due Diligence* policy, which stipulates that UN forces may not provide support to non-UN forces that are believed to be “committing grave violations” of IHL.<sup>[xii]</sup> The FARDC would be considered non-UN forces and thus this policy has implications for the FIB.

Just as there is an enduring normative framework underpinning IHL, UN peacekeeping is associated with a set of strict principles including: consent of the parties to a conflict, impartiality, and an absence of force except “in self-defence and defence of the mandate.” The movement towards peace enforcement may challenge these principles. However, it has also been argued that the questions raised by the creation of the FIB in the DRC are not new, as the use of force by UN personnel beyond self-defence has been seen since 1992, although it would be ill-advised to refer only to these missions, which were all “traumatic experiences for the UN.”<sup>[xiii]</sup> 1992 was also the year in which Secretary-General Boutros Boutros-Ghali published his *Agenda for Peace* and advocated for “peace enforcement units.” 1999 marked the year in which UN missions were first mandated to use force to protect civilians — in East Timor and Sierra Leone.<sup>[xiv]</sup> The following year saw the publication of Lakhdar Brahimi’s influential report, which “maintained that UN forces should be able to use force to prevent atrocities against civilian populations.”<sup>[xv]</sup> One cannot analyze the current situation without referring to two key events: first, the UN recognizing in 2007 its failure to protect civilians in the DRC, and second, the intervention in Libya in 2011. Although not implemented on the ground under the auspices of the UN, the Security Council gave member states a clear mandate to protect civilians through “all necessary measures.”<sup>[xvi]</sup>

Willmot and Sheeran argue that the Libya intervention paved the way for the FIB in the DRC, since the former established a precedent for protecting civilians in conformity with the Responsibility to Protect doctrine.<sup>[xvii]</sup>

## The Force Intervention Brigade in the DRC

There is not sufficient space here to explain the UN’s rationale for creating the FIB — essentially, the grave extent of the humanitarian crisis and the inability of MONUSCO to fulfill its stabilization mandate in eastern DRC in light of persistent threats from armed groups like the M23<sup>[xviii]</sup> — and in any case such explanations fall into the realm of *ius ad bellum*, which is outside the scope of IHL. Yet it must be recognized that support for FIB did not originate within the Security Council, but rather within the affected region itself, including through the International Conference on the Great Lakes Region and the 2013 *Framework for Peace, Security and Cooperation for the Democratic Republic of the Congo*.<sup>[xix]</sup> This regional engagement is reflected in the composition of troops — around 3000, primarily from Tanzania, South Africa, and Malawi.<sup>[xx]</sup> Before examining the status of FIB personnel under IHL, it is important to take note of the specific language used by the UN Security Council, which, in Resolution 2147 (2014), extended the mandate of MONUSCO until March 2015. The FIB is mandated to neutralize, disarm, and prevent the expansion of armed groups by launching “targeted offensive operations...either unilaterally or jointly with the FARDC, in a robust, highly mobile and versatile manner and in strict compliance with international law, including international humanitarian law and with the [aforementioned] human rights due diligence policy on UN-support to non-UN forces...”<sup>[xxi]</sup> Moreover, the mission itself is mandated to *respond* to violations of IHL carried out by armed groups.<sup>[xxii]</sup> The UN’s subtext appears to be that a mission designed to address and prevent IHL violations must itself be conducted in a way that respects IHL. Interestingly, the resolution stipulates that the FIB should not be seen as a “precedent” for future UN missions, yet even without this clause the FIB appears practically inimitable given its rare combination of regional buy-in, Security Council endorsement, cooperation from domestic armed forces (FARDC), and the well-resourced nature of MONUSCO.<sup>[xxiii]</sup> Still, the attempt to cast the FIB as a DRC-specific initiative does not obscure its significance in the evolution of UN peace operations towards, at the same time, more offensive and more multidimensional, integrated mandates.<sup>[xxiv]</sup>

The FIB was not adopted without criticism from states and NGOs alike. While this paper will not discuss the

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detractors' arguments in detail, it is important to note that some have questioned the FIB's conformity with the UN's long-standing principle of impartiality and the implications for existing and future UN missions.<sup>[xxiv]</sup> There are also concerns that "the use of force for the protection of civilians can escalate a conflict and exacerbate the humanitarian situation through reprisal attacks, heightening human rights violations and sexual violence, increasing displacement and leaving in its wake a dangerous security vacuum."<sup>[xxv]</sup> It did not take the (now disbanded) M23 long to threaten attacks on the FIB and troop-contributing countries were understandably worried about possible threats to non-FIB members of MONUSCO.<sup>[xxvi]</sup> The final section will further examine this crucial distinction between FIB and non-FIB components of MONUSCO as it pertains to IHL.

## Qualification of the Conflict

Before analyzing the applicability of IHL to the FIB, it is first necessary to ascertain the provisions of IHL that apply to the situation in the DRC. Given that the actions of the FIB support, and are carried out in coordination with, the DRC and its armed forces, the conflict is generally categorized as a NIAC, meaning that the relevant instrument of IHL is Common Article 3 of the Geneva Conventions. Additional Protocol II may also apply, insofar as FIB forces are "under responsible command" and are able "to carry out sustained and concerted military operations." The aforementioned 1999 *Bulletin* of the Secretary-General also applies.<sup>[xxvii]</sup> This paper views the situation as a multinational NIAC, in which "multinational armed forces are fighting alongside the armed forces of a 'host' state, in its territory, against one or more organized armed groups."<sup>[xxviii]</sup> These armed groups are parties to the conflict and have attained a certain level of organization — a command structure, logistics capabilities, and the ability to "conduct coordinated military operations" and to "respect and ensure respect for IHL" — and a certain threshold of intensity.<sup>[xxix]</sup> By contrast, Eric David argues that the DRC is not the site of a NIAC but rather of an international armed conflict (IAC) since the FIB's attacks on armed groups are inherently attacks on a "constitutive element" of the DRC itself, i.e. those citizens who form rebel groups.<sup>[xxx]</sup> Ferraro notes that troop-contributing countries would not likely be willing to accept the IAC qualification, since this would involve granting members of armed groups the status of combatants and, when captured, prisoners-of-war. The result would be that armed rebels could not be prosecuted in a situation when "it is entirely valid and appropriate to restrict the application of IHL on the grounds of sovereignty."<sup>[xxxi]</sup> It is possible that the current NIAC status quo could shift to an IAC if foreign/multilateral forces exercise "necessary control over the armed groups involved."<sup>[xxxii]</sup>

## Applicability of IHL to the FIB

Before examining the legal status of FIB personnel, who are directly engaged in the conduct of hostilities, one must acknowledge that a debate exists as to whether IHL applies *at all* to peacekeeping forces and the FIB. Despite the aforementioned *Bulletin* by the Secretary-General, the UN has never officially acknowledged that UN missions and their personnel are parties to the conflicts in which they intervene.<sup>[xxxiii]</sup> The fact that the UN cannot, as a unitary actor, ratify the applicable instruments of IHL further complicates matters.<sup>[xxxiv]</sup> Traditional arguments for the inapplicability of IHL to UN missions are flawed in that they rely on *jus ad bellum* rather than *jus in bello* considerations. For example, some claim that "given the impartial and objective nature of the mandate received from the international community and aimed at restoring international peace and security, multinational forces could not be deemed a 'belligerent' as understood in IHL."<sup>[xxxv]</sup> Still, the legitimacy of the mandate itself is a matter of *jus ad bellum* and must therefore be factored out of discussions regarding the applicability of IHL.<sup>[xxxvi]</sup> The autonomy of *jus in bello* considerations is well established in the first two Common Articles as well as the First Additional Protocol, the result being that IHL applies "without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."<sup>[xxxvii]</sup>

## The Status of FIB Personnel under IHL

The establishment of the FIB has spurred vigorous debates concerning the differential application of IHL to UN personnel depending on their engagement in the conduct of hostilities. The previous section established that *jus ad bellum* considerations must be excluded from such debates. In other words, the legitimacy of the UN or MONUSCO's mandate does not absolve affiliated personnel from their obligations under IHL.<sup>[xxxviii]</sup> Yet a number of questions remain unresolved, including which multinational personnel are parties to the armed conflict in the DRC,

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and at what moment they obtain this status.<sup>[xxix]</sup> There also remains a need for a clear legal framework to ensure protection for personnel not directly involved in hostilities, a number that is growing — due to the increasingly multidimensional nature of UN mandates — at the same time as we are witnessing a move towards offensive peace enforcement operations. Moreover, some have questioned whether the Secretary-General's *Bulletin* applies to FIB combatants, whose Chapter VII mandate not only *accepts* the use of force in certain situations, but — in calling for armed groups to be neutralized and disarmed — *relies upon* sustained coercive action by UN forces.<sup>[x]</sup> Textual analysis of mandates is important, but as Engdahl notes, no useful conclusions can be drawn regarding the applicability of IHL without taking into account the actual activities of FIB forces against armed groups. *Jus in bello* analysis requires an “objective assessment of the facts on the ground.”<sup>[xii]</sup>

While there are strong arguments for holding UN troops accountable under IHL insofar as they are directly engaged in the conduct of hostilities in a NIAC, it is important to recognize that this position challenges the time-honoured tradition of conferring immunity upon peacekeepers. As Fleck explains — using pure *jus ad bellum* analysis — this immunity is intended to “ensure an unimpeded performance” by UN personnel.<sup>[xiii]</sup> The norm originates in the 1946 *Convention on Privileges and Immunities of the United Nations* and the 1973 *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*.<sup>[xiiii]</sup> More recently, the 1994 *Convention on the Safety of United Nations and Associated Personnel* explicitly covers all UN missions involved in “maintaining or restoring international peace and security,” which, through its similarity to the language in Chapter VII of the UN Charter, suggests that the *Convention* applies to the FIB (whose mandate is also grounded in Chapter VII).<sup>[xv]</sup> Alas, the situation is more complex than this, since the *Convention* is also explicitly inapplicable to any UN mission “authorised by the Security Council as an enforcement action under Chapter VII...in which *any* of the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies.”<sup>[xvi]</sup> It would seem, therefore, that since the FIB is a *part* of MONUSCO, IHL applies, but MONUSCO personnel are not protected by the *Convention*. Fleck is not willing to accept that personnel, even when fulfilling a mandate endorsed by the Security Council, would not be protected, yet he emphasizes that the UN's focus should be on preventing peacekeepers from “becoming parties to an armed conflict” in the first place.<sup>[xvii]</sup> Evidently it is too late. On the other hand, Engdahl believes that the *Convention* continues to apply in NIACs, making it a crime (under domestic law in the DRC) for rebel groups to attack members of the FIB or any other members of MONUSCO.<sup>[xviii]</sup> Yet Ferraro cautions that this status violates the “principle of equality between belligerents” and leaves members of armed groups with little incentive to comply with IHL.<sup>[xix]</sup>

The more contemporary debate on the status of UN personnel under IHL revolves around the aforementioned *Bulletin* of 1999. This document stipulates that, in addition to being liable to domestic laws in troop-contributing countries, UN forces are required to adhere to IHL “when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement.”<sup>[xx]</sup> As such, attacks against UN forces by armed groups would be permitted — thereby respecting the principle of equality between belligerents — when and only when they are directly engaged in hostilities.” (The question of whether ‘they’ refers to the FIB or MONUSCO in general is crucial and will be further addressed in this paper).

The UN's perspective as articulated in the *Bulletin* has attracted criticism, including from the International Committee of the Red Cross (ICRC). On the surface, the *Bulletin* does not include criteria for determining whether and to what extent UN forces are “actively engaged in armed conflict as combatants,” an oversight made more acute by the creation of the FIB as distinct from less offensive UN missions.<sup>[i]</sup> There is also a failure to situate these guidelines within the language of Common Article 3, particularly with respect to assessing the *intensity* of a conflict. The aforementioned limits on the scope for ‘legal’ attacks against UN forces has also been criticized as the policy was designed to apply to “spontaneous, sporadic, or unorganised” actions by (civilian) UN personnel, the very antithesis of the FIB.<sup>[ii]</sup> Indeed the Belgian Military Court's 1997 decision that UN forces can be classified as parties to an armed conflict when they are engaged in operations “of a permanent, widespread and structured character against organised armed groups” would seem to apply to the FIB.<sup>[iii]</sup> Thus the *Bulletin* could be viewed as inapplicable in the case of FIB personnel, leaving them and their troop-contributing countries of origin vulnerable to attacks by armed groups that are parties to the NIAC in the DRC. Troop contributors would likely have something to say about this.<sup>[iv]</sup> The matter of attacks against UN forces also has implications in the realm of international criminal justice. Article 8 of the *Rome Statute of the International Criminal Court* stipulates that attacks against peacekeepers are classified as

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war crimes but only insofar as these UN personnel “are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.”<sup>[iv]</sup> This is to say that attacks on parties to a NIAC, such as FIB personnel, may not be subjected to prosecution in the Hague.

## Distinguishing between the Liability of Military and Civilian Personnel under IHL

The prevailing view is that FIB personnel, as parties to a NIAC, are obligated to respect IHL when they are directly engaged in the conduct of hostilities.<sup>[v]</sup> Still unresolved is the manner by which one can distinguish between FIB military, non-FIB military, and civilian personnel operating under the same broad, and increasingly multidimensional, UN mandate, such as that of MONUSCO. Furthermore, since troop-contributing countries “always retain some form of authority and control over the armed forces they lend,” it is not clear whether one can legally separate the status under IHL of FIB personnel from particular troop-contributing countries and other actors within the militaries of those countries.<sup>[vi]</sup> To examine the issue of distinguishing among personnel from differing aspects of MONUSCO, it is simplest to divide the mission as containing three types of personnel: first, civilians — including those tasked with increasingly comprehensive peacebuilding objectives; second, military personnel *not* part of the FIB, and; third, military personnel comprising the FIB. This differentiated analysis is vital to protecting UN personnel who are not directly engaged in the conduct of hostilities, especially in the face of arguments favouring the classification of MONUSCO in its entirety as a party to the NIAC in the DRC since all of its components, including the FIB, report to the MONUSCO Force Commander.<sup>[vii]</sup> Although the differentiated analysis used here appears fair and logical, it is important to note that it violates a key mantra in UN peacekeeping, that of “1 UN, 1 mandate and 1 force.”<sup>[viii]</sup> There have thus been calls for the FIB to “be more mainstreamed,”<sup>[ix]</sup> but this must not cloud the meaningful distinctions between different actors working to fulfill MONUSCO’s mandate.

*Civilian:* Notwithstanding the classification of MONUSCO as a party to the NIAC in the DRC, the UN mission’s civilian personnel — including police tasked with law enforcement activities — retain the status of civilians, benefiting from protection under IHL — as well as the 1994 *Convention on the Safety of UN and Associated Personnel* — so long as they do not participate directly in the conduct of hostilities.<sup>[x]</sup> As such, civilian personnel whose actions directly contribute to hostilities forfeit their status as civilians under IHL and are therefore not protected from direct attack “for the duration of each specific act amounting to direct participation in hostilities.”<sup>[xi]</sup> This qualifier raises the question of how to determine when conduct by civilian personnel amounts to direct engagement in hostilities. The ICRC offers three criteria to guide this determination:

- a) The act must be likely to adversely affect the military operations or military capacity of a party opposed to the peace forces or, alternatively, to inflict death, injury or destruction on persons or objects protected against direct attack (threshold of harm).
- b) There must be a direct causal link between the act and the harm likely to result either from that act or from a coordinated military operation of which that act constitutes an integral part (direct causation).
- c) The act must be specifically designed to directly cause the required threshold of harm in support of the military component of the peace mission to the conflict and to the detriment of the party opposing the peace forces (belligerent nexus).

*Military (FIB):* FIB troops — including the members of special police units involved in fighting armed groups — are combatants and are parties to a NIAC in the DRC. As such, “irrespective of their function” within the FIB itself, they are not granted protection under IHL from direct attack so long as they are parties to the conflict.<sup>[xii]</sup> Oswald urges the Security Council to recognize the status of FIB personnel and to amend the FIB’s mandate so as to explicitly conform with the “principles of necessity, proportionality, humanity and distinction” under IHL.<sup>[xiii]</sup> The FIB’s senior officers must also carefully review operating procedures with respect to targeting and detaining members of armed groups.

*Military (non-FIB):* In light of the striking differences between the activities of the FIB and those of other MONUSCO military personnel, Oswald argues that there is a need to distinguish military actors “according to the functions they perform.”<sup>[xiv]</sup> Military personnel who are *not* involved in combat would retain the status of civilians under IHL, while

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those engaged in combat — which, at the moment, occurs almost exclusively through the FIB — are combatants and parties to the NIAC. The same reasoning would apply to agents of private military and security companies.<sup>[ixv]</sup>

## Conclusion

In a rare moment of convergence, the UN Security Council established — and later extended — a Force Intervention Brigade operating within a highly-resourced and multidimensional peacekeeping mandate, that of MONUSCO. Both on paper and in practice, the FIB involves the use of sustained force by UN personnel, far beyond previous mandates to use force either in self-defence or in protecting civilians under Chapter VII of the UN Charter.<sup>[ixvi]</sup> The introduction of the FIB created many headaches not only for MONUSCO's military and civilian leaders, but also for those tasked with assessing the applicability of IHL to UN missions. This paper has sought to clarify the status of FIB personnel under IHL as distinct from other MONUSCO personnel — both civilian and military — who are not directly engaged in the conduct of hostilities against armed groups and in coordination with the FARDC. An attempt has also been made to emphasize the autonomy of *jus in bello* considerations when discussing IHL, and as such this paper has not addressed the legitimacy of one peacekeeping mandate compared to another, nor have principles such as the Responsibility to Protect been invoked to either justify or criticize the establishment of the FIB in the DRC.

What becomes evident when carrying out this analysis is the absence of a mechanism able to objectively determine whether forces, personnel, or armed groups are parties to a NIAC. The UN was left to its own devices to chart a path for the applicability of IHL to its loaned personnel, and this resulted in the 1999 *Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law*. Yet this document did not conceive of the authorization by the Security Council of a military brigade that necessarily flouts the principle of impartiality and that uses sustained force against non-state groups that are parties to a NIAC. Dangerous and persistent threats from non-state armed groups are ever-present in today's international security landscape — witness the rapid development of the Islamic State — and therefore it is of the utmost importance that the UN Secretary-General develop new guidelines on the application of IHL across the matrix of UN peace operations, from peace enforcement to peacebuilding.

## References

<sup>[i]</sup> UN Security Council (2013), "'Intervention Brigade' Authorized as Security Council Grants Mandate Renewal for United Nations Mission in Democratic Republic of Congo." <http://www.un.org/press/en/2013/sc10964.doc.htm> res 2098.

<sup>[ii]</sup> S/RES/2147

<sup>[iii]</sup> United Nations (2008), "UN Peacekeeping Operations: Principles and Guidelines," 19.

<sup>[iv]</sup> ICRC (2008), "How is the term 'Armed Conflict' defined in international humanitarian law?" <https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>

<sup>[v]</sup> François Bugnion (2004), "JUS AD BELLUM, JUS IN BELLO and NON-INTERNATIONAL ARMED CONFLICTS," [https://www.icrc.org/eng/assets/files/other/jus\\_ad\\_bellum,\\_jus\\_in\\_bello\\_and\\_non-international\\_armed\\_conflictsang.pdf](https://www.icrc.org/eng/assets/files/other/jus_ad_bellum,_jus_in_bello_and_non-international_armed_conflictsang.pdf)

<sup>[vi]</sup> UN (2008) 22.

There is an expectation that scholars and practitioners will be precise in their use of terms, yet as Engdahl notes, "Terms such as 'peacekeeping operations' and 'peace enforcement operations' lack clear legal definitions and can mean different things to different actors."

Eric David and Ola Engdahl (2013), "How does the involvement of a multinational peacekeeping force affect the classification of a situation?" *International Review of the Red Cross* 95 (891/892): 668. Multinational operations and

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the law doi:10.1017/S1816383114000198

This paper generally uses the term “peace operations” to encompass the full range of UN-sanctioned peace activities, from peace enforcement to peacebuilding, which itself includes a range of activities including “electoral assistance, promotion of human rights, disarmament, demobilisation and reintegration of combatants, security sector reform, and other rule of law-related activities.”

Haidi Willmot and Scott Sheeran (2013), “The protection of civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices,” *International Review of the Red Cross*, 95 (891/892), 519. Multinational operations and the law doi:10.1017/S1816383114000095

<sup>[vii]</sup> “Implementing United Nations Multidimensional and Integrated Peace Operations” (2008), [http://www.operationspax.net/DATA/DOCUMENT/5347~v~Implementing\\_United\\_Nations\\_Multidimensional\\_and\\_Integrated\\_Peace\\_Operations.pdf](http://www.operationspax.net/DATA/DOCUMENT/5347~v~Implementing_United_Nations_Multidimensional_and_Integrated_Peace_Operations.pdf).

<sup>[viii]</sup> UN (2008) 13.

<sup>[ix]</sup> UN (2008) 14.

<sup>[x]</sup> UN (1999), *The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law of 6 August 1999* (ST/SGB/1999/13).

<sup>[xi]</sup> UN Security Council, “Identical letters dated 25 February 2013 from the Secretary-General addressed to the President of the General Assembly and to the President of the Security Council” (A/67/775-S/2013/110). [http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/IdenticalLetterSG25Feb2013\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/IdenticalLetterSG25Feb2013_en.pdf)

<sup>[xii]</sup> Ronald Hatto (2013), “From peacekeeping to peacebuilding: the evolution of the role of the United Nations in peace operations,” *International Review of the Red Cross* 95 (891/892), 512. Multinational operations and the law doi:10.1017/S181638311400023X

The operations in which UN troops have used force beyond self-defence – in the Congo between 1960 and 1964, in Bosnia between 1992 and 1995, in Somalia between 1993 and 1995, in Sierra Leone in 2001 and in the DRC from 2005 onwards – have all been traumatic experiences for the UN” (Hatto 512).

<sup>[xiii]</sup> Willmot and Sheeran 519.

<sup>[xiv]</sup> Hatto 513.

<sup>[xv]</sup> Willmot and Sheeran 522-523.

<sup>[xvi]</sup> Ibid.

<sup>[xvii]</sup> Sijuaade Sunday Kayode (2014), “Intervention Brigade’ for the Congo: A Precedent for UN Peace Enforcement?” *Uluslararası Hukuk ve Politika Cilt* 10, Sayı: 38, ss.99-118.

International Forum for the Challenges of Peace Operations (2014), “Policy Brief: Force Intervention Brigade: A Sea Change for UN Peace Operations?”

<sup>[xviii]</sup> Kayode. Also see special report of the Secretary-General S/2013/119 on the DRC and the Great Lakes region.

<sup>[xix]</sup> Jérémie Labbé and Arthur Boutellis (2013), “Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces,” *International Review of the Red Cross* 95 (891/892), 542. Multinational operations and the law doi:10.1017/S1816383114000101.

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<sup>[xx]</sup> S/RES/2147 (2014) operative clause 4b.

<sup>[xxi]</sup> S/RES/2098 (2013).

<sup>[xxii]</sup> Labbé 542, International Forum for the Challenges of Peace Operations 4.

<sup>[xxiii]</sup> Hatto 507.

“Editorial.” *International Review of the Red Cross* (2013), 95 (891/892), 478. Multinational operations and the law doi:10.1017/S1816383114000319

<sup>[xxiv]</sup> Willmot and Sheeran 536.

<sup>[xxv]</sup> Ibid.

<sup>[xxvi]</sup> Labbé 551.

“Rwanda underscored ‘the need to ensure that the impartiality of the military component of MONUSCO and the protection of the Blue Helmets not be endangered at any cost’ and reiterated ‘the importance of a clear separation between the role of the Intervention Brigade and that of the regular forces of MONUSCO, whose main purpose is to protect civilians’.<sup>8</sup> Guatemala voiced concerns ‘that the entire MONUSCO runs the risk of indirectly becoming a peace enforcement mission’, noting that such a development ‘would raise many conceptual, operational and legal considerations that . . . have not been adequately explored’.”

Katarina Grenfell (2013), “Perspective on the applicability and application of international humanitarian law: the UN context,” *International Review of the Red Cross* 95 (891/892), 647. Multinational operations and the law doi:10.1017/S1816383114000162

<sup>[xxvii]</sup> Bruce ‘Ossie’ Oswald (2013), “The Security Council and the Intervention Brigade: Some Legal Issues,” *ASIL Insights* 17 (15), [www.asil.org/insights/volume/17/issue/15/security-council-and-intervention-brigade-some-legal-issues](http://www.asil.org/insights/volume/17/issue/15/security-council-and-intervention-brigade-some-legal-issues).

<sup>[xxviii]</sup> Tristan Ferraro (2013), “The applicability and application of international humanitarian law to multinational forces,” *International Review of the Red Cross* 95 (891/892), 597. Multinational operations and the law doi:10.1017/S181638311400023X

<sup>[xxix]</sup> Ferraro 576, 597. Refer to Additional Protocol II, article 1,1; and Cf. ICTY, Appeal Chamber, Tadic, 7 May 1997, para. 628 and 561-568 & ICTR Case Akayesu (2 September 1998).

<sup>[xxx]</sup> David and Engdahl 666.

<sup>[xxxi]</sup> Ferraro 599.

<sup>[xxxii]</sup> David and Engdahl 671.

<sup>[xxxiii]</sup> Oswald.

<sup>[xxxiv]</sup> Grenfell does not believe this excuses the UN from accountability under IHL, since “the UN is a ‘subject of international law and capable of possessing international rights and duties’, including under customary international law.” Grenfell 648.

<sup>[xxxv]</sup> Labbé 547.

<sup>[xxxvi]</sup>

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Ferraro 564.

<sup>[xxxvii]</sup> Ibid. 566.

<sup>[xxxviii]</sup> Ibid. 564.

<sup>[xxxix]</sup> Ibid. 574.

<sup>[x]</sup> David and Engdahl 676.

<sup>[xi]</sup> David and Engdahl 669.

<sup>[xii]</sup> Dieter Fleck (2013), “The legal status of personnel involved in United Nations peace operations,” *International Review of the Red Cross* 95 (891/892), 615. Multinational operations and the law doi:10.1017/S1816383114000290.

<sup>[xiii]</sup> “The 1946 Convention on Privileges and Immunities of the United Nations: provides for immunity of ‘officials’ (Article V) and also of ‘experts on missions’ (Article VI), but there is no consensus, let alone consistent practice as to the application of these provisions to peacekeepers” (Fleck 618).

“The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons establishes intentional attacks against an ‘internationally protected person’ as an international crime.” (Fleck 619).

<sup>[xiv]</sup> Ibid. 620.

<sup>[xv]</sup> Refer to Article 2(2), 1994 *Convention on the Safety of United Nations and Associated Personnel*.

<sup>[xvi]</sup> Fleck 635.

<sup>[xvii]</sup> David and Engdahl 673.

<sup>[xviii]</sup> Ferraro 571.

<sup>[xix]</sup> Grenfell 650.

<sup>[i]</sup> Ferraro 581.

<sup>[ii]</sup> Ibid. 605.

<sup>[iii]</sup> Ibid. 580.

<sup>[iiii]</sup> Ibid. 611.

<sup>[iv]</sup> Ibid. 572.

<sup>[v]</sup> “Editorial” 479.

<sup>[vi]</sup> Ferraro 588. For a contrasting view, see David and Engdahl (671).

<sup>[vii]</sup> Oswald.

And in more practical terms — but no less important for protection — “it would be important to consider how the opposing parties to the conflict are expected to distinguish between members of the Brigade and members of MONUSCO.” (Oswald).

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<sup>[lviii]</sup> International Forum for the Challenges of Peace Operations 3.

<sup>[lix]</sup> Ibid.

<sup>[x]</sup> Ferraro 601.

<sup>[xi]</sup> Ibid.

<sup>[xii]</sup> Ibid. 600.

<sup>[xiii]</sup> Oswald.

<sup>[xiv]</sup> Ibid.

<sup>[xv]</sup> Ferraro 604.

<sup>[xvi]</sup> Willmot and Sheeran 529.

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*Written by: Adam Moscoe*  
*Written at: Paris School of International Affairs*  
*Written for: Patrick Zahnd*  
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