

**The Security Council and the Use of Peace United Nations Peace
Operations to Protect Civilians**
The case of MONUC/MONUSCO in the Democratic Republic of Congo

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Dedication

I dedicate this work to the memory of my late father, and to my mother and all my family. I wish also dedicate it to my friends everywhere, and to all those working for more sustainable peace, fair justice and mutual understanding and love amongst the human family, wherever they may be. I finally dedicate it to all the victims of armed conflict and intolerance all over the world with my best wishes of healing and better future for all of us.

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List of Abbreviations

AU	: African Union
CNRS	: Centre national de recherche scientifique
CONOPS	: Concepts of operations
CW	: Cold War
DDR	: Disarmament, Demobilization and Rehabilitation
DPA	: Department of Political Affairs
DPKO	: Department of Peacekeeping Operations
DSRSG	: Deputy Special representative of the Secretary General
ECOMOG	: Ecomog Monitoring Group
ECOWAS	: Economic Community of West African States).
GA	: United Nations General Assembly
HRDDP	: UN Human Rights Due Diligence Policy
EJIL	: European Journal of International Law
EU	: European Union
FARDC	: Forces armées de la République démocratique du Congo
IB	: Intervention Brigade
ICC	: International Criminal court
IDPs	: Internally displaced persons (IDPs).
ISSSS	: International Security and Stabilization Support Strategy
JPTs	: Joint Protection Teams
KLI	: Kluwer Law international
MINUSMA	: United Nations Stabilization Mission in Mali
M23	: 23 March Movement
NGOs	: Non-Governmental Organizations
OCHA	: <i>Office for the Coordination of Humanitarian Affairs</i>
OAU	: Organisation of African Unity
OHCHR	: Office of High Commissioner for Human Rights
PoC	: Protection of Civilians
RGDIP	: Revue générale pour le droit international public
RoL	: Rule of Law (RoL)
PNC	: Police nationale congolaise)
SADC	: Southern African Development Community
SG	: UN Secretary General
SC	: UN Security Council
SFDI	: Société française pour le droit international
SPLA/M	: South Sudan People's Liberation Army/Movement
SRSG	: Special representative of the Secretary General
STAREC	: Government's Stabilization and Reconstruction Plan
TCCs	: Troop contributing countries
T/PCCs	: Troops and police contributing countries (T/PCCs)
UN	: United Nations
UNAMIR	: United Nations Assistance Mission in Rwanda
UNAMSIL	: United Nations Assistance Mission in Sierra Leone
UNDP	: United Nations Development Programme
UDHR	: Universal declaration of Human Rights
UNHCR	: United Nations High Commission for Refugees
UNIDIR	: UN institute for disarmament research
UNITAF	: United Task Force
UNMIS	: United Nations Mission in Sudan
UNMISS	: United Nations Mission in South Sudan
UNOSOM	: UN Operation in Somalia
UNPROFOR	: United Nations Protection force
UNRWA	: United Nations Relief and Work Agency for Palestine.

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USA : United States of America
USGHA : Under-Secretary-General for Humanitarian Affairs
WPAs : Women Protection Advisers

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Introduction

This study endeavors to shed light on the topic of the use by the Security Council (SC) of peace operations to protect civilians in armed conflict, through the exploration of the related United Nations (UN) doctrine, policy and practice, and academic and other references. This subject is at the heart of issues of peace and security in the agenda of the SC during the last two decades. The Protection of civilians (PoC) in armed conflict is also closely related to the question of protection of human rights and international humanitarian law (IHL). Human rights protection is not only one of the main aims of the UN as organization, but also an important aspect of international peace and security. This has become particularly evident since the end of the Cold War (CW), when the newly activated SC, in dealing with the crisis erupting in different parts of the world, had to take into consideration the different human rights and humanitarian implications of such crisis. The importance of protecting human rights and IHL in general, the rights of civilians in armed conflict in particular, became obvious from the early 1990s, as many armed conflicts were synonymous to massive violations of human rights and IHL. Human rights violations were often amongst the root causes of the conflicts. Disregard for human rights and IHL gave the conflicts atrocious dimensions, resulting in serious humanitarian crisis fraught with mass killings, displacement and deprivation from means of substance, ethnic cleansing and other calamities. The conflict in former Yugoslavia in early 1990s and the many conflicts that continued to take place in Africa are the best illustrations of this alarming situation.

The SC, in carrying out its peace and security mandate has important powers that enable it to use various tools in fulfilling its functions. It can have recourse to means of pacific settlement of disputes, such as mediation and recommendation of solutions (Chapter VI of the Charter), as well as the use of measures under Chapter VII of the Charter, relating to action in situations of threat to peace, breach of peace and acts of aggression. Under Chapter VII, the SC once it determines the existence of one of these situation can take decisions and adopt coercive measures including sanctions (article 41) and measures implying the use of armed force (article 42) to maintain international peace and security. The SC also has the option of encouraging regional organizations to deal with crisis situations and of authorizing them to use coercive measures to maintain peace and security (Chapter VIII). The Charter endows the Council with important decision making powers and a broad discretion to choose the actions it deems appropriate to deal with the situations. It can take decisions that bind member States (Article 25 of the Charter) and other actors. These important powers give the SC various tools for the maintenance of peace and security. In practice, the SC has had recourse not only to measures expressly mentioned in the Charter, but also to innovative measures, such as the peacekeeping operations, a tool that has been the result of practice during the CW period and has evolved since as one of the main tools at the disposal of the SC to deal with issues of peace and security.

These are the same tools the SC uses to deal with the matter of the PoC in armed conflict. The Council has at its disposal various tools, including diplomacy and negotiations, directly or through the Secretariat, the non-armed coercive measures such as sanctions, peacekeeping operations, with or without enforcement mandate, and authorization of use of force to States or coalitions of States or regional organizations, with the aim of ensuring the PoC.

This study is dedicated to the use of peacekeeping operations as a tool for the PoC in armed conflict. In fact, the SC, after a number of failures to ensure the PoC in conflicts it was dealing with, such as Rwanda (1995) and Bosnia (1995), has towards the end of the 1990s, started to dedicate important debate and attention to the PoC in armed conflict. Since, the PoC has emerged as a crucial issue of international peace and security in the agenda of the SC and the wider UN. This led to many UN thematic reports and resolutions on PoC as well as to the recourse of peace operations to entrust them with PoC mandates starting from 1999. PoC became a strategic objective of peacekeeping.¹ The PoC remains a burning issue and challenge for the international community in general, the UN in particular. Recent and ongoing conflicts, such as Syria, Libya, Yemen, as well as older ones, such as the conflict in the Democratic Republic of Congo (DRC) and in Darfur/Sudan, not to mention the ongoing conflicts

¹ OIOS, Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations, Report of the Office of Internal Oversight Services (OIOS), A/68/787, 7 March 2014 (Hereinafter “OIOS Report on Implementation of PoC mandates of UN peacekeeping operations (2014)”), para 3.

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in South Sudan, Central African Republic (CAR) and Iraq, are all vivid illustrations of how the subject of PoC in armed conflict is a particularly relevant issue and actual subject.

The aim of this research is to study the evolution of UN doctrine, policy and practice on the PoC with specific focus on use by the SC of UN peace operations as a tool for PoC in armed conflict. This subject is at the intersection of three elements, the SC, which is one of the UN main organs entrusted with primary responsibility in maintaining international peace and security²; the UN peacekeeping operations, which constitute one of the main tools of the SC to fulfill its mandate³; and the PoC which is a peace and security objective pursued by the SC of the UN.

UN Peacekeeping refers to the deployment of a UN presence in the field, with the consent of the parties' concerned, normally involving UN military and/or police personnel and frequently civilians as well.⁴ Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace.⁵ Before being an issue of peace and security, the concept of PoC originally finds its legal foundation in IHL and Human rights Law⁶. Civilians are a protected category of persons under IHL⁷, notably under the Fourth Geneva Convention⁸ as well as under human rights law. The PoC in the context of peacekeeping has been defined as “all necessary action, up to and including the use of force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government to protect its civilians”.⁹

This research endeavors to be practice oriented while grounded on solid theoretical foundations. It will look into the role of SC as a UN main body with primary responsibility in the field of peace and security, as well as the evolution of UN peacekeeping, while highlighting the evolution of the interpretation of UN Charter in relation to the link between international peace and security, on the one hand, and human rights and PoC, on the other hand. It will retrace the main steps that led to the emergence of the PoC as a matter of peace and security in UN practice, drawing from relevant SG reports and the SC resolutions, thematic or specific to particular situations. It will also focus on the role of UN peace operations as a tool for the PoC as reflected in UN official documents, notably SC resolutions relating to certain peace operations of relevance. The research will also draw from academic writings and other relevant sources of relevance such as reports of Non-Governmental organizations (NGOs).

While the initial ambition of this study was to cover all UN peace operations with PoC mandates, time constraints and the enormity of the UN practice on the matter has led us to delimit the scope of the study by streamlining the practical examples to focus with more detail on two major peace operations, the MONUC (United Nations Mission in the Democratic Republic of the Congo) and the MONUSCO (United Nations Stabilization mission in the Democratic republic of the Congo) as an illustration. While reviewing the issues identified, I will endeavor to identify the main conclusions, challenges and

² Article 24 of the UN Charter.

³ Arthur Boutellis et Alexandra Novosseloff, « Le Conseil de sécurité et l'évolution des opérations de maintien de la paix », in Alexandra Novasseloff (ed.), *Le Conseil de sécurité des Nations Unies : Entre impuissance et toute puissance*, CNRS éditions, 2016, p. 135.

⁴ *An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN doc: doc. A/47/277 of 17 June 1992, (Hereinafter (“*An Agenda for Peace (1992)*”), para. 20.

⁵ United Nations Peacekeeping Operations, Principles and Guidelines (Capstone Doctrine), 2008, p. 18.

⁶ Ray Murphy, “UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians”, *Journal of Conflict and Security Law* (2016), Vol. 21, No. 2, p. 210.

⁷ See also : Camilla Waszink, *Protection of civilians under international humanitarian law: trends and challenges*, 1 August 2011, NOREF (Norwegian Peacebuilding Resource Center), Report, 2011, 34 p.

⁸ Vasselin Papovski, “Siblings, but not twins: POC and R2P”, 1/11/2011, available at: <<https://unu.edu/publications/articles/siblings-but-not-twins-poc-and-r2p.html>>.

⁹ DPKO/DFS Policy on the Protection of Civilians in United Nations Peacekeeping, UN DPKO/DFS, 1 June 2015, Ref. 2015.07 (Hereinafter “Policy on PoC in UN Peacekeeping (2015)”), para. 14.

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lessons learned, and formulate recommendations at the end, to the attention to the most relevant UN bodies and stakeholders from international community.

Accordingly, the study is made of an Introduction, two chapters and a section on conclusions and recommendations. Chapter I will be dedicated to the linkages between the SC, peacekeeping and the PoC as an aspect of international peace and security. It will explore with more detail the role and powers of the SC, as well as the evolution of UN peacekeeping, and that of the UN doctrine and policy regarding the PoC. Chapter II will focus on the role of the peacekeeping operations in the PoC through three sections dedicated respectively to the main trends that have marked the recourse to such a tool for the PoC, the UN guidelines governing the role of peace operations in the PoC, and the case study of the roles of MONUC and MONUSCO in the PoC. The study will be finalized with a section on conclusions and recommendations.

Chapter I: Security Council, Peacekeeping and the Protection of Civilians: PoC as an aspect of international peace and security

A.-The Security Council and the evolution of UN peacekeeping

1.-The SC and the primary responsibility of peace and security

The SC is one of the five main bodies of the UN. Whereas all the UN have a role to play in the field of peace and security, the UN Charter entrusts the SC with the primary responsibility in this field¹⁰ and invests it with important powers defined in Chapters VI, VII, VIII et XII of the Charter. These enable the SC to play a role in the peaceful settlement of international disputes, take mandatory decisions that bind states and other actors, and to take coercive measures including the use of force if necessary, to maintain international peace and security.

Whereas the SC has functioned since the creation of the UN more than 70 years ago, it remained paralyzed for most its first 45 years which coincided with the CW period. During that time, its activities remained limited because of the excessive use of veto powers by the SC permanent members in conjunction with the differences between the superpowers and their allies.¹¹ The SC was able to deal with certain crisis only exceptionally when consensus amongst the great powers made it possible. This is particularly true for the use of the important powers that the SC holds under Chapter VII of the Charter, which had been only exceptionally used to take some coercive measures with regards to crisis in Korea (1950), Rhodesia (1966) and South Africa (1977).

The end of the CW in the late 1980s¹² corresponds to a new historic stage in international relations, as it put an end to the so-called bipolar world, with the United States of America (USA) emerging as the main superpower (unipolar world). The new geopolitical configuration had a direct impact on the UN in general, and the SC in particular. From 1990 onwards, the SC has known a reactivation of its role that was launched during the crisis that began with the invasion of Kuwait by Iraq on 2 August 1990. The regained consensus amongst permanent members of the SC enabled it to impose economic sanctions and to authorize the use of military force against Iraq. The Gulf War thus marked a new era in the history of the UN and SC, characterized by the frequency of SC interventions in world crisis, including civil wars and recourse to its powers under Chapter VII. This was accompanied with a more extensive interpretation of the concept of “international peace and security”¹³ and particularly the notion of “threat to international peace and security” (article 39 of the Charter).¹⁴

2.-The evolution of the UN peacekeeping

¹⁰ Article 24 of the Charter.

¹¹ On the role of the SC during the Cold war, see : M. Bertrand, *The UN : Past, Present and Future*, KLI, The Hague, 1997, pp. 37-64 ; R. Higgins, “Peace and Security : Achievements and Failures”, *EJIL*, 1995, pp. 446-448 ; A. Novosseloff, *Le Conseil de sécurité des Nations Unies et la maîtrise de la force armée*, Bruxelles, Bruylant, 2003, pp. 135-293 ; J. Weschler, “Acting on Human Rights”, in S. von Einsiedel, D. M. Malone and B. Ugarte (ed), *The UN Security Council in the 21 century, 2016*, Lienne Rienner Publishers/Boulder London, p. 260.

¹² The end of the CW is generally situated at period between the end of the 1980s and the beginning of the 1990s. The fall of the Berlin Wall in October 1989 is often considered as a historic event that symbolized the end of the CW. See : Z. Laïdi, *Un monde privé de sens*, Hachette Littératures, 2001, pp. 70 et ss ; A. N. Ayissi, *Le défi de la sécurité régionale en Afrique après la fin de la guerre froide : vers la diplomatie préventive et la sécurité collective*, UNIDIR, Nations Unies, New York et Genève, 1994, p. 7.

¹³ V. Abellan Honrubia, “La ampliación del concepto de paz y de seguridad internacional por el Consejo de Seguridad de las Naciones Unidas : Fundamento jurídico y discrecionalidad política”, in *Hacia un nuevo orden internacional y europeo*, Homenaje al Profesor M. Díez de Velasco, Tecnos, 1993, pp. 3 et ss. ; M. Torelli, “Le Conseil de sécurité : un directoire mondial ?”, *Trimestre du monde*, no 20,4/1992, pp. 30-31 ; D. Malone, “Le Conseil de sécurité dans les années 1990s : essor et récession ?”, *Politique étrangère* 2/2000, pp. 404 et ss.

¹⁴ J.- M. Sorel, “L’élargissement de la notion de menace contre la paix”, in *Le Chapitre VII de la Charte des Nations Unies*, Colloque de Rennes, SFDI, 1995, pp. 3-57.

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UN peacekeeping emerged during the CW as a tool for peace and security whereas in fact it was not provided for as a tool in the Charter. The practice of peacekeeping began when the first UN military observers were deployed in the Middle East¹⁵, in Palestine. The earliest armed peacekeeping operation was the UN Emergency force in Egypt, following the Suez Crisis in 1956 that was the occasion of the first formulation of classic UN peacekeeping principles and the coining of the name “Blue helmets”. Peacekeeping operations were usually deployed as interposition forces after a truce was concluded between parties to a conflict. Peacekeepers were not meant to engage in combat and their actions were governed by three principles; consent of the parties, impartiality between the parties and the non-use of force except for legitimate defense. In the CW era most peacekeeping operations were deployed in the context of international conflict; with some exceptions such as was the case of the ONUC in the Congo in the early 1960s. After the end of the CW, UN peacekeeping has evolved. Most peacekeeping operations are deployed in the context of internal conflicts. Their mandates have also evolved. From mainly interposition and truce observation tasks at their advent, the peacekeeping operations have been characterized by their complexity and multidimensional character, with mandates involving several military, political and civilian functions, such as supporting the implementation of peace agreements, electoral assistance, human rights monitoring, disarmament and support of judicial institutions.¹⁶ The transformation of the international environment has given rise to a new generation of “multi-dimensional” UN peacekeeping operations, which are typically deployed in the dangerous aftermath of a violent internal conflict and may employ a mix of military, police and civilian capabilities to support the implementation of a comprehensive peace agreement.¹⁷ Beyond simply monitoring cease-fires, contemporaneous multi-dimensional peacekeeping operations are called upon to facilitate the political process through the promotion of national dialogue and reconciliation, protect civilians, assist in the disarmament, demobilization and reintegration (DDR) of combatants, support the organization of elections, protect and promote human rights, and assist in restoring the rule of law.¹⁸

Another evolution that has characterized peacekeeping operations after the CW is that because they are often deployed in internal conflicts involving many factions they often face situations where the ceasefire which formed one of the premises of their deployment does not hold. Therefore, they are often deployed in places where “there is no peace to keep”. Furthermore, the principle of the non-use of force has evolved, as peacekeepers are increasingly authorized to use force not only for self-defense but also for the defense of their mandate.¹⁹ During the CW era the peacekeeping operations did not have a clear foundation in the Charter, and were considered as a means of pacific settlement of disputes (Chapter VI ½). However, beginning in the early 1990s, the SC started invoking Chapter VII of the UN Charter to authorize peacekeeping operations to use force for certain aspects of their mandates. Moreover, even while the principle of consent remains a core principle for the deployment of peacekeeping operations, the SC increasingly founded their creation of Chapter VII of the Charter.

During the CW, peacekeeping operations could be created by either the SC or the General Assembly (GA). Since the end of the CW, with the reengagement of the SC, peacekeeping operations are established by the SC as a rule. The SC creates the peacekeeping operations on the basis of a resolution. The Secretariat plays a very important role in the implementation of the peacekeeping operations of the ground. Under the authority of the Secretary General (SG), the department of peacekeeping operations (DPKO) and the Department of field Service (DFS) plan and manage operations of the ground. Peacekeeping operations are financed by the UN and are under the command and control of the SG, reporting to the SC. They consist of military contingents and police elements provided by troops and police contributing countries (T/PCCs) respectively in addition to civilian personnel who form part of the Secretariat. In recent years, the term *Peace operations* is increasingly used to designate UN multidimensional operations. While these operations have an important military

¹⁵ United Nations Peacekeeping Operations, Principles and Guidelines (Capstone Doctrine) (Hereinafter “UN Peacekeeping Principles and Guidelines (2008)”), p. 20.

¹⁶ On this evolution of UN peacekeeping, see : *An Agenda for Peace* (1992), op. cit., para. 48.

¹⁷ UN Peacekeeping Principles and Guidelines (2008”), op. cit., p. 22.

¹⁸ Ibid., p. 6.

¹⁹ Handbook on United Nations Multidimensional Peacekeeping Operations, UN, 2003, p. 57; N. Di Razza, “ Le Conseil de sécurité des Nations Unies et la « protection des civils » : un nouveau cadre d’action pour les OMP ? ”, in Alexandra Novasseloff (ed.), *Le Conseil de sécurité des Nations Unies : Entre impuissance et toute puissance*, CNRS éditions, 2016, 421 p. , p. 195 .

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component they are not to be confused with the military forces provided for in the Charter, notably its articles 43 and following.

In addition to UN peacekeeping operations, the SC has sometimes authorized coalitions of multinational forces or a state in particular to execute certain coercive tasks under Chapter VII of the Charter.²⁰ A typical use of such method is the multinational coalition authorized in 1990 to restore the sovereignty of Kuwait after its invasion by Iraqi forces. Forces authorized in this fashion by the SC remain under the command and control of the various participating nations, under the lead of one of them, who also finance them. The peace operations dealt with in this study are those under the command and control of the UN.

B.-The emergence of PoC as a peace and security issue in the agenda of the SC

1.-Progressive recognition of human rights as an issue of international peace and security

The emergence of the PoC in armed conflicts as an issue of peace and security is closely related to the protection of human rights of which it is an aspect. Human rights feature prominently in the UN Charter.²¹ However, for decades human rights were seen as being largely outside the scope of the SC and were seldom mentioned within its confines. This was due to a number of factors. Governments felt ambivalent about including a set of issues widely perceived as a matter of state sovereignty in their deliberations on international peace and security.²² During the CW, human rights were seen as a particularly sensitive topic that members were reluctant to pursue in the SC. This said, while the end of the CW certainly created a new dynamic, human rights were not entirely absent from the SC even in the early decades of its existence.²³ A number of situations dealt with by the SC during the CW, notably those relating to decolonization had prominent human rights aspects that were reflected in SC resolutions and in some of its actions.²⁴ Nonetheless, the SC remained generally reluctant to put issues of human rights in its agenda during most of the CW period and issues of peace and security were widely interpreted as not encompassing human rights violations occurring within states.²⁵

This situation started to change with the end of the CW. In 1991, the SC named repression as a threat to international peace and security for the first time in resolution 688, condemning “the repression of the Iraqi civilian population in many parts of Iraq... the consequences of which threaten international peace and security in the region”²⁶.

²⁰ H. Freudenschuß, “Between Unilateralism and Collective Security : Authorizations of the Use of Force by the UN Security Council”, 5 *EJIL*- 1994, pp. 492-531; L.-A. Sicilianos, “ L’autorisation par le Conseil de sécurité de recourir à la force : une tentative d’évaluation”, *RGDIP*, 2002, pp. 5-48.

²¹ Human Rights and the Security Council—An Evolving Role, 2016, *Security Council Report*, No. 1 25 January 2016, p. 2. The preamble of the Charter declares that peoples of UN are determined to “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...” Article 1 of the Charter includes amongst the purposes of the UN, in addition to maintenance of international peace and security, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (...), the achievement of “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

²² Human Rights and the Security Council—An Evolving Role,..., op. cit., p.2.

²³ *ibid.*

²⁴ Starting in the early 1960s, several SC resolutions that were adopted in the context of decolonization had strong human rights language, and some invoked the Universal Declaration of Human Rights (UDHR). The strongest human rights language in Council resolutions of the CW era concerned South Africa. Between 1963 and the late 1980s, the Council passed numerous resolutions that called on the government to take specific measures strictly dealing with the protection of human rights, such as the release of political prisoners (e.g. resolutions 181 and 182); stopping executions and granting amnesties for political prisoners (e.g. resolution 190); abolishing detention without charge, without access to counsel and without the right to a prompt trial (e.g. resolution 191); or commutations of death sentences or stays of execution concerning a specific prisoner (e.g. resolution 547). See: “Human Rights and the Security Council—An Evolving Role”,..., op. cit., p. 3.

²⁵ See: J. Weschler, “Acting on Human Rights”, ...op. cit., p. 260.

²⁶ Resolution 688 of 5 April 1991.

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On 31 January 1992, the SC held its first summit-level meeting²⁷ on the topic of the responsibility of the SC in the maintenance of international peace and security. The SC noted the change resulting from the end of the CW presenting it as an opportunity to advance the purposes of the Charter including maintenance of peace and security and the protection of human rights. It noted that “the absence of war and military conflicts amongst States does not in itself ensure the peace and security” and that the “non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security”²⁸. This illustrated a new interpretation of peace and security that enabled its extension and the possibility of considering violations of human rights as threats to peace in the meaning of the Charter. As a consequence, the SC increasingly invoked human rights violations as threat to peace and security, taking measures under Chapter VII to deal with such situations beginning in the 1990s.

This shift also had a direct impact on UN peacekeeping which increasingly “requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military”.²⁹ Beginning in the 1990s, UN peacekeeping operations often involved human rights related tasks, be they the verification of human rights observance by parties to a conflict, protection of humanitarian assistance (Somalia) or security zones (Bosnia). Currently, UN peace operations mandates contain as a rule human rights monitoring functions.³⁰ Contemporaneous UN peacekeeping doctrine considers that international human rights law is an integral part of the normative framework for United Nations peacekeeping operations. These “should be conducted in full respect of human rights and should seek to advance human rights through the implementation of their mandates” and their personnel, military, police or civilian – should act in accordance with international human rights law.³¹

2.-Failure to protect civilians during the 1990s: Somalia, Rwanda and Bosnia cases

Despite this important doctrinal shift, the PoC in armed conflict did not occupy a central place in the SC agenda during most of the 1990s. The situations in Somalia, Rwanda and Bosnia where UN peacekeeping operations were deployed as part of SC efforts to face the challenges of peace and security resulting from armed conflict illustrate the fact that the safety needs of civilian population in these zones remained largely neglected despite some efforts and rhetoric on human rights. In Somalia, where the SC authorized the deployment of three military operations (UNOSOM, UNITAF and UNOSOM II)³² the humanitarian mandates of these operations were largely limited to the protection of humanitarian workers. Despite tasks including the reestablishment of safety, the UN mandated forces played hardly any role in ensuring the protection of human rights. The end of the UNOSOM II is well known: following attacks of troops from the US, and deterioration of the conditions of security in Somalia, the UN decided to withdraw its military presence leaving Somalia to its own devices.³³

In Rwanda where the SC decided the deployment of a peacekeeping operation (UNAMIR) in 1993, practice demonstrated that the human rights dimension of the conflict had not been fully taken into consideration by the SC. This led to the well-known consequences of genocide in that country and related massacres of nearly 800,000 people in the country, following the resumption of war in the aftermath of President Habyarimana’s death on 7 April 1994. The disregard for the human rights situation by the SC was so obvious that it failed to take into account alarming reports of human rights

²⁷ At the level of heads of States and governments.

²⁸ Note of the President of the Security Council, UN doc. : S/23500 of 11 February 1992, p. 3.

²⁹ *Agenda for Peace* (1992), para. 52.

³⁰ Handbook on United Nations Multidimensional Peacekeeping Operations, UN, 2003, p. 63.

³¹ UN Peacekeeping Principles and Guidelines (2008), , op. cit., p. 14.

³² UNOSOM (UN Operation in Somalia) I was created by SC Resolution 751 (1992) on 24 April 1992. It was followed by the multinational force UNITAF (United Task force) under the command of the USA, that was followed by UNOSOM II established by SC Resolution 814 (1993) of 26 March 1993.

³³ On the role of UN in Somalia, See: Report of the Commission of Inquiry established pursuant to Security Council Resolution 885 (1993) to investigate armed attacks on UNOSOM II personnel which led to casualties amongst them, UN doc.: S/1994/653 of 24 February 1994.

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violations coming from other UN sources, such as the report of the Special Rapporteur on Rwanda³⁴. UN troops watched on as massacres took place, unable to take effective actions to protect civilians.³⁵ In Bosnia, where UN Protection force (UNPROFOR)³⁶ was entrusted with the mandate to protect humanitarian zones³⁷, these did not prevent massive numbers of civilian casualties as illustrated most notoriously by the massacre of Bosnian Muslims that ensued following the fall of Srebrenica to the hands of Bosnian Serb troops.³⁸

The failure to protect civilians in these situations had increased the reluctance on the part of the SC to deploy troops in conflict zones particularly when such deployment would imply the use of robust action to protect civilians where the security situation was fragile, and can put in danger the troops, in a context where many member States were not willing to take risks in terms of casualties for their troops. The UN began to draw lessons from these tragedies in terms of the need to protect civilians only at the end of the 1990s, following the issuance of reports on Rwanda and Srebrenica.

3.-The recognition of the PoC as an important element of the UN peace and security agenda

UN Investigation reports relating to Rwanda and Bosnia drew important lessons with respect to the PoC as an issue of peace and security that the SC needed to deal with. The report on Rwanda pointed out the failure of UNAMIR to protect civilians and concluded that efforts need to be made to improve the PoC in conflict situations.³⁹ Some of lessons drawn by the SG in his report on the fall of Srebrenica related directly to the PoC. Kofi Annan noted that: “The cardinal lesson of Srebrenica is that a deliberate and systematic attempt to terrorize, expel and murder an entire people must be met

³⁴ As pointed out in the Report of Independent Inquiry into actions of the UN during the 1994 genocide: a week after the signing of the Arusha Peace Agreement on 4 August 1993, following years of negotiations between the Government of Rwanda and the Rwandese Patriotic Front (RPF) signed the Arusha Peace Agreement, the UN published a report which gave an ominously serious picture of the human rights situation in Rwanda. The report described the visit to Rwanda by the Special Rapporteur (SR) of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Mr Waly Bacre Ndiaye, from 8 to 17 April 1993. Ndiaye determined that massacres and a plethora of other serious human rights violations were taking place in Rwanda. The targeting of the Tutsi population led Ndiaye to discuss whether the term genocide might be applicable. He stated that he could not pass judgment at that stage, but, citing the Genocide Convention, went on to say that the cases of intercommunal violence brought to his attention indicated “very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group and for no other objective reason.” Although Ndiaye - in addition to pointing out the serious risk of genocide in Rwanda - recommended a series of steps to prevent further massacres and other abuses, his report seems to have been largely ignored by the key actors within the United Nations system.

³⁵ Report of the independent inquiry into the actions of the United Nations during the 1994 genocide in Rwanda, UN doc.: S/1999/1257, of 15 December 1999 (Hereinafter “Report of the Independent Inquiry on 1994 genocide in Rwanda (1999)”).

³⁶ SC Resolution 836 of 4 June 1993 mandated UNPROFOR to “deter attacks against the safe areas.”

³⁷ UNPROFOR was initially established in Croatia to ensure demilitarization of designated areas, then its mandate was extended to Bosnia and Herzegovina to support the delivery of humanitarian relief, and monitor “no fly zones” and “safe areas”. On 16 April 1993, the SC adopted Resolution 819, demanding that all parties to the conflict “treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act.” Srebrenica became a catalyst for the creation of five other United Nations-declared “safe areas” three weeks later. (See SC Resolution 824, of 6 May 1993, which made Sarajevo, Tuzla, Cepa, Gorazde and Bihac “safe areas” as well). The role of the UN in the “safe areas” has been mired in confusion since the areas’ inception. The SC resolutions establishing the six “safe areas” provided for the placement of UN troops within the areas but left unclear whether force could be used to protect the enclaves and their population from attack or whether UN troops could use force only for their own self-defense. A subsequent resolution stated that UNPROFOR (SC Resolution 836 of 4 June 1993) was mandated to “deter attacks against the safe areas.” See: Human Rights Watch, *The Fall of Srebrenica and the Failure of UN Peacekeeping Bosnia and Herzegovina*, Vol. 7, No 13, October 1995 (Hereinafter “HRW Report on the fall of Srebrenica (1995)”, consulted at: (<https://www.hrw.org/sites/default/files/reports/bosnia1095web.pdf>).

³⁸ See: Report of the Secretary-General pursuant to General Assembly resolution 53/35, *The SG Report on the fall of Srebrenica (1999)*;

³⁹ Recommendation 5 of the Report of the Independent Inquiry on 1994 genocide in Rwanda (1999), op. cit., p. 53.

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decisively with all necessary means, and with the political will to carry the policy through to its logical conclusion”⁴⁰. He stated that “When the international community makes a solemn promise to safeguard and protect innocent civilians from massacre, then it must be willing to back its promise with the necessary means”⁴¹. He invited the member states in a process of reflection and analysis, to focus on the key challenges identified in order to ensure that “we have fully learned the lessons of the tragic history detailed in this report”. He pointed out issues such as “the gulf between mandate and means; the inadequacy of symbolic deterrence in the face of a systematic campaign of violence; the pervasive ambivalence within the United Nations the role of force in the pursuit of peace; and institutional ideology of impartiality even when confronted with attempted genocide; and a range of doctrinal and institutional issues that go to the heart of the UN ability to keep the peace and help protect civilian populations from armed conflict”⁴². He indicated that the Secretariat is ready to join such a process.⁴³ By then, the SC had already started debating the humanitarian implications of its peace and security activities in its meetings, which led to the emergence of the PoC as a central preoccupation in SC deliberations. Also, various reports of the SG brought the issue of PoC to the forum urging the SC and the international community to deal with this question. On 19 June 1997, the SC had held a meeting on Protection for humanitarian assistance to refugees and others in conflict situations. The SC noted the massive displacement of civilian populations in conflict situations may pose a serious challenge to international peace and security. In seeking protection for humanitarian assistance to refugees and others in conflict situations, the SC underlined the importance of pursuing a coordinated and comprehensive approach in accordance with the purposes and principles of the UN Charter.⁴⁴ The SC encouraged the SG to study further how to improve the protection for humanitarian assistance to refugees and others in conflict situations.”⁴⁵ This led to the submission by the SG of a report on the protection for humanitarian assistance to refugees and others in armed conflict in September 1998.⁴⁶ The SG outlined interesting developments on the issue of humanitarian access to refugees in armed conflicts and the responsibility of states in that regard, notably in regard to the tension this involved with the doctrine of sovereignty. He emphasized that “16. States have primary responsibility for ensuring that refugees, displaced persons and other vulnerable populations in conflict situations benefit from the necessary assistance and protection and that UN and other humanitarian organizations have safe and unimpeded access to these groups”. He noted that states, however, often “deny humanitarian access and defend their actions by appealing to the principle of national sovereignty in matters deemed essentially within their domestic jurisdiction”. He then added that “While full respect must be shown for the sovereignty, independence and territorial integrity of the States concerned, where States are unable or unwilling to meet their responsibilities towards refugees and others in conflict situations, the international community should ensure that victims receive the assistance and protection they need to safeguard their lives. Such action should not be regarded as interference in the armed conflict or as an unfriendly act so long as it is undertaken in an impartial and non-coercive manner”.⁴⁷ Although the report was more focused on the issue of refugees, this phrase was to form one of the first official formulations of an essential principle of contemporary UN doctrine on the PoC. On 12 February 1999, the SC held an open meeting on the matter of the PoC in armed conflicts. In its statement after the meeting, the SC noted that that civilians continued to be targeted in instances of armed conflict, in flagrant violation of international humanitarian and human rights law⁴⁸ and requested the SG to submit a report with recommendations on how it could act to improve both the physical and

⁴⁰ SG Report on the fall of Srebrenica (1999), op. cit., para. 502.

⁴¹ Ibid., 504.

⁴² Ibid., 505.

⁴³ Ibid., 505.

⁴⁴ Protection for humanitarian assistance to refugees and others in conflict situations, UN doc: S/PRST/1997/34 of 19 June 1997.

⁴⁵ Ibid.

⁴⁶ Report of the Secretary-General on Protection for Humanitarian Assistance to Refugees and others in Conflict Situations, 22 September 1998, UN doc: S/1998/883.

⁴⁷ Ibid., para. 16.

⁴⁸ Statement by the President of the Security Council, 12 February 1999, UN doc: S/PRST/1999/6.

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legal protection of civilians in situations of armed conflict. This led to the first Report of the SG on PoC⁴⁹.

In his first report on the PoC (which contained many recommendations on what must be done to protect civilians, including measures that the SC can adopt within its sphere of responsibility) Kofi Annan identified the main threats to civilians in armed conflicts. He went on to make a number of suggestions as to what the UN, and the SC in particular, can do to ensure a “climate of compliance” to the applicable IHL, and to address the threat to civilians by using the means for collective security allowed for under the UN Charter. This was followed by regular biannual meetings of the SC dedicated to the issue of the PoC and regular reports of the SG on the subject which fed the debates of the SG on the matter and served the basis for the adoption of statements and resolutions of the SC on the PoC. These documents complement the practices of the SC which have been expressed through its resolutions and presidential statements, both thematic and specific in regard to particular situations. Various other documents of the SG including studies and other documents elaborated on by the various departments of the Secretariat serve as the main basis of what can be considered as the UN doctrine on the PoC. In fact SC debates on the PoC, informed by the different reports of the SG, led to the adoption of a number of thematic resolutions on the PoC in addition to the inclusion of PoC related tasks in the mandates of UN peace operations beginning with UNAMSIL in 1999.

Key documents having contributed to this doctrinal corpus are milestone documents related to the reform of the UN in general, and peace and security in particular. The SG Report on ‘The causes of conflict and the promotion of durable peace and sustainable development in Africa’ (Report on causes of conflict in Africa), published in 1998, dedicated a section to humanitarian imperatives. It identified the PoC in situations of conflict, including children and refugees, as issues that needed to be dealt with and made recommendations to that effect.⁵⁰ PoC went on to constitute an important element in the

⁴⁹ Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, UN doc: S/1999/957, 8 September 1999 (Hereinafter “The first Report of the SG on PoC (1999)”, para. 1.

⁵⁰ Report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa (A/52/871) UN doc: A/52/871-S/1998/318 of 16 April 1998, (Hereinafter “SG Report on the causes of conflict and the promotion of durable peace in Africa (1998)”, paras 49-52. On Protecting civilians in situations of conflict, the report indicated that “All combatants must abide by universal humanitarian principles. Unfortunately, clear rules have not always translated into an equally clear acceptance of those rules. In recent decades, there has been a dramatic and unacceptable deterioration in the level of adherence to humanitarian norms in crisis situations. Governments have often treated armed opponents and their supporters with indiscriminate and ruthless ferocity. Anti-government forces are often willing to employ any and all means that might advance their end. In the past, civilian populations were chiefly indirect victims of fighting between hostile armies. Today, they are often the main targets, with women suffering in disproportionate numbers while often also being subjected to atrocities that include organized rape and sexual exploitation. Increasingly, relief workers, including United Nations staff, have also been directly targeted. Such attacks are unconscionable and undermine the basic conditions of humanitarian assistance (para 49). The report further indicated that : “The monitoring and reporting of respect for human rights is a critical responsibility of the international community. Adherence to international humanitarian and human rights norms by all parties to a conflict must be insisted upon, and I intend to make this a priority in the work of the UN. In order to make warring parties more accountable for their actions, I recommend that combatants be held financially liable to their victims under international law where civilians are made the deliberate target of aggression. I further recommend that international legal machinery be developed to facilitate efforts to find, attach and seize the assets of transgressing parties and their leaders” (para.49). The SG recommended that “special attention be paid to the needs of children assistance will best address humanitarian needs and facilitate in armed conflict. He highlighted the need to address refugee security issues, declaring that: “Persons fleeing persecution or war deserve refuge and assistance. The safety of refugees has increasingly become a matter of international concern, as has the security of States hosting large refugee populations or having such populations near their borders. The potential threat to African States posed by the movement of large numbers of refugees when they are mingled with combatants must be acknowledged. In the area of the Great Lakes, the movement of large numbers of Rwandan refugees into neighboring countries became a destabilizing factor for those countries, as well as for the new Government in Rwanda. Despite appeals from my predecessor and from the Office of the UNHCR the international community failed to support efforts to separate former combatants from non-combatant refugees who had ensconced themselves on the territory of the former Zaire, along its border with Rwanda. As a result, combatants hiding among refugee populations remain, even today, a source of insecurity throughout the region”.

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follow-up in the implementation of this important report.⁵¹ The Brahimi report also contributed to the development of UN doctrine regarding PoC.⁵² While discussing the reforms needed for UN peacekeeping operations in light of past failures, the Brahimi panel called for a more robust UN stance in face of situations where peace agreements are violated and civilians are subjected to violence, in the presence of UN troops, with means and authority to use force if necessary. The panel welcomed the desire on the part of the SG to extend additional protection to civilians in armed conflicts and the actions of the SC to give UN peacekeepers explicit authority to protect civilians in conflict situations, as positive developments.⁵³ It indicated that UN peacekeepers “— troops or police — who witness violence against civilians should be presumed to be authorized to stop it, within their means”, in support of basic UN principles and that “operations given a broad and explicit mandate for civilian protection must be given the specific resources needed to carry out that mandate”.⁵⁴ Following Brahimi report, SC continued mandating PoC mandate to most of UN multidimensional operations as in the situations of internal armed conflict where they are deployed civilians accounted for the vast majority of casualties.⁵⁵

The High-level Independent Panel on Peace Operations chaired by Ramos-Horta dedicated even more developments to the PoC, considering it as a core obligation of the UN. While acknowledging that significant progress has been made, the panel noted that results on the ground remained mixed and that the gap between what is asked of UN peace operations and what these can deliver has widened. It declared that the UN “must rise to the challenge of protecting civilians in the face of imminent threat, and must do so proactively and effectively, but also with recognition of its limits”, that “Protection mandates must be realistic and linked to a wider political approach”.⁵⁶ To close the gap between what is asked of missions to protect civilians and what they can provide, the panel recommended improvements across several dimensions: assessments and planning capabilities, timely information and communication, leadership and training, as well as more focused mandates”.

C.-The Evolution of UN doctrine and policy on PoC: Laying the foundations of a global strategy for the PoC amid enduring challenges on the ground

Since its emergence in the UN as an aspect of peace and security in the end of the 1990s the concept of PoC has evolved in scope and depth. The UN has, since 1999, been laying the foundations of its doctrine and policy on the PoC, amid continuing challenges. We will summarize the main elements, features and challenges of the UN doctrine and policy since 1999 in the following points.

1.-Identification of the threats to PoC and proposals to address them

It was first through the angle of humanitarian protection and the protection of refugees and other victims of war⁵⁷ such as children in armed conflict⁵⁸ that PoC was dealt with at the SC. Following its

⁵¹ See: Implementation of the recommendations contained in the report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa Report of the Secretary-General, UN doc. A/65/152-S/2010/526 of 20 July 2010. In its section dedicated to the PoC in situations of armed conflict (Protecting civilians in situations of armed conflict), after noting the developments and continuous challenges on this issue, the SG pledged that the UN is determined to ensure that the rights of civilians caught in conflicts are protected (para 77).

⁵² Report of the Panel on United Nations Peace Operations UN doc. : A/55/305, S/2000/809 of 21 August 2000 (Hereinafter “ Brahimi Report (2000)”).

⁵³ Brahimi Report (2000), para. 62.

⁵⁴ Ibid, para. 72.

⁵⁵ UN Peacekeeping Principles and Guidelines (2008), op. cit., p. 24.

⁵⁶ Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people, UN doc: A/70/95-S/2015/446, 17 June 2015(Hereinafter “Report on the High-level Independent Panel on Peace Operations (2015)”)(Summary), p. 11.

⁵⁷ Report of the Secretary-General on Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations, 22 September 1998, UN doc: S/1998/883.

⁵⁸ SC Presidential Statement of 29 June 1998 relating to Children in Armed Conflict, UN doc: S/PRST/1998/18 of 29 June 1998. In this statement the SC expressed grave concern at the harmful impact of armed conflict on children, condemned the targeting of children in armed conflicts, including their humiliation,

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first open meeting dedicated to the PoC in armed conflict on 12 February 1999, the SC noted that civilians continued to be targeted in instances of armed conflict, in flagrant violation of IHL and human rights⁵⁹.

In his first thematic report on PoC⁶⁰, Kofi Annan linked the issue with violations of applicable IHL. He identified the main threats that civilians face during armed conflicts, the legal framework governing the PoC in armed conflicts and proposed measures to ensure both legal and physical protection of civilians in armed conflicts. He cited the Geneva conventions of 1949 and the 1977 protocols, as well as international human rights law instruments to which the majority of the countries in the world are party to. He identified a number of threats and violence against civilian population in situations of armed conflict, resulting from the failure of parties to armed conflict to comply with the law on the one hand, and the lack of effective enforcement mechanisms on the other, which led to a situation in which civilians suffer disproportionately, and which the international community appears powerless to prevent.⁶¹ He placed PoC at the heart of the peace and security agenda.

The SG also presented a number of recommendations aimed at strengthening the legal protection and the physical protection of civilians in armed conflict. He remarked that the PoC in armed conflict would be largely assured if combatants respected the provisions of IHL and human rights law, and

brutalization, sexual abuse, abduction and forced displacement, as well as their recruitment and use in hostilities in violation of international law, and calls upon all parties concerned to put an end to such activities.

⁵⁹ Statement by the President of the Security Council, 12 February 1999, UN doc: S/PRST/1999/6.

⁶⁰ Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, UN doc: S/1999/957, 8 September 1999 (Hereinafter "First Report of the SG on PoC (1999)").

⁶¹ First Report of the SG on PoC (1999), *op. cit.*, paras 6-7. These threats included: A.-Attacks against civilians:, with civilian casualties and the destruction of civilian infrastructure being not simply byproducts of war, but also the consequence of the deliberate targeting of non-combatants in most contemporaneous wars often involving non-state actors, including irregular forces and privately financed militias; B. Forced displacement: Displaced people exposed to systematic atrocities and without adequate physical protection, forced to flee, leaving behind their possessions, their homes and family members; C. Combatants and armed elements mixed with civilians in camps for refugees and internally displaced persons (IDPs), whereby failure to maintain the purely civilian and humanitarian character of camps meaning that civilians can find themselves living side by side, without protection; D. Specific problems faced by children: Children killed as a direct result of armed conflict, seriously injured or permanently disabled, recruited into the military are deprived of their basic rights, including those to family unity and education, children experiencing grave emotional wounds as a result of their experiences and the events they witness; E. Specific problems faced by women: Complex emergencies have a different impact on women and men, with men account for the largest numbers of combatants, women and children are disproportionately represented among civilians affected by conflict, dramatic increases in the number of children and women heads of households, leading to abrupt changes in their roles and increases in their workloads, disintegration of families leaving women and girls especially vulnerable to gender-based violence and sexual exploitation, including rape and forced prostitution; F. Denial of humanitarian assistance and humanitarian access: Combatants target civilians in conflict by, among other things, attempting to restrict their access to food and/or other forms of life-saving assistance, or, indeed, deliberately starving them. (...) Restrictions on the access of humanitarian organizations to those in need (...) In the absence of any international presence, civilians affected by the conflicts in these areas are at the mercy of the warring parties and are dependent on them for the supplies; G. Targeting of humanitarian and peacekeeping personnel: Humanitarian and peacekeeping personnel have increasingly become targets of organized violence. The protective emblem of the International Red Cross as well as the Red Crescent, and the UN flag, which represent the impartiality of relief workers, appear to offer less protection. Threats against relief workers and peacekeeping personnel further restrict the ability of humanitarian organizations to ensure the delivery of assistance to vulnerable populations; H. Widespread availability of small arms and continued use of anti-personnel landmines: Widespread use of small arms, light weapons and anti-personnel landmines has had a significant impact on the scope and level of the violence that affects civilian populations. Unexploded low-cost anti-personnel landmines and other ordnance constitute the deadly legacy of more than two dozen wars. They kill and maim thousands of civilians. Landmines also deny the use of land for agriculture, impede the delivery of humanitarian assistance and development aid and disrupt and delay the resettlement and reintegration of returning IDPs and refugees; I. Humanitarian impact of sanctions: Highly negative impact on civilian populations especially children and women. Collateral effects of such measures continue to give cause for concern. Regional sanctions and embargoes are of special concern. Hastily imposed sanctions without clear guidelines regarding the minimization of their humanitarian impact hamper the provision of emergency humanitarian assistance, sometimes preventing UN humanitarian operations from delivering urgently needed assistance.

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identified ways in which the SC could promote full respect of the applicable law. He made proposals of actions the SC could take to ensure that violations of these instruments are addressed through appropriate judicial processes to ensure better legal PoC. These included recommendations to ensure legal protection related to the ratification and implementation of international instruments, ensuring accountability for war crimes, and addressing gaps in the existing law in relation to internal displacement, minimum age of recruitment into armed forces and groups and safety of humanitarian personnel.

Regarding the physical protection, Annan suggested that the SC promote the PoC in conflict both by political and diplomatic measures as well as by peacekeeping or enforcement measures under Chapters VI, VII or VIII of the UN Charter.⁶² He recommended the deployment of preventive peacekeeping operations; the control of media by closing hate media assets, special measures for the protection of children and women; targeted sanctions; control of small arms and anti-personnel landmines; use of peacekeeping operations to protect civilians; separation of combatants and armed elements from civilians in camps; disarmament and demobilization; and the creation of humanitarian zones, security zones and safe corridors. This report, while not defining the concept of PoC, gave an overview of the main challenges, while suggesting solutions that the SC can take to address them.

Subsequently, the SC adopted Resolution 1265 where it expressed “its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council’s disposal” in line with the relevant recommendations of the SG⁶³. The SC also announced its “willingness to consider how peacekeeping mandates might better address the negative impact of armed conflict on civilians” as well as its “its support for the inclusion, where appropriate, in peace agreements and mandates of UN peacekeeping missions, of specific and adequate measures for the disarmament, demobilization and reintegration (DDR) of ex-combatants, with special attention given to the demobilization and reintegration of child soldiers”.⁶⁴ The Council also decided to establish an appropriate mechanism to review further the recommendations contained in the report of the SG.⁶⁵ Such mechanism will become known as the informal working group on PoC.⁶⁶

The Council also requested the SG to continue to include in his written reports to the Council on matters of which it is seized, as appropriate, observations relating to the PoC in armed conflict, and to submit by 30 March 2001 his next report on the PoC in armed conflict, with a view to requesting additional such reports in future. The Council further requested the SG to include in this report any additional recommendations on ways the Council and other UN organs could further improve the PoC in situations of armed conflict, while encouraging him to consult the Inter-Agency Standing Committee in the preparation of the reports. Resolution 1265 (1999), building on the report of the SG and its previous resolutions on the matter outlined the main initial features of the SC policy with regard to the PoC for the years to come.⁶⁷

2.- Affirmation of the main guiding principles of UN policy on PoC

By resolution 1296 of 19 April 2000, the SC outlined the principles that should govern the PoC and the measures that it intends to take to that effect, while making condemnations of reprehensible acts against civilians, and assigning certain tasks to the SG.

⁶² First Report of the SG on PoC (1999), *op. cit.*, para. 44.

⁶³ Resolution 1265 (1999) of 17 September 1999, para. 10.

⁶⁴ Ibid. paras. 11-12.

⁶⁵ Ibid., para. 22.

⁶⁶ The SC’s Informal Expert Group on PoC (Expert Group) was established in January 2009 following recommendation of the SG in 2007. It is chaired by the United Kingdom and made of experts from SC members who consider a wide range of protection issues pertaining to the SC’s agenda, based on briefings from OCHA with inputs from relevant departments of the Secretariat, agencies, and humanitarian actors including NGOs. OCHA serves as the secretariat of the group. For more details on the role of the Expert Group, see: OCHA, *Security Council Norms and Practice on the Protection of Civilians in Armed Conflict: Analysis of Normative Developments in Security Council Resolutions 2009-2013*, OCHA Policy and Studies Series, May 2014, 008, p.

vi.

⁶⁷ Resolution 1265 (1999).

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On the principles, the SC reaffirmed its commitment to the purposes and principles of the Charter including the principles of the political independence, sovereign equality and territorial integrity of all States, and to respect the sovereignty of all States. It underlined the need when considering ways to provide for the PoC in armed conflicts, to proceed on a case-by-case basis, taking into account the particular circumstances; the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities.

The Council condemned “all incitements to violence against civilians in situations of armed conflict” reaffirming the need to bring to justice individuals who incite or otherwise cause such violence. It noted that “the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security”, reaffirming its readiness to consider such situations and, where necessary, to adopt appropriate steps”. The SC further announced its intention to take into account the relevant recommendations of the SG report of 8 September 1999 and, where appropriate, to call upon the parties to a conflict to make special arrangements to meet the protection and assistance requirements of women, children and other vulnerable groups.

The SG also, in his second report on PoC⁶⁸, outlined important principles that must govern the PoC, referring to the need for complementarity between the UN and other entities. He stated that: “While the primary responsibility for the protection of civilians rests with Governments, in places where the Government is unable or unwilling to fulfil its obligations the international community is coming to accept its own responsibilities.”⁶⁹ He concluded that the primary responsibility for the PoC falls on Governments and armed groups involved in conflict situations, specifying that “where they do not honor these responsibilities, it is up to the Security Council to take action”.⁷⁰ This idea is closely related to the principle of the Responsibility to Protect (R2P), adopted later by the GA in 2005. Both the SG, and the SC made reference to the R2P in the context of the PoC as an important step. Annan hailed the adoption of the resolution on R2P as a positive step in his fifth report on PoC.⁷¹ In Resolution 1674, the SC reaffirmed the provisions of the 2005 World Summit Outcome Document relating to the R2P.⁷² It demanded that all parties concerned comply strictly with the obligations applicable to them under IHL. The Council also emphasized on ending impunity as essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians to prevent future such abuses.⁷³

3.- Affirmation of the role of peace operations as tool for PoC

Peacekeeping operations were identified by the UN as tool for the PoC in its policy documents. The SG recommended in his first report on PoC the deployment of preventive peacekeeping operations as well as their use of peacekeeping.⁷⁴ In Resolution 1265, the SC announced its “willingness to consider how peacekeeping mandates might better address the negative impact of armed conflict on civilians” and “its support for the inclusion, where appropriate, in peace agreements and mandates of UN

⁶⁸ Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 30 March 2001 UN doc: S/2001/331 (Hereinafter “Second Report of SG on PoC (2001)”),

⁶⁹ Second Report of SG on PoC (2001), para 51.

⁷⁰ Ibid., para. 67.

⁷¹ Report of the Secretary-General on the protection of civilians in armed conflict of 28 November 2005 UN doc : S/2005/740 (Hereinafter “Fifth report of the SG on PoC (2005)”), para 53.

⁷² Yet, it has been noted that the R2P is not to confuse with the PoC despite their links. Author J.-P. Vilmer noted that the scope of the PoC and that of the R2P are not the same. R2P has a narrower scope in that it applies only to the four gravest international crimes against civilian populations, whereas the PoC concept applies to all threats to civilians, irrespective of their size and gravity, which includes for instance the issue of sexual exploitation, forced displacements, famine strategies or obstruction of humanitarian assistance. See: Jean-Baptiste Jeangène Vilmer, *La responsabilité de protéger*, PUF, 2015, 120 p., p.21. The SG Ban Ki-moon also, indicated in one of his reports that the two concepts are different and should not be confused (9th Report of SG on PoC (2012), para. 19).

⁷³ Resolution 1674 of 28 April 2006.

⁷⁴ 1999 Report of the SG on PoC, op. cit., para. 44.

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peacekeeping missions, of specific and adequate measures for the DDR of ex-combatants, with special attention given to the demobilization and reintegration of child soldiers.⁷⁵ In 2004, the Council reaffirmed its readiness to ensure that peacekeeping missions are given suitable mandates and adequate resources so as to enable them to better protect civilians under imminent threat of physical danger, including by strengthening the ability of the UN to plan and rapidly deploy peacekeeping and humanitarian personnel.⁷⁶

In his 5th report of the PoC, the SG identified the peacekeeping missions as a tool for the protection of IDPs. He noted that an effective peacekeeping presence early in the movement of refugees and IDPs that responds to the protection needs of the displaced can provide the necessary security environment to prevent displacement and facilitate an early return. He remarked that peacekeeping forces may also be the only means of ensuring that the civilian character of camps for displaced populations is maintained by preventing the infiltration of armed elements.

The SG reminded the SC of its earlier affirmation in Resolution 1296 of its intention to ensure that peacekeeping missions are given suitable mandates and resources to protect civilians under imminent threat (...). He pledged that “In order to assist the SC in its decision-making and analysis, future reports on the PoC will include systematic analysis of the major trends affecting the PoC with a greater emphasis on empirical information reflecting the effect of conflict on the quality of life and the well-being of civilian populations in areas of conflict”. He suggested that in situations where parties to a conflict commit systematic and widespread breaches of IHL and human rights and thereby create the threat of genocide, crimes against humanity and war crimes, the Council should be willing to intervene under Chapter VII of the Charter.⁷⁷

In his 6th report on the PoC⁷⁸ the SG dedicated important recommendations to the role of peace operations in the PoC. He proposed that the SC requests reports from UN peacekeeping missions on steps to ensure the PoC in the conduct of hostilities and systematic provision of comprehensive information on sexual violence as a specific annex to all reports to the SC on peacekeeping operations ; ensures that UN peacekeepers are mandated to contribute to the creation of security conditions that enable the provision of humanitarian assistance; and mandates peacekeeping missions to prevent the illegal appropriation or confiscation of land and property. The SG also recommended that the SC establishes, consistent with resolution 1674 (2006), a dedicated, expert level working group to facilitate the systematic and sustained consideration and analysis of protection concerns, and ensuring consistent application of the Aide-Memoire⁷⁹ for the consideration of issues pertaining to the PoC in the Council’s deliberations on the mandates of UN peacekeeping missions, draft resolutions and presidential statements, and in Council missions.

⁷⁵ Resolution 1265 (1999), paras. 10-12.

⁷⁶ Statement by the President of the Security Council Statement by the President of the Security Council, 14 December 2004, UN doc: S/PRST/2004/46.

⁷⁷ Ibid., para 53.

⁷⁸ Report of the Secretary-General on the protection of civilians in armed conflict 28 October 2007 (6th report), UN doc.: S/2007/643 (hereafter, “6th Report of SG on PoC (2007)”, para 10.

⁷⁹ The SC first adopted the Aide-Memoire on PoC on 15 March 2002, annexed in the Statement by its President (S/PRST/2002/6) as a means to facilitate its consideration of issues pertaining to PoC. In subsequent statements, the SC expressed its willingness to update the Aide Memoire regularly in order to reflect emerging trends in the PoC in armed conflict. In its statement (S/PRST/2009/1 of 14 January 2009), the SC endorsed an updated version of the Aide-Memoire on the PoC reiterating its importance “ as a practical tool that provides a basis for improved analysis and diagnosis of key protection issues, particularly during deliberations on peacekeeping mandates, and stresses the need to implement the approaches set out there in on a more regular and consistent basis, taking into account the particular circumstances of each conflict situation, and undertakes to remain actively seized of the matter.” The Aide-Memoire continued to be updated regularly by the SC and the Secretariat, with OCHA playing a crucial role. In a Statement by the President of the Security Council of 16 December 2015 (UN doc: S/PRST/2015/25), the SC endorsed the 6th updated edition of the aide-mémoire. The Council reminded that the Aide Memoire is intended to facilitate the Security Council’s consideration of issues relevant to the PoC in armed conflict. To this end, it highlights primary objectives for SC action; offers, on the basis of the Council’s past practice, specific issues for consideration in meeting those objectives; and provides, in the addendum, a selection of agreed language from SC resolutions and presidential statements that refer to such concerns.

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In Resolution 1674, the SC reaffirmed its practice of ensuring that the mandates of UN peacekeeping missions include, where appropriate provisions regarding (i) the PoC, particularly those under imminent threat of physical danger within their zones of operation, (ii) the facilitation of the provision of humanitarian assistance, and sustainable return of refugees and internally displaced persons. The Council further expressed its intention of ensuring that (i) such mandates include clear guidelines as to what missions can and should do to achieve those goals, (ii) the PoC is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates, and (iii) that protection mandates are implemented. This was a very important resolution particularly given the emphasis made on the need for UN peace operation to prioritize the PoC over other tasks of their mandates.⁸⁰ By this resolution, the SC took the commitment to make the peace operations a privileged tool for PoC, and to give this a priority in their mandates. This was an important development in the SC policy on the use of peace operations for the PoC.⁸¹

Both the SG and the SC continued to affirm the crucial role of UN peace operations as a tool for the PoC, suggesting improvements to address the challenges on the ground while also insisting on the need for a comprehensive approach in line with UN's stated policy.

Ban Ki-moon noted in his May 2009 that while he SC has taken important steps to improve protection for specific groups such as women, children, refugees and IDPs, there persisted to be enduring need to further strengthen PoC. He stated that "Significant though they are, for all the reports, resolutions and actions of the last decade, the situation that confronts civilians in current conflicts is depressingly similar to that which prevailed in 1999".⁸² Ban emphasized the vital need to ensure that peace operations have the capacity and resources appropriate for the task in a timely manner" noting that this was particularly important in volatile situations in which peacekeeping missions must operate with robust rules of engagement.⁸³ He reminded that the SC, in its resolution 1674 (2006), declared its intention to ensure that mandates include clear guidelines as to what missions can and should do to protect civilians. He noted that there remained a disconnect between mandates, intentions, expectations, interpretations and real implementation capacity and that the PoC mandate in peacekeeping missions remained largely undefined as both a military task and as a mission-wide task and that each mission interprets its protection mandate as best it can in its specific context.⁸⁴ This was an indication of the doctrinal void that persisted for many years⁸⁵, till the adoption of DPKO/DFS policy documents in 2015.

Resolution 1894 (2009) of the SC that intervened subsequently is a landmark policy document. It further developed the doctrine regarding the role of peacekeeping operations in the PoC. The SC expressed its intention to: "Mandate UN peacekeeping missions, where appropriate, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian assistance. It also recalled its determination to upgrade the strategic oversight of peacekeeping operations, mindful of the important role peacekeeping operations play for the PoC. The SC also highlighted "the importance of entrusting peacekeeping missions that are tasked with the PoC with clear, credible and achievable mandates, based on accurate and reliable information on the situation on the ground, and a realistic assessment of threats against civilians and missions, made in consultation with all relevant stakeholders."⁸⁶

⁸⁰ Resolution 1674 of 28 April 2006.

⁸¹ N. Di Razza, « Le Conseil de sécurité des Nations Unies et la « protection des civils » », op. cit., p. 181.

⁸² Report of the Secretary-General on the protection of civilians in armed conflict ("7th report of the SG on PoC"), 29 May 2009, UN doc: S/2009/277, Ibid., paras 14- 15.

⁸³ Ibid., para. 54.

⁸⁴ Ibid., para. 51.

⁸⁵ The concept of PoC has been wanting for a clear definition for sometimes, including in the UN context. This has been underlined by authors Sande Lie and De Carvalho, who noted in relation to the concept of the PoC that, while there has been mainstreaming and general infusion of the concept within the international community, there is no coherent and comprehensive understanding of what the concept really means and what kind of practices it comprises and entails, and that the concept's seminal thinkers and proponents failed to provide a clear and unambiguous definition of the concept. See: Jon Herald Sande Lie and Benjamin de Carvalho, "Between Culture and Concept: The Protection of Civilians in Sudan (UNMIS)", *Journal of International Peacekeeping* 14 (2010), p. 60.

⁸⁶ Resolution 1894 (2009) of 11 November 2009.

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In 2015, the SG underlined the ongoing challenges that peacekeepers face in their efforts to protect civilians in armed conflict. He remarked that, while the situation in many conflicts remains grim, it would be far worse without the important protection that peacekeepers can provide. Amongst these challenges were attacks on peacekeeping personnel resulting, in a recent time, in the death of 55 personnel and injury of 99 notably in Mali and Darfur. Another challenge is movement restrictions in violation of status-of-forces agreements with national authorities, which can hamper their ability to perform their mandated tasks. He emphasized that the important and impartial role of peacekeepers in protecting civilians must be respected by all parties.⁸⁷

4.- Clarification of the notion of protection

In his second report on PoC, Annan urged the international community to move beyond analysis to more concrete action. He called to move toward a “culture of protection” by recommending a clear course of action for the SC to compel parties to a conflict to better protect civilian populations and to respect the rights guaranteed to civilians by international law, and focusing on additional steps which UN member States must take to strengthen their capacity to protect the civilian victims of war more effectively, and on initiatives that the SC and other organs of the UN can take. He identified the parameters of protection by clarifying the meaning of protection as concept. He indicated that “Protection” is “a complex and multi-layered process, involving a diversity of entities and approaches” which “depends on the circumstances and stages of a particular conflict”. He explained that many countries are caught in a grey zone between war and peace: armed conflict may erupt sporadically in parts of the country, and may tend to intensify or to subside. In such situations, “it often is the diversity of entities providing protection and their mandates that helps to cover a wide range of needs. Relevant activities may include the delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law, and reporting these violations to those responsible and other decision makers; institution building, governance and development programmes; and, ultimately, the deployment of peacekeeping troops. In each case, these activities will have to be adapted to the specific requirements of each conflict situation, and be adapted to the needs, structure and sensitivities of the affected population”.⁸⁸ This was a welcome clarification effort on the meaning of PoC, but it did not solve the definitional gap that existed for years to come. With the adoption guidelines with regard to the role of peacekeeping operations in the PoC by the Secretariat in 2005, the PoC has been defined as “all necessary action, up to and including the use of force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government to protect its civilians”.⁸⁹ This brings some clarity to the notion.

5.-Insistence on the need for a comprehensive approach to PoC

Both the SC and the SG insisted constantly on the need for a comprehensive approach to the PoC. In a Statement of 14 December 2004, the SC recognized again “the importance of a comprehensive, coherent and action-oriented approach” to PoC in situations of armed conflict”. It stressed also “the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict in a comprehensive manner in order to enhance the PoC on a long term basis, including by promoting sustainable development, poverty eradication, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights”. This marks the recognition of the multidimensional nature of the PoC challenge and the need for a holistic approach to it, as well as the crucial role of prevention.

⁸⁷ Report of the Secretary-General on the protection of civilians in armed conflict, 18 June 2015, UN doc: S/2015/453 (“11th report of SG on PoC »), para 40.

⁸⁸ Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 30 March 2001 UN doc: S/2001/331 (Hereinafter “Second Report of SG on PoC (2001)”), para 6.

⁸⁹ DPKO/DFS Policy on the Protection of Civilians in United Nations Peacekeeping, UN DPKO/DFS, 1 June 2015, Ref. 2015.07 (Hereinafter “Policy on PoC in UN Peacekeeping (2015)”), para. 14.

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The SC and the SG continued to insist on the comprehensive approach and the related need for a coordination amongst actors involved in the PoC, notably UN agencies, both of which came to constitute a salient feature of the UN stated strategy for PoC.

One way in which the Council insisted in the comprehensive approach is by identifying various aspects of protection as part of the UN PoC agenda.⁹⁰ In 2006, the SC (resolution 1674 of 28 April 2006), the SC stressed the “the need for a comprehensive approach through promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law, and respect for, and protection of, human rights”, underlining the importance of a “coherent, comprehensive and coordinated approach” by the principal organs of the UN.⁹¹ Likewise, in its resolution 1738 (2006), the Council stressed “the importance of a comprehensive, coherent and action-oriented approach, including in early planning, of protection of civilians in situations of armed conflict” and the need “to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict in a comprehensive manner in order to enhance the PoC on a long-term basis, including by promoting sustainable development, poverty eradication, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights”.⁹²

In his seventh report, Ban Ki-moon confirmed again the importance of a comprehensive approach to the PoC and insisted on the need to continue prioritizing PoC in peace operations mandates. He stated that the PoC “is not a military task alone” and that “all components of a mission, including police, humanitarian affairs, human rights, child protection, mine action, gender, political and civil affairs, public information, rule of law and security sector reform, can and must contribute to discharging the mission’s protection mandate”.⁹³ This was an important doctrinal clarification, reminding that PoC should be viewed as a whole of mission and multidimensional task.⁹⁴

In Resolution 1894 (2009), the SC recognized the necessity to take into account the protection needs of civilians in situations of armed conflict, in particular women and children, in the early phase of mandate drafting and throughout the lifecycle of the peacekeeping mission. It underlined the importance of engagement with the countries concerned and of close consultation with the Secretariat and relevant actors including T/PCCs.⁹⁵

The Council also recognized the need for comprehensive operational guidance on peacekeeping missions’ tasks and responsibilities in the implementation of PoC. It requested the SG to develop in close consultation with Member States including T/PCCs an operational concept for the PoC. Like the SG, the Council underlined, in its stated policies, the importance of “a coherent, comprehensive and coordinated approach” by the principal UN organs, cooperating with one another and within their respective mandates.

The Council requested the SG to ensure that peacekeeping missions with the PoC mandates conduct mission-wide planning, pre-deployment training, and senior leadership training on the PoC. It requested the T/PCCs ensure the provision of appropriate training of their personnel participating in UN peacekeeping to heighten the awareness and responsiveness to protection concerns. Further, the SC requested the SG to ensure that all relevant peacekeeping missions with protection mandates “incorporate comprehensive protection strategies into the overall mission implementation plans and contingency plans which include assessments of potential threats and options for crisis response and risk mitigation and establish priorities, actions and clear roles and responsibilities” under the leadership and coordination of the SRSG, with the full involvement of all relevant actors and in consultation with UN country teams (UNCTs).

The Special Committee on Peacekeeping operations, which is a subsidiary organ of the GA, also dedicated some reports to the issue of the PoC in Peace Operations. In its 2009 report, the Special

⁹⁰ See next point on dimensions of PoC.

⁹¹ Resolution 1674 of 28 April 2006.

⁹² Resolution 1738 of 23 December 2006.

⁹³ Report of the Secretary-General on the protection of civilians in armed conflict (7th report), 29 May 2009, UN doc: S/2009/277, para. 53

⁹⁴ Report of the Secretary-General on the protection of civilians in armed conflict (7th report), 29 May 2009, UN doc: S/2009/277, para. 54.

⁹⁵ Resolution 1894 (2009) of 11 November 2009.

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Committee noted that successful conduct of tasks relating to the PoC “requires integration of efforts at all levels” underlining “the importance of a comprehensive approach to this issue”.⁹⁶

6.- Highlighting the various dimensions of the PoC

Connected to this comprehensive approach is the identification of various aspects in relation to the PoC as dimensions thereto. Such aspects include the recognition of rule of law (RoL), the importance of the protection of humanitarian personnel, the need to give particular attention to addressing sexual violence and the protection of children in armed conflicts. The SG indicated in his third report on PoC that: “Restoration of the rule of law is fundamental to a country’s capacity to emerge from a period of conflict into a sustainable peace, based on the assured protection of civilians and the return of order.”⁹⁷ This was a recognition that PoC, if it were to be efficient on the long range, was not to be a purely military task. In his fifth report on the PoC the SG again touched upon the importance of the RoL in addressing violence against civilians. The SG stated later that “the restoration of law and order to prevent further violence and tackle impunity should be a key priority for the States concerned, and for the Security Council and possible peacekeeping and peacebuilding missions in support of, or, exceptionally, in lieu of, the States concerned”⁹⁸.

Another aspect is the protection of humanitarian personnel. In Resolution 1502 (2003)⁹⁹ dedicated to the protection of UN and humanitarian personnel, the SC reaffirmed its previous resolutions and statements¹⁰⁰ relating to the PoC, outlined the applicable humanitarian principles while placing the matter of protection of UN and humanitarian personnel under the umbrella of its PoC policy. Resolution 1502, in addition to making a clear reference to the Convention on the Safety of UN and Associated Personnel as a specific legal reference, contained the following principles: Obligation of all humanitarian personnel and associated personnel to observe and respect; the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities; the existence of prohibitions under international law against attacks knowingly and intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission undertaken in accordance with the UN Charter, which in situations of armed conflicts constitute war crimes; and the need for States to end impunity for such criminal acts. On the other hand, in Resolution 1502, the SC expressed its determination to take appropriate steps in order to ensure the safety and security of humanitarian personnel and UN and its associated personnel. Such steps include : (a) Requesting the SG to seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of UN and Associated Personnel; (b) to encouraging the SG to bring to its attention situations in which humanitarian assistance is denied as a consequence of violence directed against humanitarian personnel and UN and its associated personnel; and (c) Issuing the declaration of exceptional risk for the purposes of article 1 (c) (ii) of the Convention on the Safety of UN and Associated Personnel, in situations where in its assessment circumstances would support such a declaration.

In his fourth report on PoC, the SG pointed out the issue of sexual exploitation and abuse of women and children in armed conflict by UN personnel, as being the focus of considerable attention since his last report, citing the SG’s bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) that was promulgated in October 2003. He indicated that all parts of the UN system with a field presence have been working to establish a coherent system for the

⁹⁶ Report of the Special Committee on Peacekeeping Operations and its Working Group, 2009 substantive session (23 February-20 March 2009), NY, 2009, para 127.

⁹⁷ Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 26 November 2002, UN doc.:S/2002/1300 (Hereinafter “3rd report of SG on PoC (2002)”), para. 41.

⁹⁸ Report of the Secretary-General on the protection of civilians in armed conflict of 28 November 2005, UN doc : S/2005/740, para. 16 (Hereinafter “Fifth report of the SG on PoC (2005)”).

⁹⁹ Resolution 1502 of 26 August 2003.

¹⁰⁰ Notably Resolutions 1296 (2000), of 19 April 2000, and 1265 (1999), of 17 September 1999, on protection of civilians in armed conflict, and resolution 1460 (2003), of 30 January 2003, on children and armed conflict, as well as other relevant resolutions, and recalling the statements of its President on protection of civilians in armed conflict and on protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones).

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implementation of the bulletin at field level. He outlined that human trafficking, which is a related issue of increasing concern, is being addressed by the DPKO as a policy priority.¹⁰¹

The need for a regional approach to PoC and the importance of mainstreaming PoC in peace process were also highlighted. Concluding his forth report on the PoC, the SG charted a way forward insisting on two aspects. On the one hand, he called for regional approaches to protection, noting that the most protracted conflicts have developed regional dimensions and created new dynamics that extend well beyond the border of a single country, increasingly inhibiting resolution of the conflict”¹⁰². On the other hand, he insisted on the need for peace processes to integrate the protection dimension. The SG noted that, unless peace processes properly address concerns about the protection of civilians, they can be easily compromised and difficult to sustain.¹⁰³ He recommended that ceasefire and peace agreements include commitment by parties to conflict to immediately cease all attacks on civilians, to facilitate humanitarian access, to create conditions conducive to the safe and sustainable return of refugees and internally displaced persons, to ensure the safety of humanitarian personnel and to disarm and demobilize combatants. Finally, the SG urged the SC to engage fully with these issues in order to be prepared to address important new challenges to the environment for protecting civilians.¹⁰⁴

The SC endorsed such proposals subsequently. In a Statement of 14 December 2004, the SC, recognizing the regional dimensions of certain armed conflicts, stressed the need for regional cooperation in order to address cross-border issues such as disarmament, demobilization, reintegration and rehabilitation (DDRR), cross border movement of refugees and combatants, human trafficking, illicit flow of small arms and illegal exploitation of natural resources and post-conflict situations”.¹⁰⁵

Mainstreaming the PoC into peace processes, as a policy orientation, was reaffirmed in Resolution 1674 (2006).¹⁰⁶ The SC called upon all parties concerned to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including (i) the cessation of attacks on civilians, (ii) the facilitation of the provision of humanitarian assistance, (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, (iv) the facilitation of early access to education and training, (v) the re-establishment of the rule of law, and (vi) the ending of impunity.¹⁰⁷

The Council also stressed “the importance of developing strategies aimed at preventing and responding to sexual and gender-based violence, through the improvement in the design of peacekeeping and assessment missions by, *inter alia*, the inclusion of gender and child protection advisers” and “the importance for women and children subject to exploitation and sexual violence to receive adequate assistance and support”.¹⁰⁸ In its resolution 1738 (2006), the SC¹⁰⁹ raised the issue of the protection of journalists as an aspect of the PoC.¹¹⁰

It is obviously from these developments that the concept of PoC was including many aspects, ranging from the need to ensure compliance to international law provisions, to ensuring protection of civilian populations in general, with emphasis on certain groups, such as refugees, humanitarian personnel, women and journalists.

¹⁰¹ Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 28 May 2004, UN doc: S/2004/431, (Hereinafter “4th Report of SG on PoC (2004)”), para 14.

¹⁰² Ibid., para 48.

¹⁰³ Ibid., para 52.

¹⁰⁴ Ibid., para 59.

¹⁰⁵ Statement of 14 December 2004

¹⁰⁶ Resolution 1674 of 28 April 2006.

¹⁰⁷ Ibid.

¹⁰⁸ Statement of 14 December 2004

¹⁰⁹ Resolution 1738 of 23 December 2006.

¹¹⁰ Resolution 1738 of 23 December 2006. In this resolution, the expressed deep concern at the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict, in particular deliberate attacks in violation of IHL. It recalled that “that media equipment and installations constitute civilian objects, and in this respect shall not be the object of attack or of reprisals, unless they are military objectives”, before affirming that it will address the issue of protection of journalists in armed conflict strictly under the agenda item “protection of civilians in armed conflict”.

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In a Presidential Statement on 16 June 2010 relating to the protection of children, the SC reaffirmed its decision in resolution 1882 (2009) to continue to include specific provisions for the protection of children in the mandates of all relevant UN peacekeeping, peacebuilding and political missions and encouraged the deployment of Child Protection Advisers to such missions. The Council called upon the SG to ensure that such advisors are recruited and deployed in line with the Council's relevant country-specific resolutions and the DPKO Policy Directive on Mainstreaming the Protection Rights and Wellbeing of Children Affected by Armed Conflict.¹¹¹

The SC, in a statement of 12 February 2013¹¹² emphasized the need for peacekeeping missions with PoC mandates to ensure their implementation, and stressed the importance of continued and further engagement by senior mission leadership, to ensure that "all mission components and all levels of the chain of command are properly informed of and are involved in the mission's protection mandate and their relevant responsibilities".¹¹³ The Council stressed the need for strong leadership in peacekeeping missions, encouraging coordination between UN and regional and sub-regional institutions on issues relating to the PoC civilians in peacekeeping operations.¹¹⁴

The SG declared in his tenth Report on PoC that Peacekeeping remains an important tool in protecting civilians. He highlighted that all missions reviewed in the report have saved lives, but also face considerable operational challenges, including logistical constraints and, in the case of UNMISS and UNAMID, Government-imposed access restrictions and attacks by armed groups". He concluded that sustained efforts to provide missions with sufficient resources and capabilities are essential to enable this vital mandated task to be conducted consistently.¹¹⁵

Further, in its Statement of 25 November 2015 relating to the need to improve the efficiency of UN peace operations¹¹⁶, the SC touched upon the accountability for peacekeepers on the ground for PoC related matters. It affirmed that proper conduct by, and discipline over, all personnel deployed in UN peace operations are crucial to their effectiveness. The Council underscored specifically that sexual exploitation and abuse by UN peacekeepers is unacceptable and affirmed its support for the UN zero tolerance policy on all forms of sexual exploitation and abuse.¹¹⁷ In another statement of 25 November 2016, where the Council endorsed the 6th updated version of the Aide-Mémoire on PoC, the Council underlined the importance it attaches to the PoC as one of the core issues on its agenda, and expressed its intention to continue addressing this issue regularly, both in country-specific considerations and as a thematic item.¹¹⁸

7.-The importance of coordination at various levels

The importance of coordination as a policy tool was constantly affirmed by the SC and the SG. The SC after consideration of the second report of SG report on PoC made the view that it should be considered more widely within the UN including the GA.¹¹⁹ It called for the reorganization of SG recommendations into different groups in order to clarify responsibilities within the UN, enhance cooperation and facilitate their implementation. The Council directed the SG to harmonize the recommendations with principles and approaches contained in its resolutions 1265 (1999) and 1296 (2000), taking into account the different responsibilities and mandates of the UN organs and the need to further strengthen coordination among components of the UN system. The SC encouraged the SG to ensure closer cooperation between OCHA and DPKO by establishing a crosscutting joint team to facilitate due consideration of issues related to the protection of civilians in the design, planning and

¹¹¹ Statement by the President of the Security Council, 16 June 2010, UN doc: S/PRST/2010/10.

¹¹² Statement by the President of the Security Council, 12 February 2013, UN doc: S/PRST/2013/2 ("Statement of 12 Feb 2013").

¹¹³ Statement of 12 Feb 2013.

¹¹⁴ Ibid.

¹¹⁵ Report of the Secretary-General on the protection of civilians in armed conflict, 22 November 2013, UN doc: S/2013/689 (Hereinafter "10th Report of the SG on PoC"), Ibid., para. 50.

¹¹⁶ Statement by the President of the Security Council, 25 November 2015, UN doc: S/PRST/2015/22.

¹¹⁷ Ibid.

¹¹⁸ Statement by the President of the Security Council, 25 November 2015, UN doc: S/PRST/2015/23.

¹¹⁹ Letter dated 21 June 2001 from the President of the Security Council addressed to the Secretary-General of 21 June 2001, UN doc: S/2001/614.

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implementation of peacekeeping operations. It further requested the elaboration of an Aide-Memoire listing those issues that are relevant to PoC to be drafted in close cooperation with the Council in order to facilitate consideration by the SC, whenever appropriate, of issues pertaining to PoC in its deliberations on the establishment, change or close of peacekeeping mandates. The Aide-Mémoire was subsequently drafted and regularly updated.

In his 3rd report on the PoC (26 November 2002) the SG indicated that closer cooperation and coordination between the DPKO and OCHA has facilitated much work, including the elaboration of the aide-memoire on PoC, and that discussions are under way to deepen the cooperation to facilitate joint planning through the implementation of standard operating procedures (SOPs), that also aim to mainstream issues pertaining to the PoC into the work of peacekeeping missions.¹²⁰ He reported on roundtables organized by the secretariat and which contributed to the design of a “roadmap”, requested in Resolutions 1265 (1999) of 17 September 1999 and 1296 (2000) of 19 April 2000.¹²¹ On 20 December 2002, the SC emphasized the need for coordination within the UN system in dealing with PoC. The Council stressed once more “the importance of a comprehensive, coherent and action-oriented approach to the protection of civilians in armed conflict”. It encouraged “further cooperation between Member States, OCHA, DPA, DPKO, UNHCR, UNRWA, OHCHR, UNDP and other relevant UN agencies and offices, bearing also in mind the contents of resolutions 1325 on women, peace and security and 1379 on children in armed conflict”¹²².

In May 2004, the SG informed that key departments and agencies have jointly developed protection tools through the Executive Committee on Humanitarian Affairs Implementation Group for the Protection of Civilians in Armed Conflict, established in January 2003, including the “road map” and the updated aide-memoire on the PoC.¹²³

While noting the progress made in defining a PoC policy, the SG indicated that “the capacity of the Council to address protection issues could be enhanced in a number of ways, including through better informed decision-making, (...) drafting of resolutions and mandates that more fully reflect the needs of civilians. To help bring this about, Annan suggested briefings on the humanitarian implications of proposed resolutions would be useful, as would the holding of debates on issues which embrace both peace and security and humanitarian concerns. Further, he noted that as the experience of the Council’s recent visits to the DRC, Sierra Leone or East Timor shows, field missions can be useful as fact finding tools, exercises in advocacy and instruments of persuasion. Such missions might usefully be dispatched to other crisis zones in which the international response has been poorly informed or poorly supported. The Council would also benefit from being regularly informed by actors outside the UN system.”¹²⁴

The SG also recommended the SC to develop a regular exchange with the General Assembly (GA) and other organs of the UN on issues pertaining to the PoC in armed conflict. He suggested some role for civil society and NGOs. He encouraged the SC to continue “investigating the linkages between illicit trade in natural resources and the conduct of war” and “to urge UN member States and regional organizations to take appropriate measures against corporate actors, individuals and entities involved in illicit trafficking in natural resources and small arms that may further fuel conflicts”. He urged States to adopt and enforce executive and legislative measures to prevent private sector actors within their jurisdiction from engaging in commercial activities with parties to armed conflict that might result in or contribute to systematic violations of IHL and human rights law.

¹²⁰ Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 26 November 2002, UN doc.:S/2002/1300 (Hereinafter “3rd report of SG on PoC”), para. 5.

¹²¹ Ibid., para. 6.

¹²² Statement by the President of the Security Council (PoC in armed conflict), 20 December 2002, UN doc: S/PRST/2002/41. Also, in May 2004, in his 4th Report on PoC, the SG emphasized on his call for a system-wide approach, indicating that this has been reflected in the continued work to strengthen the policy framework and inter-agency coordination within the UN system. He informed that key departments and agencies have jointly developed protection tools through the Executive Committee on Humanitarian Affairs Implementation Group for the Protection of Civilians in Armed Conflict, established in January 2003, including the “road map” and the updated aide-memoire on the PoC, Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, 28 May 2004, UN doc: S/2004/431, (Hereinafter “4th Report of SG on PoC (2004)”), para 15.

¹²³ “4th Report of SG on PoC (2004)”, para 15.

¹²⁴ Ibid.

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The SG also encouraged the SC to establish a more regular cooperation with regional organizations to ensure informed decision-making, the integration of additional resources, and the use of their comparative advantages, through the establishment of a regular regional reporting mechanism, and briefings, for the SC.

The Special Committee on Peacekeeping operations also insisted on the importance of coordination, notably through the triangular cooperation between the SC, the Secretariat and the T/PCCs. It underlined the need to enhance the relationship between those who plan, mandate and manage UN peacekeeping operations and those who implement the mandates of those operations. It stated that T/PCCs should be involved early and fully in all aspects and stages of UN peacekeeping operations so that the experience and expertise of the T/PCCs can assist the SC in making appropriate, effective and timely decisions on UN peacekeeping operations. It added that this will also have a positive impact on the operations of national contingents.¹²⁵

In a Statement of 14 February 2014, the SC noted that 2014 marked the fifteenth anniversary of the progressive consideration by the SC of the PoC in armed conflict as a thematic issue.¹²⁶ The Council acknowledged the enduring need for the SC and UN member States to strengthen further the PoC in armed conflict. It reaffirmed the need for peacekeeping missions with PoC mandates to ensure their implementation, stressing the importance of continued engagement by senior mission leadership, with a view to ensuring “that all mission components and all levels of the chain of command are properly informed of and are involved in the mission’s protection mandate and their relevant responsibilities”. It reiterated the need for strong leadership in peacekeeping missions, and encouraged further coordination between UN and regional and sub-regional institutions on issues relating to the PoC in peace operations.

It is obvious from these developments, that coordination at all levels, within the UN, at headquarters and in the field, as well as between the UN and other actors, was identified as important for ensuring a better protection of civilians. The need for coordination to ensure effective PoC is constantly reaffirmed in UN peacekeeping doctrine. In a publication outlining DPKO doctrine on peace operations (capstone doctrine), in 2008, it is stated that the PoC “requires concerted and coordinated action among the military, police and civilian components of a United Nations peacekeeping operation and must be mainstreamed into the planning and conduct of its core activities”.¹²⁷

8.-The ten point strategy proposed by the OCHA

Under the lead of OCHA, the UN endeavored to have a strategic plan identifying the main priorities for the PoC. In its Statement on 15 December 2003, the SC after recalling the obligations of states to the PoC and condemning violations of IHL in that respect, noted with interest the proposal presented by the Under-Secretary-General for Humanitarian Affairs (USGHA), Jan Egeland at the 9 December 2003 open meeting of the SC for a ‘10-point action plan’ on the PoC in armed conflict, outlining its conduct, discussions and consultations on this issue.¹²⁸ The same statement contained in its annex, not only the 10 point plan, but also the *Aide-Mémoire* on the PoC. The 10 point plan built on areas in the road map that enjoyed the consensus support of the SC, which included: improving humanitarian access; improving security of humanitarian personnel; ensuring special protection of children; ensuring special protection of women; combatting impunity; addressing “forgotten emergencies”; better responding to the security needs of refugees; addressing shortcomings in disarmament, demobilization, reintegration and rehabilitation; addressing the impact of small arms and light weapons on the protection of civilians; and developing further measures to promote the responsibility of armed groups and non-State actors to protect civilians and to respect IHL, human rights and refugee law. The Council reiterated its willingness to update annually the Aide Memoire in order to reflect emerging trends in the PoC in armed conflict and endorsed it, emphasizing its importance as a practical tool that provides a basis for

¹²⁵ Report of the Special Committee on Peacekeeping Operations 2010 substantive session (22 February-19 March 2010), para 147.

¹²⁶ Statement by the President of the Security Council 12 February 2014, UN doc: S/PRST/2014/3.

¹²⁷ UN Peacekeeping Principles and Guidelines (2008), op. cit., p.24.

¹²⁸ Statement by the President of the Security Council, 15 December 2003 (Protection of civilians in armed conflict), UN doc: S/PRST/2003/27.

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improved analysis and diagnosis of key protection issues during deliberations on peacekeeping mandates.

In his fourth report on the PoC presented in May 2004, 5 years since the PoC in armed conflict was introduced in the UN agenda, Annan stressed the need to assess the collective achievements that have been made to better protect vulnerable civilian populations in the height of crises and in their immediate aftermath, and called for an honest reflection on those areas where action still falls short of needs.¹²⁹ He assessed the progress made in light of the 10 point action plan on the PoC presented a year earlier. He noted that the SC resolutions and peacekeeping mandates have regularly identified key protection issues, including the deliberate targeting of civilians, sexual and other forms of violence, the recruitment and use of child soldiers and ensuring humanitarian access to facilitate the delivery of assistance and the safety of UN and associated personnel. He also welcomed the focus on protection concerns in the SC missions to the Great Lakes region and West Africa, and to Afghanistan during 2003, hoping that future missions will be used to further the implementation of the SC's resolutions on the PoC in armed conflict, children and armed conflict, and women, peace and security.¹³⁰ He cited as encouraging events the referral of situations in Uganda and DRC to the International Criminal Court (ICC) in 2003 and 2004, as well as the SC's request that the OHCHR carry out a special investigation into civilian massacres in the DRC. This represents a further mechanism for enhancing the protection of civilians.¹³¹

The SG pointed to continuing shortfalls despite the progress mentioned. He reviewed progress in all aspects identified in the UN action plan in light of priorities identified by the SC, which form the basis of the ten-point platform and most of which feature in resolutions 1265 (1999) and 1296 (2000): (a) improving humanitarian access to civilians in need; (b) improving the safety and security of humanitarian personnel; (c) improving measures to respond to the security needs of refugees and internally displaced persons; (d) ensuring that the special protection and assistance requirements of children in armed conflict are fully addressed; (e) ensuring that the special protection and assistance requirements of women in armed conflict are fully addressed; (f) addressing shortcomings in our approach to disarmament, demobilization, reintegration and rehabilitation; (g) addressing the impact of small arms and light weapons on civilians; (h) combating impunity; (i) developing further measures to promote the responsibility of armed groups and non-State actors; and (j) ensuring the provision of the necessary resources to address the needs of vulnerable populations in "forgotten emergencies".¹³²

¹²⁹ 4th Report of SG on PoC (2004), para 2.

¹³⁰ Ibid., para 6.

¹³¹ Ibid., para 13.

¹³² Ibid., para 16. The SG noted that while important progress has been made in ensuring access to civilians in eastern DRC thanks to emerging peace process, the same has not been the case in Darfur where fighting continue to hinder access (paras. 17-18). On security of humanitarian access, he noted the continued deliberate targeting of humanitarian workers in many cases (para 21). The safety for refugees and the internally displaced within camps and in host communities continues to be a matter of international concern, as is the security of States hosting large refugee populations or with such populations near their borders (22). On the specific issues related to women and children, he indicated that women and children, especially girls, continued to suffer disproportionately in situations of armed conflict (para 26), with prevalence of sexual violence and other particularly abhorrent human rights abuses against women and children in situations of armed conflict, notably in Côte d'Ivoire, the DRC, Haiti, Liberia, western Sudan and northern Uganda (para 27). Regarding Disarmament, demobilization, reintegration and rehabilitation (DDRR), he indicated that (para 32), despite increased recognition that failed initiatives in this field carry with them the risk of a return to violence; such programmes remain chronically under-resourced, particularly in the rehabilitation and reintegration phases. Small arms and light weapons continue to be a source of prolongation of conflicts in places like Colombia, DRC, Haiti, Iraq and the Middle East, the Sudan and West Africa, among other conflict areas (para 36). On Impunity and compliance, he indicated that his decision to appoint a Special Adviser on the Prevention of Genocide is intended to provide early warning of situations of concern and a better basis for action by the UN, and reminded that States on whose territory such crimes are being committed bear the foremost responsibility, but that in the absence of timely and appropriate action by a State, the responsibility to respond falls to the international community. On the responsibility of non-State armed groups, the SG called for a coherent approach to engagement with non-State armed groups by the international/humanitarian community. On the so-called forgotten emergencies, the SG warned against the differentiated treatment between so called high profile crisis and others more neglected, urging the Security Council to consider carefully the links between the maintenance

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In the SG's 6th report on PoC, the new the SG Ban Ki-moon noted that much has been achieved towards strengthening the PoC in armed conflict, including the acceptance of the R2P; increased engagement of the SC on issues relating to the PoC; more regular inclusion of activities in support of the PoC in peacekeeping mandates", noting however that "considerable challenges remain"¹³³. He identified issues of concern on the ground, including one relating to the conduct of hostilities with a noticeable erosion of IHL principles of distinction and proportionality; and concerns relating to the impact of armed conflict on older people and persons with disabilities, and the protection of journalists. He then summarized the major challenges to PoC that the UN faces in 4 points: ensuring access to civilians for humanitarian purposes, more robust response to sexual violence, more effective response to housing, land and property issues, and eliminating the humanitarian impact of cluster munitions. He concluded his report by affirming that The PoC in armed conflict "is, and must remain, an absolute priority" and proposing a course of action to address the main concerns and challenges identified in the report.

9.-Persistence of challenges to PoC, despite important normative developments

Ban Ki-moon continued to present regular reports on PoC to which the SC responded by adopting resolutions and statements to develop the policy and normative framework. In his 7th report on the PoC, issued ten years after the beginning of the inclusion of PoC in SC's agenda, he endeavored to assess the achievements and challenges. He reminded that the PoC is not "a purely humanitarian task; rather, it is a task that requires focus and action in the peacekeeping, human rights, rule of law, political, security, development and disarmament fields", and that the reports also underlined the fact that improving the protection of individuals and communities is not a substitute for political processes aimed at preventing or ending conflict and building sustainable peace.¹³⁴ This statement heightens the role of the PoC as a core subject of peace and security efforts of the UN. Its conclusion on the crucial role of political solutions was confirmed years later by the high level panel on UN peace operations.¹³⁵

On enhancing protection on the ground, Ban Ki-moon stated the positive developments that occurred, while essential, are of limited value if they do not translate into concrete improvements in the PoC on the ground. He noted that civilians still account for the vast majority of casualties and continue to be targeted and subjected to indiscriminate attacks and other violations by parties to conflict. Ten years on there remains an enduring need for the Security Council and Member States to strengthen further the protection of civilians."¹³⁶ He added that the enduring need to strengthen the PoC stems from the failure of parties to conflict to comply with their legal obligations to protect civilians. He declared that such a failure demands reinvigorated commitment and determined action to meet five challenges that he identified: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced UN peacekeeping; enhancing humanitarian access; and enhancing accountability for violations.¹³⁷

of international peace and security and the timing and lack of balance of funding in certain crises (42), See: 4th Report of SG on PoC (2004), op. cit., paras 17-42.

¹³³ Report of the Secretary-General on the protection of civilians in armed conflict 28 October 2007 (6th report), UN doc.: S/2007/643 (hereafter, "6th Report of SG on PoC (2007)", para 10.

¹³⁴ Report of the Secretary-General on the protection of civilians in armed conflict (7th report), 29 May 2009, UN doc: S/2009/277 (Hereinafter "7th Report of SG on PoC (2009)", para 8. The SG also reminded that the SC Expert Group on the PoC established to mainstream protection into the Council's actions, has started to convene to work and to advise the SC, notably on the occasion of renewal of peacekeeping mandates¹³⁴ and that it also provides an important forum for the OCHA to informally brief the SC on behalf of the humanitarian community, with a view to ensuring that protection concerns are identified and addressed in the Council's resolutions and actions on specific situations. He urged the Council to make extensive use of the Expert Group and, through it, give practical relevance to the Aide-Memoire and the wealth of experience and best practice developed over the last 10 years. Ibid., para 13.

¹³⁵ See : Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people ["Report on the High-level Independent Panel on Peace Operations"], p. 26, para. 43.

¹³⁶ 7th Report of SG on PoC (2009, op. cit., para 23.

¹³⁷ Ibid., para. 26 and following.

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In his 8th report on PoC, Ban Ki-moon reviewed again progress and challenges, drawing lessons and providing policy directives in the form of recommendations to address the five main challenges identified including actions aimed at ensuring a comprehensive, consistent and accountable approach to the PoC.¹³⁸ He noted that, to the extent that progress can be reported in the PoC, it is not on account of parties to conflict having scrupulously observed their obligations under international law. Such progress rests rather with developments at the normative level and, above all, with the efforts of UN actors, in particular humanitarian agencies and peacekeeping missions, and other international and NGOs to enhance protection, as well as with the courage and ingenuity of the affected populations.¹³⁹ Nonetheless, he noted that in relation to strengthening protection on the ground, there has been progress.¹⁴⁰ He cited as examples the specific mandate entrusted by the international community to the ICRC, increasing number of humanitarian organizations prioritizing PoC and the implementation of the cluster approach by UN and other humanitarian organizations and the establishment of field-based protection clusters, as well as the development of new protection tools, guidance and standards, are ensuring a more coordinated and professional response to protection concerns. He noted however that the need for more comprehensive and consistent action remained. He reported that understanding of the different approaches to applying protection on the ground is increasing, and that the DPKO and the Global Protection cluster are collecting lessons learned and good practice in protection.¹⁴¹ In 9th report of the SG on PoC, Ban Ki-moon noted once more that despite some progress on the PoC, the reality on the ground was characterized by the frequent failure of parties to a conflict to comply with their obligations to respect and protect civilians.¹⁴² He mentioned many cases around the world, including DRC, Libya and Syria where the PoC remained a huge challenge.¹⁴³ He expressed concern on the issue of use of unmanned aerial vehicles, or drones, for targeted attacks, including in situations of armed conflict, noting that drone attacks have caused hundreds of civilian casualties, raising questions about compliance with the principle of proportionality.¹⁴⁴ The SG also referred to some developments in actions of the SC in relation to the conflicts in Cote d'Ivoire and Libya, through resolutions 1975 (2011) regarding Cote d'Ivoire, and resolutions 1970 (2011) and 1973 (2011)

¹³⁸ Report of the Secretary-General on the protection of civilians in armed conflict 11 November 2010 (8th Report), 11 November 2010, UN doc: S/2010/579 (Hereinafter "8th Report of SG on PoC (2010)").

¹³⁹ Ibid., para. 6.

¹⁴⁰ Ibid., para. 33.

¹⁴¹ The SG summarized the related findings in 6 points. First, the effective protection requires presence among civilian populations. Second, regular assessments of potential threats to civilians, including through constant interaction with the populations concerned, and the establishment of early warning systems are critical to ensuring timely action. Third, coordinated action on geographical and operational priorities among all relevant protection actors is essential, in accordance with their mandates. He specified that within peacekeeping missions, the PoC is greatly enhanced when all components (military, police and civilian) are engaged, rather than this task is relegated to only the military component. He cited the example of Joint Protection Teams in DRC as an example for such an approach. Fourth, the efforts of the civilian population to protect itself must be supported. Fifth, the allocation of sufficient resources for discrete protection activities and initiatives is key, and expands the capability of humanitarian organizations and peacekeeping missions to protect civilians. Lastly, the SG indicated that "underpinning all such efforts, is the need for the proactive engagement of senior United Nations officials on the ground, including my Special Representatives and Humanitarian Coordinators, with the parties to conflict, with a view to advocating on behalf of those at risk and preventing threats to civilians from further escalating". This last point was clear reference to the crucial role of missions' leadership on the ground. The SG concluded with the analysis of the 5 main challenges identified in his earlier report, making recommendations with regard to each issue, Ibid., paras. 35 and following.

¹⁴² Report of the Secretary-General on the protection of civilians in armed conflict (9th Report), 22 May 2012, UN doc: S/2012/376 (Hereinafter "9th Report of SG on PoC (2012)").

¹⁴³ The SG specifically mentioned the plight of women and children in some of these conflicts, notably Afghanistan, DRC, Libya and Mali. He also touched upon the extrajudicial killings and other violations against civilians in Syria, the killings of civilians in relation to conflict in Gaza and the plight of migrant workers and their families in situations of conflict such as Libya, with reports of killings, sexual violence, discrimination and arbitrary detention. He expressed concern on the issue of use of unmanned aerial vehicles, or drones, for targeted attacks, including in situations of armed conflict, noting that drone attacks also reportedly have caused hundreds of civilian casualties, raising questions about compliance with the principle of proportionality, 9th Report of SG on PoC (2012), op. cit., paras 11-16.

¹⁴⁴ Ibid., para 16.

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regarding Libya, whereby the SC authorized the use of force for the PoC.¹⁴⁵ He expressed concern at the “continuing and inaccurate conflation of the concepts of the protection of civilians and the responsibility to protect”, outlining the differences between the two concepts and urging the SC and Member States to be mindful of these distinctions.¹⁴⁶

The SG reported about other encouraging developments, including the institution of human rights due diligence policy (HRDDP) on UN support to non-UN security forces¹⁴⁷, ongoing efforts to improve monitoring and reporting on the PoC including on the development of guidance for reporting on the PoC in situation-specific reports, as requested in SC resolution 1894 (2009); consultations initiated by OCHA with UN partners on developing indicators for improved monitoring and reporting on protection trends, and the use of new information technology to facilitate the PoC.¹⁴⁸

In his 10th report on PoC (November 2013), the SG stated that PoC “is not simply as a thematic item on the agenda” of the SC but also “a fundamental objective that we must all — parties to conflict, States, the UN and other partners — work tirelessly to achieve.”¹⁴⁹ He indicated that the need to strengthen efforts to prevent and respond to violations of IHL and Human Rights Law in situations of conflict and violence have been at the forefront of discussions within the UN and its agencies, funds and programs, notably while considering the response to the situation in Syria and the recommendations made by the Internal Review Panel on UN Action in Sri Lanka. He declared that the UN components “are strongly committed to learning from past failures and have agreed upon an action plan, entitled “Rights up front”, which contains important proposals to strengthen the role of the UN. The plan, he explained, is based on recognition that the UN can meet its core responsibilities only when it operates with the firm, unified and vocal support of Member States, both within and outside the SC. The plan, he stated, recognizes that protecting people from atrocities is an overarching responsibility that must bring together all the critical functions of the UN: human rights, humanitarian, political and peacekeeping. He insisted on the need for close coordination, better information sharing and advocacy, more robust preparedness, greater efforts in prevention work and a coherent and effective strategy owned and delivered by the Organization as a whole. He reminded that, whatever the UN can do to strengthen its own efforts to protect civilians, the ultimate responsibility rests with parties to conflict.”¹⁵⁰

¹⁴⁵ Ibid., para 18. In relation to Libya, the SG reported that while the implementation of resolution 1973 (2011), “prevented deaths and injuries”, the extent to which its implementation was perceived to go beyond the PoC raised concerns among some Member States that continue to colour the Council’s discussions on the PoC and related issues in other situations. He said that this may also have had the unintended effect of undermining the PoC agenda, including as a framework for action in future crises. He pledged that, in the future, in addition to complying scrupulously with international humanitarian law and human rights law, the implementation of such decisions must be limited to promoting and ensuring the protection of civilians”, 9th Report of SG on PoC (2012), para. 19.

¹⁴⁶ Ibid., para. 21. The SG explained that, while the two concepts share some common elements, particularly with regard to prevention and support to national authorities in discharging their responsibilities towards civilians, there are fundamental differences. First, the PoC is a legal concept based on IHL and human rights and refugee law, while the R2P “is a political concept, set out in the 2005 World Summit Outcome. Second, there are important differences in their scope. The PoC relates to violations of IHL and human rights law in situations of armed conflict, whereas the R2P “is limited to violations that constitute war crimes or crimes against humanity or that would be considered acts of genocide or ethnic cleansing. He further explained that Crimes against humanity, genocide and ethnic cleansing may occur in situations that do not meet the threshold of armed conflict.

¹⁴⁷ Ibid., para.27. See: Human Rights Due Diligence Policy (HRDDP) on UN Support to Non-UN Security Forces, Guidance Note, 2014.07.01. The HRDDP aims to prevent the support to State or non-State actors alike used for the commission of grave violations of IHL, human rights and refugee law. On the Policy, See: Helmut Philip Aust, “The UN Human Rights Due Diligence Policy: An Effective Mechanism against Complicity of Peacekeeping Forces?”, Security Law (2015) 20 (1): 61-73.

¹⁴⁸ Ibid., para.27.

¹⁴⁹ Report of the Secretary-General on the protection of civilians in armed conflict, 22 November 2013, UN doc: S/2013/689 (Hereinafter “10th Report of the SG on PoC (2013)”), para. 2.

¹⁵⁰ Ibid., paras 3- 4.

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Ban also stressed the need for the SC to be consistent in the treatment of different situations, stating: “The need to act consistently across all relevant situations is clear, given that, without such consistency, there will be a significant gap between the commitments undertaken by the SC in the abstract and the actual performance of the SC in responding to violence against civilians when it matters most”¹⁵¹.

The SG opined that the current state of the PoC “leaves little room for optimism”, explaining that civilians continue to account for the vast majority of casualties in current conflicts, and that they are regularly targeted and subject to indiscriminate attacks and other violations by parties to conflict”¹⁵². He also identified the new weapons and technologies and their implication for PoC as a continuing emerging challenge¹⁵³. The SG then went on with an analysis of the 5 core challenges to PoC¹⁵⁴ and made recommendations to address them. On the role of peace operations, he noted that Mission PoC activities focus largely on building a protective environment.¹⁵⁵

The SC too continued to adopt resolutions and statements on the PoC and to develop its policy. In Resolution 2175 (2014) dedicated to the security of humanitarian workers, the SC recalled the inclusion of attacks intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, as a war crime in the ICC Statute.¹⁵⁶ The Council reaffirmed the obligation of all parties involved in an armed conflict to comply with IHL, in particular their obligations under the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, to ensure the respect and protection of all humanitarian personnel and UN and associated personnel, as well as with the rules and principles of international HRL and refugee law”. The Council also condemned all forms of violence and intimidation, including, inter alia, murder, rape and sexual assault, armed robbery, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention to which those participating in humanitarian operations are increasingly exposed, as well as attacks on humanitarian convoys and acts of destruction and looting of their assets. The SC further expressed its determination to take appropriate steps to ensure the safety and security of humanitarian personnel and UN and its associated personnel. The Council identified a number of such measures to that effect.¹⁵⁷ In its resolution 2222 (2015) dedicated to the protection of journalists, the SC affirmed that UN peacekeeping missions, where

¹⁵¹ The SG cited the case of Syria. He reminded that, notwithstanding the agreement to destroy the chemical weapons of Syria and the welcome statement by the President of the Council of 2 October 2013 addressing humanitarian concerns (S/PRST/2013/15), the continued political differences in the Council have resulted in paralysis and an inability to secure a ceasefire in hostilities and use the tools at its disposal to strengthen the PoC.

¹⁵² Ibid., para. 8.

¹⁵³ Ibid., para. 25.

¹⁵⁴ These challenges are: Enhancing compliance, enhancing compliance by non-State armed groups, enhancing the role of peacekeeping and other missions, enhancing humanitarian access and enhancing accountability.

¹⁵⁵ Report of the Secretary-General on the protection of civilians in armed conflict, 22 November 2013, UN doc: S/2013/689 (Hereinafter “10th Report of the SG on PoC”), Ibid. 49.

¹⁵⁶ Resolution 2175 of 29 August 2014.

¹⁵⁷ Measures identified in this context by SC include : (a) *Ensuring* that the mandates of relevant UN peacekeeping operations can help to contribute to a secure environment to enable the delivery of humanitarian assistance by humanitarian organizations; (b) Requesting the SG to seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of UN and Associated Personnel, including, among others, those regarding the prevention of attacks against members of UN operations, the establishment of such attacks as crimes punishable by law ; (c) Encouraging the SG to bring to the attention of the SC situations in which humanitarian assistance is unable to reach people in need as a consequence of violence directed against humanitarian personnel and UN and its associated personnel; (d) Issuing the declaration of exceptional risk for the purposes of article 1 (c) (ii) of the Convention on the Safety of United Nations and Associated Personnel, in situations where in its assessment circumstances would support such a declaration, and inviting the SG to advise the SC, where in his assessment circumstances would support such a declaration; (e) Calling upon all States to consider becoming parties to the Convention on the Safety of UN and Associated Personnel and its Optional Protocol, and urging States parties to take steps to enable its effective implementation.

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appropriate, should include in their mandated reporting, information on specific acts of violence against journalists, media professionals and associated personnel in situations of armed conflict”.¹⁵⁸

In his 11th Report on the PoC of June 2015, the SG reviewed the state of the PoC in specific crisis, identifying challenges and providing recommendations. He painted a dim picture of the state of the PoC in contemporaneous conflicts.¹⁵⁹ He reminded that upholding humanity is at the core of humanitarian action and of the UN Charter and that civilians caught in armed conflict are among the world’s most vulnerable, and have a right to be protected. Yet, the commitment and the ability of the international community to protect civilians in conflict and preserve their dignity are being challenged at every turn.¹⁶⁰

Ban Ki-moon noted that over the past 16 years, the SC has established a robust normative framework on the PoC, embodied in various resolutions and presidential statements and founded on the principles of IHL, human rights and refugee law; that the Council has also significantly strengthened the protection and human rights mandates of many UN peace operations.”¹⁶¹ Clearly, the achievements of effective PoC on the ground remained a big challenge for the UN and the international community. The SG added that the five core challenges to the PoC outlined in his previous reports continue to be highly relevant.¹⁶² In this report, the SG reviewed country specific concerns relating to the PoC, notably in Afghanistan, Central African Republic (CAR), Colombia, DRC, Iraq, Libya, Mali, Myanmar, Nigeria, Palestine, Pakistan, Somalia, South Sudan, Sudan, Syria, Ukraine and Yemen.¹⁶³

The SG also noted that the successful implementation over the past two years of the HRDDP on UN support to non-UN security forces by peace operations constituted another effective way to reduce the risk of national security forces committing violations of international human rights or humanitarian law.¹⁶⁴ He reported that the DPKO and DFS have published the first UN policy on the PoC in UN peacekeeping, along with associated guidelines for military components”. This was an important development in UN efforts to institutionalize how civilian, police and military peacekeepers implement the PoC’ mandates, remarked the SG.¹⁶⁵ In fact these documents came to fill a gap that was persistent with regard to the true meaning and implications of PoC, notably for peace operations, and other stakeholders in the field.

The conclusion that these developments suggest is that while UN has gone a long way on putting in place a doctrine and policy as well as a broad strategy to ensure protection of civilians in armed conflict, it keeps struggling with the effective execution of such strategy. This is due to many factors, including political factors, the mismatch between means and the ends, and the fact that the PoC does not exclusively depend from the UN, but also to a great part, to the States and other actors on the ground. In short, despite huge legal powers, and important normative developments and means deployed on the grounds of the conflict, the UN has still to work for the improvement of its performance with regard to the PoC in armed conflict.

¹⁵⁸ Resolution 2222 of 27 May 2015, para. 12.

¹⁵⁹ Report of the Secretary-General on the protection of civilians in armed conflict, 18 June 2015, UN doc: S/2015/453 (“11th report of SG on PoC (2015)»). The SG stated that “shocking levels of brutality and casual disregard for human life and dignity have come to characterize most of today’s armed conflicts. Civilians are killed and maimed in targeted or indiscriminate attacks. They are tortured, taken hostage and disappeared, forcibly recruited into armed groups, displaced from their homes, separated from their families and denied access to the most basic necessities. Sexual and gender-based violence is widespread. Direct attacks on schools and hospitals have become common features of many armed conflicts. Humanitarian and health-care workers are deliberately targeted. In many conflicts, the most basic rules of international humanitarian law are routinely violated with little or no accountability. Impunity remains widespread across conflicts and fuels further violations”, para 4.

¹⁶⁰ Report of the Secretary-General on the protection of civilians in armed conflict, 18 June 2015, UN doc: S/2015/453 (“11th report of SG on PoC »), para 6.

¹⁶¹ Ibid., para 7.

¹⁶² Ibid., para 10.

¹⁶³ Ibid., para 11-26

¹⁶⁴ Ibid., para 53.

¹⁶⁵ Ibid., para 57.

Chapter II.- UN Peace Operations and the PoC : Trends, Guidelines and Practice

This chapter first examines the main trends of UN peace operations PoC mandates in the UN practice since 1999 (A.-). It then gives an account of the content of the guidelines elaborated by the UN on its policy regarding the role of Peace Operations in the PoC (B.-). Finally, it will focus on a case study regarding the role of UN peace missions in the DRC (MONUC and MONUSCO) as an illustration of the role of how UN peacekeeping has been used as a tool for the PoC (C.-).

A.-Trends in the use of peace operations to protect civilians in armed conflict

This section will illustrate briefly how the PoC was at the beginning entrusted to peace operations as a relatively secondary aspect of their mandate, before becoming a central element later. It will draw from some examples of the most illustrative cases, notably in Africa, where most peace operations with PoC mandates have been deployed.

1.- PoC as a secondary element in the mandates of peace operations

Recourse to UN peace operations for the PoC remained rather rare in the history of UN peacekeeping until the end of the 1990s. In early 1990s, UNPROFOR in Bosnia was given some role in the protection of the safe zones to ensure civilians were protected and humanitarian assistance provided. After this, the first UN peace operation that was entrusted with an explicit mandate to protect civilians was UNAMSIL. By Resolution 1270 (1999), the SC “acting under Chapter VII of the Charter (...) decided that in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford PoC under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG”.¹⁶⁶ Peacekeepers were authorized to take military action to protect civilians under imminent physical threat. This was a manifestation of the new policy of the UN regarding the PoC. While violence against civilians was common in most of the conflicts that were being treated by the SC, such as that of Sierra Leone¹⁶⁷, PoC was till then rarely considered an express priority. Resolution 1270 actually made a reference to the first report of the SG on the PoC submitted, which shows a link with the new policy. It was followed by other resolutions confirming this mandate of the PoC.¹⁶⁸ UNAMSIL’s mandate to protect civilians was secondary however. Peacekeepers had to

¹⁶⁶ Resolution 1270 (1999), 22 October 1999, para 4.

¹⁶⁷ Previous resolutions of SC on Sierra Leone, notably Resolution 1270 of 5 June 2008 and Resolution 1181 (1998) showed that the atrocities against civilians were a salient feature of the conflict in Sierra Leone, but no action directly dealing with the protection of civilian population were taken before the resolution 1270. In Resolution 1181 (1998) the SC expressed concern at the loss of life and immense suffering undergone by the people of Sierra Leone, including refugees and displaced persons, as a result of the continuing rebel attacks, and in particular at the plight of children affected by the conflict. Resolution 1223 of 11 March 1999: “condemns the atrocities perpetrated by the rebels on the civilian population of Sierra Leone, including in particular those committed against women and children, deplores all violations of human rights and international humanitarian law which have occurred in Sierra Leone during the recent escalation of violence as referred to in (...) the report of the Secretary-General, including the recruitment of children as soldiers, and urges the appropriate authorities to investigate all allegations of such violations with a view to bringing the perpetrators to justice” and calls all parties to the conflict to respect human rights and international humanitarian law and the neutrality and impartiality of humanitarian workers, and to ensure full and unhindered access for humanitarian assistance to affected populations”. But no concrete operational action aiming to curb this was taken to curb this, beyond calls and demands to stop the violations.

¹⁶⁸ Resolution 1289 (2000) of 7 February 2000: “authorizes UNAMSIL to take the necessary action to fulfil the additional tasks set out above, and affirms that, in the discharge of its mandate, UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone”; Resolution 1389 (2002) of 16 January 2002: “2. Reiterates its authorization to UNAMSIL, under Chapter VII of the Charter(..), as provided for in resolution 1270 (1999) of 22 October 1999 and resolution 1289 (2000) of 7 February 2000, to take the necessary action to fulfil the tasks set out in paragraphs 1 (b) and 1 (c) above, and reaffirms that, in the discharge of its mandate,

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use their means for the purposes of the PoC only to the extent possible within their areas of deployment. PoC was only a relatively tiny aspect of the UNAMSIL's multidimensional mandate.

The practice with UNSMIL was soon reproduced in other UN multidimensional operations deployed in Africa and beyond. In Resolution 1291 (2000) on DRC conflict, the SC "decided that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations and co-located JMC personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence".¹⁶⁹ The same mandate was regularly prolonged.¹⁷⁰

In relation to the conflict in Sudan, following the conclusion of a peace agreement between the Khartoum government and the SPLA/M (South Sudan People's Liberation Army/Movement) in 2005, the SC entrusted the UNMIS with a mandate including the PoC. Resolution 1590 (2005) confers to UNMIS the task "(d) To contribute towards international efforts to protect and promote human rights in Sudan, as well as to coordinate international efforts towards the protection of civilians with particular attention to vulnerable groups including internally displaced persons, returning refugees, and women and children, within UNMIS's capabilities and in close cooperation with other United Nations agencies, related organizations, and non-governmental organizations".¹⁷¹ In this case, the tasks relating to the PoC were included in a classic human rights mandate, whereas in other peace operations the PoC was in fact usually presented separately from the human rights tasks, and presented more as a mainly military and security related task. As was the case in UNAMSIL and MONUC, the UNMIS was authorized to "to take the necessary action, in the areas of deployment of its forces and as it deems within its capabilities, to protect United Nations personnel, facilities, installations, and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence".¹⁷²

In July 2007, in Resolution 1769 establishing the UNAMID, the SC, acting under Chapter VII of the Charter (a) decided that UNAMID was authorized to take the necessary action, in the areas of the deployment of its forces and as it deemed within its capabilities in order to: (i) protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers; and, (ii) support early and effective implementation of the Darfur Peace Agreement, prevent the disruption of its implementation and armed attacks, and protect civilians, without prejudice to the responsibility of the Government of Sudan".¹⁷³

To that date the PoC had been a rather secondary aspect of UN peace operations mandates. In addition, the means of these operations were often very limited to meet the challenges of the PoC in these countries. This was the case even in Darfur where the humanitarian crisis characterized by mass atrocities of civilians was a decisive factor in the creation and deployment of UNAMID. Also, the PoC are a shared responsibility, between the host States, which have primary responsibility on the matter, and even regional forces, as the case maybe, such as was the situation in Sierra Leone.

2.- A certain prioritization of PoC in UN peace operations mandates

UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone, including the Sierra Leone Police".

¹⁶⁹ Resolution 1291 of 24 February 2000.

¹⁷⁰ Resolution 1565 (2004) which came to strengthen the MONUC and its mandate, included there the task "to ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence", Resolution 1565 of 1 October 2004.

¹⁷¹ Resolution 1590 of 24 March 2005.

¹⁷² Resolution 1590 (2005) of 24 March 2005, 16 (i).

¹⁷³ Resolution 1769 of 31 July 2007. See also the Resolution 1828 (2008) of 31 July 2008, where the SC underlined the need for UNAMID to make full use of its current mandate and capabilities with regard to the protection of civilians, ensuring humanitarian access and working with other UN agencies.

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There has been some noticeable trend toward the prioritization of the PoC in the mandates of UN peace operations in Africa, particularly beginning from 2008, in line with the announced policy of the SC. However, this is not the case in some more recent UN operations notably those deployed in Mali and CAR. At the same time, the prioritization of PoC in the mandates has had its challenges on the ground. With the evolution of the challenge of PoC in zones of conflict and UN policy on the matter, the SC began to give more priority to the PoC in the mandates of UN peace operations. In the DRC, starting from December 2008, the Council started to give more priority to the PoC in the mandate of MONUC. In Resolution 1856 of 22 December 2008¹⁷⁴, the Council requested MONUC to attach the highest priority to addressing the crisis in the Kivus, in particular the PoC, and to concentrate progressively during 2009, its action in the eastern part of the DRC. Further, it reformulated the mandate of MONUC in a way that put the PoC as one of its priority tasks. It decided that MONUC shall, from the adoption of this resolution, have the mandate, in this order of priority, working in close cooperation with the Government of the DRC to carry out a number of tasks, the first of which is: Protection of civilians, humanitarian personnel and UN personnel and facilities.¹⁷⁵ PoC was mentioned in the first place and presented as a priority over other tasks such as : DDR, monitoring of resources of foreign and Congolese armed groups; Training and mentoring of FARDC in support for security sector reform; Supporting the territorial security of the DRC; Support of the strengthening of democratic institutions and the rule of law.

In fact the prioritization of PoC over other tasks of the mandates appeared to become a salient feature of the UN policy, as reflected in some of its key thematic resolutions on PoC, notably Resolutions 1674 (2006) and 1894 (2009).¹⁷⁶ The prioritization of PoC in the mandate of MONUC and those of other UN peace operations is part of the concretization of this policy element. The MONUC/DRC cases which will be studied with more details below illustrate this to a great extent.

This trend towards the prioritization of the PoC began also to be noticeable in the mandate of the UNAMID around the same period. By Resolution 1881 (2009), the SC after determining that the situation in Sudan constitutes a threat to international peace and security underlined “the need for UNAMID to make full use of its mandate and capabilities, particularly with regard to (a) the protection of civilians across Darfur, and (b) ensuring safe, timely and unhindered humanitarian access, the safety and security of humanitarian personnel and the protection of humanitarian convoys”.¹⁷⁷ This emphasis on PoC was a novelty in the SC resolutions concerning the situation in Darfur and reflected some willingness to give it more priority.¹⁷⁸ PoC passes from a task that was timidly formulated in the earlier

¹⁷⁴ Resolution 1856 of 22 December 2008. This resolution extended the deployment of MONUC until 31 December 2009 and authorized the increase of its maximum authorized troops up to 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 personnel of formed police units.

¹⁷⁵ This tasks consisted in a number of activities including : Ensuring the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict; Contributing to the improvement of the security conditions in which humanitarian assistance is provided, and assist in the voluntary return of refugees and internally displaced persons; Ensuring the protection of UN personnel, facilities, installations and equipment; Ensuring the security and freedom of movement of UN and associated personnel; and Carrying out joint patrols with the national police and security forces to improve security in the event of civil disturbance.

¹⁷⁶ The SC, in Resolution 1674 (2006), reaffirmed its practice of ensuring that the mandates of UN peacekeeping missions include, where appropriate provisions regarding (i) the PoC, particularly those under imminent threat of physical danger within their zones of operation, and that the PoC “is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates”, and (iii) that protection mandates are implemented. Also, in Resolution 1894 (2009), the SC stressed that mandated protection activities “must be given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of mandates” (Resolution 1894 (2009) of 11 November 2009).

¹⁷⁷ Resolution 1881 (2009) of 30 July 2009.

¹⁷⁸ This prioritization of PoC became more explicit in Resolution 2003 (2011) which underlines the need for UNAMID to make full use of its mandate and capabilities, giving priority in decisions about the use of available capacity and resources to (a) the protection of civilians across Darfur, including through proactive deployment and patrols in areas at high risk of conflict, securing IDP camps and adjacent areas, and implementation of a mission-wide early warning strategy and capacity and (b) ensuring safe, timely and unhindered humanitarian access, and the safety and security of humanitarian personnel and humanitarian

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resolutions of the SC regarding Darfur, to a main task that needed its own strategy. The content of the PoC is also better explained with clear reference to relevant thematic resolutions of the SC and the needs of particular groups to protection. This trend continued¹⁷⁹ and in parallel, the SC increasingly called upon the parties to the conflict, including the government of Sudan to take measures to ensure civilians are protected from violence.¹⁸⁰ This prioritization is also obvious in Resolution 2148 (2014) whereby the SC endorsed UNAMID's revised strategic priorities of: the protection of civilians, the facilitation of the delivery of humanitarian assistance and the safety and security of humanitarian personnel" and requests UNAMID "to focus and streamline its activities, across its military, police and civilian components in order to achieve progress on its strategic priorities, key amongst which is the PoC."¹⁸¹

activities, so as to facilitate the unimpeded delivery of humanitarian assistance throughout Darfur; and requests UNAMID to maximize the use of its capabilities, in cooperation with the UN Country Team and other international and non-governmental actors, in the implementation of its mission-wide comprehensive strategy for the achievement of these objectives.¹⁷⁸ In the same resolution, the SC demanded that the parties to the conflict immediately take appropriate measures to protect civilians, including women and children, from all forms of sexual violence, in line with resolution 1820 (2008); requests UNAMID to report on sexual and gender based violence, as well as to assess progress towards the elimination of sexual and gender-based violence, and further emphasizes the need to include protection to women and children from sexual violence and gender based violence, as part of the mission-wide Protection of Civilians strategy identified in paragraph 3 above, and requests the Secretary-General to ensure that the relevant provisions of resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) are implemented by UNAMID, including the participation of women through the appointment of women protection advisors, and to include information on this in his reporting to the Council".

¹⁷⁹ In its Resolution 2063 (2012) of 31 July 2012, the Council "4. Emphasizes UNAMID's Chapter VII mandate, as defined in resolution 1769, to deliver its core tasks to protect civilians without prejudice to the primary responsibility of the Government of Sudan and to ensure the freedom of movement and security of UNAMID's own personnel and humanitarian workers" and urged UNAMID "to deter any threats against itself and its mandate; notes the observation in the Secretary-General's report that it is important to ensure that contingents are properly prepared and effectively equipped to be able to carry out UNAMID's mandate".

¹⁸⁰ In its Resolution 2091 (2013) of 14 February 2013, the SC "11. Urges the Government of Sudan to respond to the Committee's requests on measures put in place to protect civilians in various parts of Darfur, including those affected by new displacements; investigations conducted and accountability measures undertaken for killings of civilians and perpetrators of human rights abuses and violations of international humanitarian law, including notably the killings of civilians in Abu Zereiga in June 2011, Hashaba in August 2012 and Sigili in November 2012; investigations conducted and accountability measures undertaken for attacks against peacekeepers and humanitarian personnel; and the situation of civilian populations in areas such as eastern Jebel Marra, where the Panel of Experts, UNAMID and humanitarian agencies and personnel have been denied access, and measures taken to allow unimpeded and regular access for humanitarian relief to these areas".

¹⁸¹ Resolution 2148 (2014) of 3 April 2014. Prioritization of PoC is also obvious from Resolution 2228 (2015) of 29 June 2015 where the Council underlines that UNAMID must continue to give priority in decisions about the use of available capacity and resources to: (a) the protection of civilians across Darfur, including women and children, and without prejudice to the basic principles of peacekeeping, inter alia, continuing to move to a more preventive and pre-emptive posture in pursuit of its priorities and in active defence of its mandate; enhanced early warning; proactive military deployment and active and effective patrolling in areas at high risk of conflict and high concentration of IDPs; more prompt and effective responses to threats of violence against civilians, including through regular reviews of the geographic deployment of UNAMID's force; securing IDP camps, adjacent areas and areas of return, including development and training of community policing; and (b) ensuring safe, timely and unhindered humanitarian access, and the safety and security of humanitarian personnel and activities, in accordance with relevant provisions of international law and the UN guiding principles on humanitarian assistance; and requests UNAMID to maximize the use of its capabilities, in cooperation with the UNCT and other international and non-governmental actors, in the implementation of its mission wide comprehensive strategy for the achievement of these objectives. In the same resolution, the Council emphasizes UNAMID's Chapter VII mandate, as defined in resolution 1769 (2007), to deliver its core tasks to protect civilians without prejudice to the primary responsibility of the Government of Sudan and to ensure the freedom of movement and security of UNAMID's own personnel and humanitarian workers; and recalls that UNAMID is authorized to take all the necessary action in fulfilment of this mandate; and urges UNAMID to deter any threats against itself and its mandate. Similar language is used in Resolution 2296 (2016) of 29 June 2016 relating to the UNAMID.

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UNMISS, created to assist the newly independent South Sudan, is another operation where PoC increasingly became a priority. Resolution 1996 (2011) of 8 July 2011 establishing UNMISS included in its mandate, along with the support of peace consolidation and other tasks, the task of supporting the Government of South Sudan in exercising its responsibilities for conflict prevention, mitigation, and resolution and to protect civilians.¹⁸² It is obvious that the UNMISS tasks were to be complementary to those of the government, who should bear the primary responsibility in the PoC. However, in view of the developments on the ground, by May 2014, the PoC had already become the top UNMISS priority. Resolution 2155 (2014) of 27 May 2014, of the Security Council authorized UNMISS to use all necessary means to perform a number of tasks, the first of which was the (a) Protection of civilians.¹⁸³ This task was mentioned along other main tasks of UNMISS including: (b) Monitoring and investigating human rights; (c) Creating the conditions for delivery of humanitarian assistance; and (d) Supporting the Implementation of the Cessation of Hostilities Agreement. Even before this resolution, the SC had already noted in its Resolution 2057 (2012) that “the priority of UNMISS’ mandated tasks in resolution 1996 (2011) for the protection of civilians and for the achievement of an improved security environment”, urging UNMISS to deploy its assets accordingly.¹⁸⁴ The same resolution authorizes UNMISS to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out its protection mandate. The priority given to the PoC in the mandate was obvious. In Resolution 2304 (2016)¹⁸⁵, the SC emphasized that PoC must be given priority in decisions about the use of available capacity and resources within the mission. This practice to prioritize the PoC has not been observed in the more recently created UN multidimensional operations in Mali and in CAR. The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) was established by SC resolution 2100 of 25 April 2013 to support political processes in that country and carry out a number of security-related tasks. In

¹⁸² Resolution 1996 (2011) of 8 July 2011. This should be done through: (i) Exercising good offices, confidence-building, and facilitation at the national, state, and county levels within capabilities to anticipate, prevent, mitigate, and resolve conflict; (ii) Establishment and implementation of a mission-wide early warning capacity, with an integrated approach to information gathering, monitoring, verification, early warning and dissemination, and follow-up mechanisms; (iii) Monitoring, investigating, verifying, and reporting regularly on human rights and potential threats against the civilian population as well as actual and potential violations of international humanitarian and human rights law, working as appropriate with the Office of the High Commissioner for Human Rights, bringing these to the attention of the authorities as necessary, and immediately reporting gross violations of human rights to the SC.

¹⁸³ PoC as formulated in the mandate included a number of activities, notably: i. Protecting civilians under threat of physical violence, irrespective of the source of such violence, within its capacity and areas of deployment, with specific protection for women and children, including through the continued use of the Mission’s child protection and women’s protection advisers; ii. Deterring violence against civilians, including foreign nationals, especially through proactive deployment, active patrolling with particular attention to displaced civilians, including those in protection sites and refugee camps, humanitarian personnel and human rights defenders, and identification of threats and attacks against the civilian population, including through regular interaction with the civilian population and closely with humanitarian, human rights and development organizations, in areas at high risk of conflict including, as appropriate, schools, places of worship, hospitals and the oil installations, in particular when the Government of South Sudan is unable or failing to provide such security; iii. Implementing a Mission-wide early warning strategy, including a coordinated approach to information gathering, monitoring, verification, early warning and dissemination, and response mechanisms, including response mechanisms to prepare for further potential attacks on UN personnel and facilities; iv. Maintaining public safety and security within and of UNMISS protection of civilians sites; and Exercising good offices, confidence-building and facilitation in support of the Mission’s protection strategy, especially in regard to women and children, including to facilitate inter-communal reconciliation in areas of high risk of conflict as an essential part of long-term State-building activity. vi. To foster a secure environment for the eventual safe and voluntary return of IDPs and refugees, including, where compatible and in strict compliance with the United Nations Human Rights Due Diligence Policy (HRDPP), through monitoring of ensuring the maintenance of international human rights standards by, and specific operational coordination with the police services in relevant and protection-focused tasks, in order to strengthen protection of civilians.

¹⁸⁴ Resolution 2057 (2012) of 5 July 2012 .See also Resolution 2187 (2014) of 25 November 2014; Resolution 2223 (2015) of 28 May 2015; Resolution 2252 of 15 December 2015.

¹⁸⁵ Resolution 2304 (2016) of 12 August 2016.

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MINUSMA, the PoC was part of the multidimensional mandate on equal footing with other tasks, and it was not mentioned in the first place.¹⁸⁶ The PoC¹⁸⁷ was not given a priority over other tasks. In the CAR, where serious human rights violations occurred after the eruption of the last conflict in 2013, the SC continued to deplore such violation against civilians before the creation of MINUSCA. The SC also mandate the MISCA, a force deployed by the African Union, to which the MINUSCA will take over later, with the mandate including : “(i) the protection of civilians and the restoration of security and public order, through the use of appropriate measures”¹⁸⁸. MINUSCA, created under Chapter VII of the Charter by Resolution 2149 (2104) of 10 April 2014, with a force of 10000 troops was mandated to focus on a number of priority tasks including the Protection of Civilians.¹⁸⁹ However, the SC did not explicitly give priority to the PoC related tasks over other tasks: Support for the implementation of the transition process, including efforts in favor of the extension of State authority and preservation of territorial integrity; facilitating the immediate, full, safe and unhindered delivery of humanitarian assistance; Promotion and protection of human rights; Support for national and international justice and the rule of law; DDR, SSR, etc. The PoC was simply enumerated in the first place, amongst other priorities. This trend was confirmed in subsequent resolutions relating to MINUSCA.¹⁹⁰ This change in the trend may be explained by the specificity of the realities on the ground, where priorities may differ, depending on the context. In Mali, probably the political settlement was considered as a priority during the setting of the mission. While the same consideration may be valid in the case of the CAR, it is less evident, because the humanitarian crisis in that country was a very serious one involving serious killings of civilians. Probably, in both cases, the trend not to give priority to the PoC stakes from the consideration for the need to give equal priority to all tasks considered as equally important, and interdependent.

In any case, despite this prioritization of PoC in the situations mentioned above, developments on the ground showed that there always remained a gap between the rhetoric and the reality. This is obvious not only in the resolutions of the SC which continued to deplore lack of advancement but also in the periodic reports of the SG, both those relating to the specific situations and those relating to the thematic issue of the PoC. It is true that the UN has learned a lot of lessons and went on to improve the PoC in the areas of conflict, such as Sierra Leone, Liberia and even Darfur. Yet, the UN has not always

¹⁸⁶ MINUSMA’s mandate tasks included: (a) Stabilization of key population centers and support for the reestablishment of State authority throughout the country ; (b) Support for the implementation of the transitional road map, including the national political dialogue and the electoral process; (c) Protection of Civilians; (d) Promotion and protection of human rights ; (e) Support for humanitarian assistance In support of the transitional authorities of Mali, to contribute to the creation of a secure environment for the safe, civilian-led delivery of humanitarian assistance, in accordance with humanitarian principles, and the voluntary return of internally displaced persons and refugees in close coordination with humanitarian actors; (f) Support for cultural preservation To assist the transitional authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO.

¹⁸⁷ The PoC mandate of MINUSMA beard the title : c) Protection of civilians and UN personnel. It includes the following tasks : (i) To protect, without prejudice to the responsibility of the transitional authorities of Mali, civilians under imminent threat of physical violence, within its capacities and areas of deployment; (ii) To provide specific protection for women and children affected by armed conflict, including through the deployment of Child Protection Advisors and Women Protection Advisors, and address the needs of victims of sexual and gender-based violence in armed conflict; (iii) To protect the UN personnel, installations and equipment and ensure the security and freedom of movement of UN and associated personnel.

¹⁸⁸ Resolution 2127 (2013) of 5 December 2013 relating to the CAR.

¹⁸⁹ Resolution 2149 (2104) of 10 April 2014. The PoC mandate of MINUSCA included : i. To protect, without prejudice to the primary responsibility of the Central African Republic authorities, the civilian population from threat of physical violence, within its capabilities and areas of deployment, including through active patrolling; ii. To provide specific protection for women and children affected by armed conflict, including through the deployment of Child Protection Advisors and Women Protection Advisors; iii. To identify and record threats and attacks against the civilian population, including through regular interaction with the civilian population and working closely with humanitarian and human rights organizations; and iv. To design, implement and deliver, in close consultation with humanitarian and human rights organizations and other relevant partners, a mission-wide protection strategy.

¹⁹⁰ Resolutions 2217 of 28 April 2015 and 2301 (2016) of 26 July 2016 relating to CAR and MINUSCA.

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been able to fill the gaps where States are not willing and able to fulfill their duties to protect population under their duties. This is illustrated where the UN has deployed important peace operations, as well as where it did not deploy such operations as is the case in Syria. It is also true in places like Libya, where UN authorized military operations not under the UN command and control to use military force in order to protect civilians as has been the case in Libya in 2011.

Challenges faced by UN peace operations in ensuring the PoC find their sources in various reasons. As protection is a relatively new role for UN peacekeepers, they are not trained adequately yet. Moreover, for long time it was not clear what “protection” means in practice as it remains vague in which circumstances action is required. Consequently, peacekeepers are forced to improvise in the field. On the other hand, modern peace operations are facing an important capability gap. They are deployed in some of the most insecure and logistically challenging parts of the world, while mandated to carry out multiple tasks apart from civilian protection. However, due to the increasing global demand, UN peace operations are facing enormous resource constraints and consequently have difficulty fulfilling their mandate.¹⁹¹ The gap between mandate and capacities, the lack of equipment and dysfunctional command and control structures, have been recurrent features of UN peacekeeping operations, despite some improvements. These challenges have been well captured in some major reports of the UN, notably the report of OIOS on the evaluation of the PoC mandates of UN peace operations.¹⁹² They continue also to be illustrated by challenges on the ground, notably in South Sudan, where the failure of UNMISS to ensure the PoC, led recently (November 2016) to the sacking by the SG of the military commander of that operation on the account of such failures.¹⁹³

B.-DPKO and DFS guidelines on PoC by peacekeeping operations

This section endeavors to give an account of the content of DPKO/DFS guidelines on PoC, currently in force. The PoC remained without a precise official definition for many years. Efforts within the UN to fill this gap led to the adoption of some documents by the Secretariat. The first of these documents was Draft DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations (2010).¹⁹⁴ Other key documents that intervened later are the Implementing Guidelines for Military Components of United Nations Peacekeeping Missions published in February 2015¹⁹⁵ and the DPKO/DFS Policy on the Protection of Civilian in UN peacekeeping¹⁹⁶, which superseded the 2010 Operational Concept. Drawing lessons from more than 15 years of experience in implementation PoC mandates, these documents bring much needed doctrinal clarification to the PoC. They define the concept and determine its scope, guiding principles, and identify relevant and best practices to guide peace missions.

¹⁹¹ Julie Reynaert, “MONUC/MONUSCO and Civilian Protection in the Kivus” (47 pages), IPIS, p. 8.

¹⁹² OIOS Report on Implementation of PoC mandates of UN peacekeeping operations (2014), op. cit.

¹⁹³ See: Executive Summary of the Independent Special Investigation into the violence which occurred in Juba in 2016 and UNMISS response, 1 November 2016. This document summarizes the results of investigation ordered by the SG Ban Ki-Moon, on 23 August 2016, to look into the crisis that took place in Juba, South Sudan, from 8 to 11 July 2016, saw three days of intense fighting that resulted in the death of many civilians, two peacekeepers and the collapse of the peace agreement in that country. The investigation having concluded to the failure of peacekeepers to protect civilians as mandated, the SG decided to sack the commander of the peacekeeping force.

¹⁹⁴ Draft DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations (2010). This document was adopted largely in response to the request contained in paragraph 128 of the report of the Special Committee on Peacekeeping Operations and its Working Group (A/63/19) for its substantive session (23 February – 20 March 2009). DPKO and DFS have begun to gather lessons learned from mission personnel and troop and police contributors on the implementation of the PoC mandates of missions. Another related document is *Framework for Drafting Comprehensive Protection of Civilians (POC): Strategies in UN Peacekeeping Operations*, 2011, elaborated by the UN Office for the Coordination of Humanitarian Affairs (OCHA), in 2011.

¹⁹⁵ Protection of Civilians: Implementing Guidelines for Military Components of United Nations Peacekeeping Missions, United Nations Department of Peacekeeping Operations /Department of Field Support, 2015 (Hereinafter, “Guidelines for Military Components”), 44 p.

¹⁹⁶ DPKO/DFS Policy on the Protection of Civilians in United Nations Peacekeeping, UN DPKO/DFS, 1 June 2015, Ref. 2015.07 (Hereinafter “Policy on PoC in UN Peacekeeping (2015)”).

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While the purpose of the guidelines is to provide military components of UN peacekeeping missions tasked with implementing mandates on the PoC, its scope goes beyond military personnel and the military tasks and are aimed explicitly at UN personnel, troop contributing countries and other stakeholders. The guidelines endeavor to give operational guidance on the roles and responsibilities of UN civilian, military and police on the PoC against threats of physical violence and on the integration of human rights into the activities of UN peacekeeping missions.¹⁹⁷ The PoC in the context of UN peace operations is widely assimilated to physical protection defined as “all necessary action, up to and including the use of force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government to protect its civilians”. A similar definition is reproduced in the DPKO/DFS Policy¹⁹⁸. This document also defines the related terms of “Civilian” and “Threats of physical violence or POC threats”. “Civilian” refers to “any person who is not or is no longer directly participating in hostilities or other acts of violence shall be considered a civilian, unless he or she is a member of armed forces or groups” and “in case of doubt whether a person is a civilian, that person shall be considered a civilian”.¹⁹⁹ The notions of “Threats of physical violence or POC threats” encompass “all hostile acts or situations that are likely to lead to death or serious bodily injury, including sexual violence, regardless of the source of the threat.”²⁰⁰

The guidelines also outline the framework of the PoC by identifying guiding principles and considerations that the UN approach to the PoC must take into account. Key amongst the guidelines is the determination of the respective roles of host State and UN peacekeeping responsibilities, establishing a principle of complementarity. Host governments bear the primary responsibility for protecting civilians inside their borders, consistent with their obligations under international human rights and humanitarian law but, when they are unwilling or unable to do so, UN peacekeepers are authorized and are duty bound to undertake actions to protect civilians. Another principle is that of grounding PoC in International Human Rights and Humanitarian Laws: PoC is rooted in international human rights and humanitarian law violations which involve physical violence, including killings, torture and rape and is a core element of UN mission mandates to protect rights and promote international humanitarian obligations.²⁰¹

PoC should also be Community-Based, meaning that UN mission interaction with local populations should be rooted in values of respect and dignity, that action to protect civilians should be planned in consultation with men and women of the local community (including representatives of women’s and youth groups) and in support of the mechanisms locals have established to ensure their own protection. Also, the PoC should involve the entire mission. Each component of a peacekeeping mission—military, police, substantive sections and mission support—has a role and responsibility to implement jointly the PoC mandate.

Further, PoC should integrate Gender Dynamics: Peacekeepers must pay attention to local gender issues when carrying out the PoC mandate. They should avoid exacerbating existing gender inequalities through inadvertent action. Deployment of more female military peacekeepers in contingents, as staff officers and as military observers, is crucial to the effective implementation of PoC tasks as female military peacekeepers are better able to interact with women and children, and can establish better relations with local women and therefore improve information gathering about the local

¹⁹⁷ Guidelines for Military Components, p. 1.

¹⁹⁸ This definition is reproducing by the UN Policy on PoC. In light of the above, the PoC mandate for civilian, military and police components in UN peacekeeping is defined as follows: “all necessary means, up to and including the use of deadly force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government”. The term “Civilian”, refers to any person “who is not or is no longer directly participating in hostilities or other acts of violence shall be considered a civilian, unless he or she is a member of armed forces or groups. In case of doubt whether a person is a civilian, that person shall be considered a civilian”. “Threats of physical violence or POC threats” encompasses “all hostile acts or situations that are likely to lead to death or serious bodily injury, including sexual violence, regardless of the source of the threat”, (Policy on PoC in UN Peacekeeping (2015, op. cit., paras. 13-15)

¹⁹⁹ Ibid. para. 14.

²⁰⁰ Ibid., para. 15.

²⁰¹ Guidelines for Military Components, op. cit., p. 3.

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community. PoC should address Sexual Violence, which implies that military components in peacekeeping operations must protect civilians against sexual violence.²⁰² It should also ensure Child Protection, the peacekeepers having responsibility regarding children as a vulnerable group and to take their need into consideration at all levels of command when planning, coordinating, reporting and executing tasks.

Finally, Conduct and Discipline of UN Peacekeeping Personnel should be in line with applicable standards. Peacekeepers must uphold the highest standards of integrity enshrined in the UN Charter and the view of them by host populations as protectors is crucial to their success in implementing their mandated tasks, including protecting civilians. The UN policy of 'zero tolerance' regarding Sexual Exploitation and Abuse remains a key exigency on the behavior of peacekeepers at all levels.

These guiding principles are endorsed and developed further in the DPKO/DFS policy on the PoC. This document contains a chapter on guiding principles defined as a set of legal and practical principles rooted in the UN Charter and international law that apply to all missions with POC mandates.²⁰³ One of such principles is a confirmation that PoC shall be grounded on international law.²⁰⁴ Another principle is that PoC is a priority mandate, meaning that in all missions mandated to undertake PoC, this task must be prioritized in decisions regarding the allocation and use of available capacity and resources in the implementation of mandates and that within the wide scope of potential situations of physical violence against civilians, the mission must prioritize those situations or incidents of greatest concern and allocate its resources accordingly. The policy specifies that a mission can only act within its capabilities and areas of deployment (the mandate does not demand that peacekeepers engage in actions for which they are not equipped) as no peacekeeping force will be able to address all threats at all times.²⁰⁵ The policy also affirms the primary responsibility of governments in PoC²⁰⁶ whereas the peacekeepers have a subsidiary responsibility which implies that they should act when the State is unwilling or unable to protect civilians or when its own forces constitute a threat to civilian population.²⁰⁷

The peacekeepers have an active duty to protect, meaning that the PoC mandate embodies an active duty to protect; missions do not engage in protection only in reaction to an attack.²⁰⁸ Peacekeepers shall be under effective command and control. This implies that is the responsibility of commanders of all contingents to ensure all those under their command understand and comply with the ROE/DUF.²⁰⁹

²⁰² Ibid., p. 4.

²⁰³ Policy on PoC in UN Peacekeeping (2015), op. cit., para 16.

²⁰⁴ This means that PoC mandates are a manifestation of the international community's determination to prevent the most serious violations of international human rights, humanitarian and refugee law and related standards,¹⁵ and they should be implemented in both the letter and spirit of these legal frameworks. The POC mandate is complementary to and reinforces the mission's mandate to promote and protect human rights, Policy, para 17.

²⁰⁵ Policy on PoC in UN Peacekeeping (2015, op. cit., para 18.

²⁰⁶ The host state always has the primary responsibility to protect civilians within its borders; this responsibility is not diminished when a peacekeeping mission with a PoC mandate is deployed. The mission's PoC mandate does not replace the host state's responsibility. The mission should support the host state's protection efforts or act independently to protect civilians when the latter is deemed unable or unwilling to protect its own civilians, or where government forces themselves pose a threat to civilians. When supporting host states or other non-UN security forces, peacekeeping operations shall respect the UN Human Rights Due Diligence Policy on UN Support to non-UN Security Forces., Policy, para 19

²⁰⁷ A responsibility of peacekeepers: Where the state is unable or unwilling to protect civilians, or where government forces themselves pose such a threat to civilians, peacekeepers have the authority and the responsibility to provide such protection within their capabilities and areas of deployment. Particularly, peacekeepers will act to prevent, deter, pre-empt or respond to threats of physical violence in their areas of deployment, no matter the scale of the violence and irrespective of the source of the threat., Policy, para 20.

²⁰⁸ This implies that activities to protect civilians should be planned, deliberate and on-going, and the mission should constantly work to prevent, pre-empt and respond to violence against civilians. This includes presence in areas under greatest threat, a credible deterrent posture and other activities in accordance with the mandate, the POC strategy and the military and police concepts of operations (CONOPS). Compliance will be monitored through a joint monitoring and evaluation mechanism on PoC., Policy, para. 21.

²⁰⁹ The Force Commander and Police Commissioner are ultimately responsible for their enforcement. Compliance with command and control arrangements is critical to save lives and prevent harm being done to

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PoC mandates shall be consonant with the principles of peacekeeping, notably the consent of the host state, impartiality in implementing their mandate, and use of force only in self-defense and as otherwise authorized by the Security Council, including for the PoC.²¹⁰ The PoC mandate is a whole-of-mission activity that requires concerted and coordinated action between uniformed and civilian components of a mission under the mission's protection of civilians' strategy that must be mainstreamed and prioritized into the planning and conduct of activities by all components, including through joint definition of clear, realistic and authorized objectives to eliminate or mitigate threats.²¹¹

PoC shall follow a comprehensive approach. Due to the multiplicity of actors that contribute to providing PoC, it is required that an analysis be conducted to determine the comparative advantage, optimal positioning and appropriate modes of engagement of the mission vis-à-vis local, national, sub-regional and international protection actors.²¹² PoC mandates shall be carried out in cooperation with humanitarian actors and in respect of humanitarian principles: As UN humanitarian agencies and NGOs undertake a broad range of activities in support of the PoC, individually and within the Protection Cluster. This implies close and systematic coordination with these actors and assessing protection priorities as well as when planning activities under the three tiers through established mechanisms. It also implies that humanitarian actors are civilians entitled to physical protection under the PoC mandate. PoC shall also be a community-based approach²¹³, undertaken with a gender perspective and with mainstreamed child protection concerns.²¹⁴

The guidelines also develop the concept of PoC further suggesting a clear strategic approach for its implementation. They state that UN peacekeeping interprets the PoC through a three-tiered approach.²¹⁵ The PoC is a key element of a mission's strategy, attained through a combination of general and specific tasks: Tier 1 is Protection through Dialogue and engagement, the second tier relates to provision of physical protection, whereas the third tier relates to the provision of protective environment. The guidelines state that while military components support all three tiers, they have a crucial role and responsibility the second tier, and that the three tiers are sequential in nature but can be conducted simultaneously. The guidelines further explain the meaning of such tiers. Tier I (Protection through Dialogue and Engagement) activities include dialogue with or demarche of a perpetrator or potential perpetrator, conflict resolution and mediation between parties to the conflict, persuading the government and other relevant actors to intervene to protect civilians, and other initiatives that seek to protect civilians through dialogue and direct engagement.²¹⁶

Tier II (Provision of Physical Protection) encompasses activities by police and military components involving the show or use of force to prevent deter and respond to situations in which civilians are under the threat of physical violence. Such actions are informed by and implemented in close

civilians. Failure to protect civilians as a result of weak command-and-control structures or insufficient levels of compliance, may lead to the suffering and death of vulnerable individuals and can compromise the overall credibility and effectiveness of the peacekeeping operation in the country, Policy on PoC in UN Peacekeeping (2015), op. cit., para 22.

²¹⁰ The guidelines specify that this includes, where necessary, the use of force against elements of government forces at the tactical level where such forces are themselves engaged in, or pose an imminent threat of, physical violence against civilians, Policy, para 23

²¹¹ Policy on PoC in UN Peacekeeping, op. cit., para 24.

²¹² Ibid., para 25.

²¹³ Actions to protect civilians should be planned in consultation with women, men, girls and boys of the local community and with a view to empowering them and supporting the mechanisms and community-based organisations they have established to ensure their own protection. Addressing vulnerabilities affecting civilians, or taking them into account when designing the protection response, will ensure a sustainable impact. Staff must be mindful in their engagement with communities not to expose people to risk or cause harm through their engagement.2 Policy, para 27.

²¹⁴ Policy on PoC in UN Peacekeeping, op. cit., paras 27-28.

²¹⁵ This approach of 3 tiers was already outlined in the 2010 Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations, Draft DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations which state that the operational concept is organized around a three tiered approach to protecting civilians: Tier 1: Protection through political process ; Tier 2: Providing protection from physical violence ; and Tier 3: Establishing a protective environment. The same approach is maintained in the Policy on PoC in UN Peacekeeping (2015).

²¹⁶ Guidelines for Military Components, op. cit., p. 7.

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coordination with substantive civilian sections, who help guide the objectives and conduct of military and police operations through joint POC planning and coordination structures. The provision of physical force is a last resort; UN military and police-formed units must act swiftly and decisively when preventive mechanisms of the mission fail to protect civilians in compliance with rules of engagement and using requisite force within capabilities and area of responsibility. This Tier is the main focus for military components and aims at prevention and assurance of robust intent to protect civilians.²¹⁷

Tier III (Establishing a Protective Environment)²¹⁸ tasks are described as environment-building activities that are frequently programmatic in nature and designed with committed resources for medium- to long-term peacebuilding objectives. They are sometimes presented as separate mandated tasks under country-specific resolutions; these activities contribute to the PoC, and are generally planned independently of PoC. Measures falling under this tier typically include support to the political process, promotion and protection of human rights, advocacy and access to humanitarian support, fighting impunity, promoting justice and establishing the rule of law, supporting compensation and rehabilitation of victims. The military and police play a crucial role in this tier by providing support to the Human Rights and the RoL mandates while contributing to (along with the host state, UN entities and mission components) security and support to humanitarian effort (where appropriate). The military component can also potentially contribute in this tier by conducting tasks in support of this activities of the tier, such as advocating with local military on issues of impunity; Promoting and protecting human rights, including measures to end human rights violations; and support Security Sector Reform and implement Defense Sector Reform policies; Contributing to security conditions, conducive to durable solutions for displaced persons; Contributing to creating the conditions conducive to the voluntary, safe, dignified and sustainable return, or resettlement of refugees and IDPs; and creating security conditions conducive to the delivery of humanitarian assistance.

The guidelines, along with the policy give a clearer explanation of what the PoC in the context of peace operations is about, thus filling the doctrinal and conceptual gap. Both contain important guidance for military personnel and civilian staff on how to proceed regarding the PoC, both at a strategic level and at the operational and tactical levels, with specific directives for the use of DPKO military office in New York, force commanders in the field and even sector commanders. The policy identifies clear response phases by Peace Operations staff describing a set of activities that the peacekeepers can take, to prevent, preempt and respond to threats and to consolidate the PoC once threats are mitigated. According to this scheme, POC operations are implemented along four operational phases: (i) prevention, (ii) pre-emption, (iii) response and (iv) consolidation with a view to either eliminating a threat or mitigating the risk to civilians associated with it. These phases do not necessarily occur in sequential order and may be undertaken simultaneously or independently. Activities and objectives mentioned under these phases will vary along with the specific content of each country specific mandate and the nature of each threat.²¹⁹

C.-The role of MONUC and MONUSCO in the Protection of Civilians

1.-The conflict in the Congo: a complex situation involving regional actors

The conflict in the DRC has been a complex crisis involving internal war with important regional ramifications that contributed to the internationalization of the conflict, as well as a difficult

²¹⁷ This protection is ensured through a number of measures such as: Situational awareness, threat/risk assessment, early warning; • Ensuring visibility, patrolling, investigation as appropriate; Liaising with local security forces & non-state actors; • Ensuring preventive force deployment and posture • Providing physical protection to civilians around UN bases and compounds; • Establishing buffer zones • Ensuring freedom of movement and route security for civilians, including refugees/IDPs; Defending protected areas (IDPs/Refugee camps, safe corridors); • Supporting deployments of human rights staff to areas at risk of human rights violations. If civilians are under threat of physical violence, a robust response is required, including; • Show of force (as deterrence); • Force inter-positioning between (armed) actors and civilians; and, • Direct military action against armed actors with clear hostile intent to harm civilians.

²¹⁸ Guidelines for Military Components, op. cit., p. 7.

²¹⁹ Policy, para 31.

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humanitarian situation, with interethnic clashes, massacres and other human rights violations, famine and diseases, in an immense country at the heart of Africa. The country has known various cycles of instability since its independence in 1960, due to years of bad governance and dictatorship, leading to historic injustices, economic crisis and human rights violations, all of which combined constituted ingredients of conflict. This situation was compounded by regional instability with wars in neighboring countries particularly Rwanda, which conflict in the 1990s had a direct impact on the then Zaire. The consequences of that conflict have continued to affect stability in the DRC. Other factors that add to the complexity of the situation are the multiplication of warring factions within DRC as well as the intervention of governments of neighboring countries in the conflict, either on the side of DRC government forces or in support of rebel movements and factions, or for other motives.

After years of colonial occupation and exploitation, Congo achieved independence from Belgium on 30 September 1960. The newly independent country experienced a serious political and constitutional crisis, the main protagonists of which were President Joseph Kasavubu and Prime Minister Patrice Lumumba. On 5 September 1960, Kasavubu decided to dismiss Lumumba from office, and the latter contested the decision as unconstitutional. Lumumba ended up being arrested in the same month by Congolese army forces led then by Joseph Mobutu, handed to authorities in the separatist Katanga region and killed by Belgian led Katangese troops in January 1961. A rebellion demanding separation had erupted in Katanga with the support of Belgium immediately after independence. Although the separatist forces were defeated in January 1963, the country continued to experience political instability, with a few short lived governments during its first years of independence, all in the context of CW superpowers rivalry. In those years, the UN had engaged in the Congo one of its earliest peacekeeping endeavors on the African continent, with the deployment in 1960 of the ONUC (Opération des Nations Unies au Congo) at the request of Congolese authorities.²²⁰

Mobutu, who was supported by western powers, finally took power through a coup in 1965. Mobutu, who changed the country's name to Zaire in 1971, continued to rule it until 1996, when he was ousted by a rebel movement supported by neighboring Rwanda and Uganda. Mobutu's regime, while imposing some stability, was widely characterized by dictatorship and corruption. It survived for 3 decades thanks in part thanks to the CW context and the support of the then western camp, led by the USA, but also to the control of an immense country with important natural resources.

Following the end of the CW, the Mobutu regime was increasingly contested internally with opposition demanding for democracy emerging as was the case in various parts of the world, including in some African countries. Mobutu made important concessions during the early 1990s without however enabling true democratic system to emerge. The last years of Mobutu rule were also characterized by a serious economic crisis and the weakening of the State authority amid popular discontent and contestation.

It is in this context that a rebel movement emerged in the eastern Zaire under the name of AFDL (Alliance des forces démocratiques pour la libération du Congo). AFDL, led by Laurent Desiré Kabila, was supported by Rwanda and Uganda. Rwanda had a special interest in the war. The PFR (Rwandan patriotic Front) regime that came to power in that country in the aftermath of 1994 genocide considered the Zaire of Mobutu to be a threat, not only because of its previous support to former Rwandan regime, but also because the bulk of the former Rwandan armed forces (FAR)²²¹ and their affiliate militia had fled to Zaire with many mainly Hutu refugees.²²² The AFDL coalition won the war relatively quickly in May 1997. It ousted Mobutu and set up of a new regime, with Laurent Desiré Kabila as President, and Zaire was renamed DRC.

²²⁰ Opération des Nations Unies au Congo (ONUC). ONUC was established by SC Resolution 143 of 14 July 1960, at the request of Congolese authorities. It remained in the Congo until 1963 and had contributed in putting an end to the separatist movement of Katanga, through the use of military force.

²²¹ Forces armées rwandaises (FAR).

²²² Another factor that contributed to this war was a local conflict that had been occurring in eastern Zaire, in North Kivu, since 1993 between indigenous and Rwandan ethnic groups gained in intensity with the arrival of more than 1,200,000 Hutu refugees (including some responsible for the genocide) that fled from Rwanda in 1994. See: Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1998/61 (Doc E/CN.4/1999/31, of 8 February 1999), para 25.

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The new regime that relied heavily on Rwandan FPR forces at the beginning, and rwandophone²²³ Congolese known as Banyamulenge, distanced itself from these allies starting from 1998, for various reasons.²²⁴ This generated tension between DRC on the one hand and Rwanda and Uganda on the other hand, thus contributing in the prolongation of instability in the DRC. Both Rwanda and Uganda had their troops in the eastern DRC and were supporting local militia and opposition groups (such as the RDC and the MLC)²²⁵ against Kabila regime. The latter, on the other hand, relied also on other local militias, including Mai Mai and former FAR and Hutu militias that had fled from Rwanda.²²⁶ Rwanda and Uganda were also reportedly involved in the illegal exploitation of mineral resources in eastern Congo.

In this context war resumed in eastern Congo hardly one year after Kabila took power, with forces and militias loyal to him opposing Rwandan and Ugandan forces and their allies in the country. Kabila's regime turned to other regional neighbors, notably Angola, Zimbabwe, CAR and even Sudan for support in the war with Uganda and Rwanda. Zimbabwe, Angola and Namibia sent troops to DRC in support of the Kabila regime. There were also tensions between opposition parties and forces in DRC; and the Kinshasa regime which was taking an authoritarian turn and resisting democratic changes hoped for by many political forces in the country. In addition to this complex military and political situation, the DRC was going through a serious humanitarian crisis with numerous socio-economic challenges, including serious human rights violations, breakdown of law and order in many parts of the country, malnutrition and diseases, resulting in huge numbers of death and displacement of populations. According to a SG report in July 1999²²⁷ the conflict DRC "inflicted further terrible suffering on a country already heavily burdened with poverty and neglect, an estimated 700,000 persons are displaced within the country, in addition to some 300,000 refugees located on its territory,

²²³ Kinyarwanda speakers.

²²⁴ The AFDL had quickly won the war that lasted from 1 September 1996 to 17 May 1997 and set up a strong regime, with Laurent Desiré Kabila as President. The over-weighting of Tutsi in the Government caused considerable unease in the population, which had welcomed victory as liberation. This discontent was aggravated by the paralysis of democratization and contempt for the historic opposition. The Rwandan presence in the east was especially resented, since it was perceived as a form of foreign occupation. The historic problems of the east (ownership of the land and access to power) were aggravated. In 1998, there were serious clashes, attacks and burning of property resulting in numerous deaths, injuries and displaced persons in North Kivu. AFDL forces pursued anyone suspected of helping the Mai-Mai and one of the Alliance leaders, "Commander 'Strongman' Kagame", undertook to exterminate the suspects. In order to facilitate the settlement of Tutsis, population records were burnt. In South Kivu, the main events occurred in Bukavu on 18 February 1998, when massive searches were conducted for Mai-Mai militia men. Butembo was taken by the Mai-Mai and recaptured later by AFDL using unprecedented violence that resulted in the deaths of at least 300 people (20 and 21 February). The Congolese Armed Forces (FAC) moved whole communities (Kibumba, Rugari, Byahi, Tyazo) as a means of facilitating military manoeuvres, as recognized by the Provincial Security Council of North Kivu. See: *Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1998/61 (Doc E/CN.4/1999/31, of 8 February 1999)*, paras 25-29.

²²⁵ RCD and MLC respectively stand for Rassemblement congolais pour la démocratie, and Mouvement pour la Libération du Congo

²²⁶ The Lusaka peace agreement of July 1999, identified the following armed groups operating in the DRC territory: former Rwandan government forces and Interahamwe militia, the Allied Democratic Front, Lord's Resistance Army, the Forces for the Defence of Democracy of Burundi, the Former Uganda National Army, the Uganda National Rescue Front II; the West Nile Bank Front; and the National Union for the Total Independence of Angola.

²²⁷ Report of the Secretary-General on the Preliminary Deployment in the DRC, 15 July 1999, UN doc: S/1999/790 (Hereinafter, "SG report on Preliminary Deployment in DRC"), para. 13. According to this report, the conflict DRC "inflicted further terrible suffering on a country already heavily burdened with poverty and neglect. An estimated 700,000 persons are displaced within the country, in addition to some 300,000 refugees located on its territory. The UN reported of harrowing accounts of famine and epidemics. Food security and economic conditions, in particular in urban centers, continue to deteriorate at an alarming rate. The conflict has been characterized by appalling, widespread and systematic human rights violations, including mass killings, ethnic cleansing, rape and the destruction of property. The war's effects have spread beyond the subregion to afflict the continent of Africa as a whole". All these factors combined contributed to making the crisis in DRC of a great complexity and a huge challenge to peace and security in Congo and the region.

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2.-Background of UN involvement in the settlement of the crisis: from OAU mediation to the deployment of MONUC

The DRC was in a deep crisis of stability and governance, characterized with State failure.²²⁸ African regional organizations and the UN remained reluctant or incapable to tackle this situation during most 1990s. The Organization of African Unity (OAU) and other regional organizations, both because of their limited capacities in a context characterized by regional instability and of the involvement of their member countries in the crisis could not do much to resolve the situation. Efforts of mediation sponsored by the OAU would however enable the conclusion of the a peace agreement between warring parties in DRC, the Lusaka Peace agreement in 1999 that would form the first step of the internationally supported peace process in the Congo.²²⁹

The UN was crossing a phase of its history, following the failures of its interventions in Somalia, Rwanda and Bosnia, when the Organization and some of its most influential members, were particularly reluctant to engage in conflicts in Africa. UN involvement in the crisis in DRC remained very limited during the 1990s. Apart from the habitual UN presence in developing countries through development agencies, no UN action was deployed to treat peace and security dimensions if the crisis before the deployment of MONUC in the end of 1990s. Reports of the Special rapporteur on the human rights situation in Zaïre/Congo and other reports of the SG on conflicts in Africa and on the humanitarian situation did however report on the situation in Zaïre/the Congo including the humanitarian situation and the peace and security aspects of it, calling for action by the UN to treat the situation. Apart from that, so was the reluctance of the UN to take action with respect to such conflicts in Africa at the time, that a military operation with a humanitarian mandate that the SC authorized in 1996 to facilitate humanitarian action in eastern Zaïre was never deployed on the ground.²³⁰

The conclusion of Lusaka peace agreement on 10 July 1999 opened the perspective for more Un involvement. The request made by signatories of such accord for the UN to deploy military troops to monitor the implementation of the agreement and accompany the ensuing political process in DRC was met by the decision by the UN to get involved in the resolution of the crisis. This led to the creation of MONUC which ended up playing an important role in monitoring the implementation of the peace process and the support of the transition in the DRC. MONUC was a multidimensional peace operation with a mandate to monitor the peace process and support the various aspects of the transition in the Congo.²³¹

²²⁸ See: Anthony W. Gambino, "State Failure: The Responsibility to Protect Civilians in the Democratic Republic of the Congo", *Conflict & Security*, Summer/Fall, 2009, pp. 51-58.

²²⁹ On 10 July 1999, at Lusaka, the Heads of State of the Democratic Republic of Congo, Namibia, Rwanda, Uganda and Zimbabwe and the Minister of Defense of Angola signed an agreement for a cessation of hostilities between all the belligerent forces in the Democratic Republic of the Congo. The representatives of the Rally for a Democratic Congo (RDC) and the Movement for the Liberation of the Congo (MLC) who declined to sign the agreement initially joined it later.

²³⁰ By its Resolution 1080 of 15 November 1996, the SC authorized the deployment of a multinational military operation in eastern Zaire, with the mandate to facilitate the return of humanitarian organizations, to relief the suffering of the displaced people, the refugees and civilians in danger, in the context of the war that was taking place there. It was predicted that Canada takes the lead of the operation. However, the operation was never deployed due in part to the reluctance of the stakeholders including influential UN members such as the USA.

²³¹ After the signing of the Lusaka Ceasefire Agreement in July 1999 between the warring parties in DRC, MONUC by its resolution 1279 of 30 November 1999 initially to plan for the observation of the ceasefire and disengagement of forces and maintain liaison with all parties to the Ceasefire Agreement. Later in a series of resolutions, the Council expanded the mandate of MONUC to the supervision of the implementation of the

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During the earlier years of the UN presence of the DRC, President Kabila was assassinated in January 2001 while in power and was replaced by his son, Joseph Kabila. The long political process continued, leading to further political agreements that enabled the setting up of transitional unity government, the adoption of a new constitution and the organization of legislative and presidential elections. Yet, these positive developments were occurring amid prolonged humanitarian crisis and regional tensions, and sporadic violence including in the eastern part of the country, where tension has persisted, despite the progress realized in the stabilization of the country, the withdrawal of foreign troops, and the reunification of the country. MONUC will later (2010) become MONUSCO, also multidimensional operation. Both have important PoC mandates. In fact, because of the continuous violations of human rights resulting from military clashes, massacres and other atrocities, PoC continued to be a huge challenge in the DRC until now. This explains why PoC increasingly became a priority in the mandate of MONUC and then MONUSCO, not only because of the seriousness of the problem in DRC, but also given the UN policy with respect to PoC started from 1999.

3.-Evolution of the PoC mandates of the MONUC: from a marginal task to a priority

The serious humanitarian crisis in the Congo could difficultly be ignored. While planning for UN deployment of troops in DRC, Kofi Annan announced that it will be necessary to include in the mandate of any eventual peacekeeping mission measures to address the human rights violations that have characterized this conflict.²³² MONUC was created as an observation mission entrusted with a liaison role between the signatories of the Lusaka peace agreement and gathering information on the ground.²³³ The SC had expressed deep concern at all violations and abuses of human rights and IHL and entrusted the MONUC with the task to facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers, as MONUC deemed within its capabilities and under acceptable security conditions, in close cooperation with other UN agencies, related organizations and non-governmental organizations.²³⁴ The Council decided that MONUC “may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect UN and co-located JMC²³⁵ personnel, facilities, installations and equipment, ensure the security and freedom of

Ceasefire Agreement and assigned multiple related additional tasks. MONUC mandate has included (Resolutions 1291 (2000); 1797 (2008); 1856 (2008)) to include: Monitoring various aspects of the implementation of the Ceasefire Agreement and investigate violations of the ceasefire; establishing and maintaining liaison with parties ; protecting UN and assimilated personnel, facilities, installations and equipment; ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence; ensuring protection of civilians; monitoring the implementation of sanctions; conducting DDR operations and disarming militia; supporting the constitutional process, the electoral process and various aspects of RoL and governance reforms; assisting in the promotion and protection of human rights, supporting humanitarian action; Training and mentoring of FARDC in support for security sector reform; supporting Security sector reform, etc.

²³² SG report on Preliminary Deployment in DRC, op. cit., , para 24.

²³³ MONUC was established by the SC resolution 1279 on 30 November 1999. The SC decided that MONUC shall carry out the following ongoing tasks : a) To establish contacts with the signatories to the Ceasefire Agreement at their headquarters levels, as well as in the capitals of the States signatories; (b) To liaise with the JMC and provide technical assistance in the implementation of its functions under the Ceasefire Agreement, including in the investigation of ceasefire violations; (c) To provide information on security conditions in all areas of its operation, with emphasis on local conditions affecting future decisions on the introduction of United Nations personnel; (d) To plan for the observation of the ceasefire and disengagement of forces; and (e) To maintain liaison with all parties to the Ceasefire Agreement to facilitate the delivery of humanitarian assistance to displaced persons, refugees, children, and other affected persons, and assist in the protection of human rights, including the rights of children. Although MONUC was to include multidisciplinary staff of personnel in the fields of human rights, humanitarian affairs, public information, medical support, child protection, political affairs and administrative support, which will assist the SRSR, it was not entrusted with a clear human rights or PoC mandate at its creation.

²³⁴ Resolution 1291 (2000) of 24 February 2000, 7, g)

²³⁵ Joint Military Commission, made of military representatives of the signatories of the Lusaka peace agreement.

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movement of its personnel, and protect civilians under imminent threat of physical violence” The humanitarian and human rights mandate of the MONUC was now clear. It was following a usual pattern in UN multidimensional operations. These tasks were not placed under Chapter VII unlike the PoC under imminent threats for which the operation was authorized to “take necessary action” including the use of force under Chapter VII. This formulation followed the earlier practice of the SC in entrusting peace operations with PoC mandate, notably the example of Sierra Leone in 1999. Yet, the PoC was a relatively secondary aspect of the mandate of MONUC, and enumerated along other tasks such as protecting UN facilities and personnel.

Despite this mandate, MONUC’s role in the PoC under threat could hardly be significant in practice, as its deployment in the vast territory of DRC was limited and conflict continued in various parts of the country notwithstanding the peace agreement. Foreign troops were still in the DRC. The UN continued to report human rights violations and massacres and to condemn such violations and remind the parties of their responsibilities and call them to make an end to such violations. RDC as State was not in a position to ensure security in the country and protect civilian population from violence.²³⁶ Even after the Lusaka cease fire agreement of July 1999, the country remained divided with the main politico-military factions, each controlling parts of the territory and the government in Kinshasa, far from having full control of the country, while foreign troops were still present. In addition, the parties to the conflict were not well cooperating with MONUC.²³⁷

Only after the process of Inter-Congolose dialogue led to the Sun City agreement on 19 April 2002, the prospect of having a Congo united transition government became possible.²³⁸ The Sun City Agreement did not stop the conflict completely, but it enabled for a transitional government to manage the transition during which a new constitution was adopted and legislative and presidential elections were held to enable the country to have legitimate institutions. Yet, DRC transitional government did not have control over parts of its territory. Its rival components continued having their own forces and competing for political power and resources.

This situation was well illustrated by the continuation of violence incidents and even combats in many parts of the country particularly the east. When interethnic clashes between Hema and Lendu militias in Bunia in 2003, the UN had no option but to call for the intervention of a multinational military force to ease the violence and protect the civilians. This led to the authorization by SC of the deployment of an international force under Resolution 1484 of 30 May 2003.²³⁹ The Council, expressing “its utmost concern at the fighting and atrocities in Ituri, as well as the gravity of the humanitarian situation in the town of Bunia” and determining “that the situation in the Ituri region and in Bunia in particular constitutes a threat to the peace process in the DRC and to the peace and security in the Great Lakes region”, authorized, under Chapter VII of the Charter, the “the deployment until 1 September 2003 of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC (...) to contribute to the stabilization of the security conditions and the improvement of the humanitarian situation in Bunia, to ensure the protection of the airport, the internally displaced persons in the camps

²³⁶ Anthony W. Gambino, “State Failure: The Responsibility to Protect Civilians in the Democratic Republic of the Congo”, *Conflict & Security*, Summer/Fall, 2009, p. 1.

²³⁷ On the challenges of MONUC at its beginning, see: Ray Murphy, “UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians”, op. cit., p. 216.

²³⁸ This agreement was reached thanks to the mediation by African peers under the patronage of the Organization of African Unity, with the support of the UN. The agreement laid down a framework for providing the Congo with a unified, multi-party government and a timeline for democratic elections, within a 2 years period. The agreement allowed Joseph Kabila to remain president of the DRC during a transition period of two years, while sharing power with four vice-presidents - one from each of the two main armed opposition movements, one from the government and one from the unarmed political opposition.

²³⁹ Resolution 1484 of 30 May 2003. In the resolution authorizing such force, the SC took note of the request of the SG to the Council in his letter dated 15 May 2003 (S/2003/574) and of the support for this request expressed in the letter to the SG from the President of the DRC and also by the Ituri parties on 16 May 2003 in Dar es Salaam, as well as the support expressed in the letters to the Secretary-General from the President of Rwanda and from the Minister of State for Foreign Affairs of Uganda, as requested by the SG, for the deployment of a multinational force in Bunia. In other words including DRC and other stakeholders recognized the need to call for a multinational operation to stabilize the situation in Ituri, given the incapacity of MONUC to do it.

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in Bunia and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town”. The SC stressed that the Multinational Force is to be deployed “on a strictly temporary basis” to allow the SG to reinforce MONUC’s presence in Bunia. It authorized the SG to deploy, within the overall authorized MONUC ceiling, reinforced UN presence to Bunia, by mid-August 2003. This gave birth to the operation Artemis under the command of France, composed mainly by European troops.

Thereafter, upon recommendation of the SG, the Council decided on 28 July 2003 to strengthen MONUC authorizing it “to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities²⁴⁰: – to protect UN personnel, facilities, installations and equipment; – to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or DDRRR; – to protect civilians and humanitarian workers under imminent threat of physical violence; – and to contribute to the improvement of the security conditions in which humanitarian assistance is provided”. MONUC was authorized “to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu”²⁴¹. The SC directed the SG to deploy in the Ituri district, as soon as possible, the tactical brigade-size force (...) including the reinforced MONUC presence in Bunia by mid-August 2003 as requested in resolution 1484 (2003). This aimed “to helping to stabilize the security conditions and improving the humanitarian situation, ensuring the protection of airfields and displaced persons living in camps and, if the circumstances warrant it, helping to ensure the security of the civilian population and the personnel of the United Nations and the humanitarian organizations in Bunia and its environs and eventually, as the situation permits, in other parts of Ituri”. From now on, MONUC was entrusted with a stabilization mandate particularly in the eastern parts of the country and authorized to use force to carry out related tasks including the PoC. The eastern DRC continued to face acute, humanitarian, political and military crisis.²⁴²

Subsequently, the Council continued to renew the PoC mandates of MONUC, insisting each time on the applicable principles such as the primary responsibility of the government to protect its populations, while condemning the atrocities and insisting on the need to fight impunity of crimes including sexual violence against women and urging parties to respect their obligations under IHL and to fight against impunity.²⁴³ The SC increased the strength of MONUC further in October 2004 when

²⁴⁰ Resolution 1493 (2003) of 28 July 2003, para. 25.

²⁴¹ Ibid., para. 26.

²⁴² Anthony W. Gambino, “State Failure: The Responsibility to Protect Civilians in the Democratic Republic of the Congo”, *Conflict & Security*, Summer/Fall, 2009, p. 1.

²⁴³ See, for instance: Resolution 1794 (2007) of 21 December 2007 where the Council stressed the primary responsibility of the Government of the DRC for ensuring security in its territory and protecting its civilians with respect for the rule of law, human rights and international humanitarian law, expressed its grave concern at the continued presence of foreign and Congolese armed groups and militias in the eastern part of the DRC, including the Forces Démocratiques de Libération du Rwanda (FLDR), ex-FAR/Interahamwe and the dissident militia of Laurent Nkunda, which had resulted in a serious security and humanitarian crisis particularly in North Kivu. The Council also expressed its deep concern at the humanitarian consequences of the recent fighting between the dissident militia of Laurent Nkunda and the Armed Forces of the DRC (FARDC), and recalled that a comprehensive approach is needed to tackle the crisis in the Kivus including efforts to address the presence of all armed groups and militias, to end impunity and to promote reconciliation, social cohesion, recovery and development in the region. Further, the Council recalled its resolution 1325 (2000) on women, peace and security, its resolution 1502 (2003) on the Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones, its resolution 1612 (2005) on children in armed conflict and its resolution 1674 (2006) on the protection of civilians in armed conflicts and deplored the persistence of violations of human rights and IHL in the DRC, in particular those carried out by the FDLR, ex-FAR/Interahamwe and the dissident militia of Laurent Nkunda, as well as other militias and armed groups and elements of the FARDC, the Congolese National Police (PNC) and other security and intelligence services, and stressing the urgent need for those responsible for these crimes to be brought to justice. The Council also condemned in particular sexual violence perpetrated by militias and armed groups as well as elements of the FARDC, the PNC and other security and intelligence services, stressing the urgent need for the Government of the DRC, in cooperation with MONUC and other relevant actors, to end such violence and bring the perpetrators, as well as the senior commanders under whom they serve, to justice, and called on Member States to assist in this regard and to continue to provide medical, humanitarian and other assistance to victims. See also Resolution 1804 (2008) of

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it requested the SG “to arrange the rapid deployment of additional military capabilities for MONUC in accordance with the recommendation contained in his letter dated 3 September 2004, and, beyond, to deploy as soon as possible in the provinces of North and South Kivu all the brigades and appropriate force enablers (3)”²⁴⁴. The SG was authorized to increase MONUC’s strength by 5,900 personnel, including up to 341 civilian police personnel, as well as the deployment of appropriate civilian personnel, appropriate and proportionate air mobility assets and other force enablers, and expresses its determination to keep MONUC’s strength and structure under regular review, taking into account the evolution of the situation on the ground”.²⁴⁵ The strengthened mandate of MONUC included these tasks :“(a) to deploy and maintain a presence in the key areas of potential volatility in order to promote the re-establishment of confidence, to discourage violence (...); (b) to ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, (c) to ensure the protection of UN personnel, facilities, installations and equipment, (d) to ensure the security and freedom of movement of its personnel.

In Resolution 1756 (2007), the SC declared that the mandate of MONUC will consist in supporting the DRC government to the instauration of a safe and stable security environment, and to fulfill a number of tasks the first of which is the PoC, including humanitarian personnel, under imminent threat of physical violence, ensuring security conditions for the provision of humanitarian assistance and the securing of return of refugees and displaced persons, ensuring safety and freedom of movement of UN troops, conducting joint patrols with national riot police units to increase security in time of troubles.²⁴⁶ The SC also expressed preoccupation at allegations of sexual exploitation and abuse by MONUC troops and personnel of local population. With this respect, the Council took note of the UN zero tolerance policy with that regard and called on the SG to continue investigations and to keep it informed on the outcomes. It also requested the troop contributing countries (TCCs) to take appropriate disciplinary measures to ensure accountability.

On 21 December 2007, through its Resolution 1794, the SC²⁴⁷ requested it to “attach the highest priority to addressing the crisis in the Kivus in all its dimensions, in particular through the protection of civilians and support for the implementation of the Nairobi Joint Communiqué”. The Council also emphasized that the PoC “must be given priority in decisions about the use of available capacity and resources, to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to support the FARDC²⁴⁸ integrated brigades with a view to disarming the recalcitrant foreign and Congolese armed groups, in particular the FDLR, ex-FAR/Interahamwe and the dissident militia of Laurent Nkunda, in order to ensure their participation in the disarmament, demobilization, repatriation, resettlement and reintegration processes, as appropriate”. The Council went to on to request the SG to report on how MONUC could further support the FARDC, to deal with illegal and foreign armed groups in the country, notably through joint operations. This marked an important evolution in the MONUC mandate for PoC. From a secondary aspect it is now a priority. And, while disarmament of armed groups and local militia, notably foreign armed groups, was voluntary in past resolutions, now it is coercive. Resolution 1794 (2007) contained other provisions in relation to the

13 March 2008, in which SC deplored the persistence of violations of human rights and IHL carried out by the FDLR, ex-FAR/Interahamwe, and other Rwandan armed groups operating in the eastern DRC, condemned sexual violence perpetrated by those groups, recalling its resolutions 1325 (2000) on women, peace and security and 1612 (2005) on children in armed conflict and the conclusions endorsed by the SC on Children and Armed Conflict in the DRC (S/AC.51/2007/17 and demanded also that the FDLR, ex-FAR/Interahamwe, and other Rwandan armed groups operating in the eastern DRC immediately stop recruiting and using children, release all children associated with them, and put an end to gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence,

²⁴⁴ Resolution 1565 (2004) of 1 October 2004.

²⁴⁵ Ibid., para 3.

²⁴⁶ Resolution 1756 of 15 May 2007.

²⁴⁷ The Council decides to extend the mandate and capacity of MONUC, as set out in resolution 1756, until 31 December 2008 and authorizes the continuation until that date of up to 17,030 military personnel, 760 military observers, 391 police personnel and 6 formed police units comprising up to 125 personnel each.

²⁴⁸ FARDC is acronym for *Forces armées de la République démocratique du Congo*, the DRC army.

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need to protect human rights, including those of children and women, and to fight impunity.²⁴⁹ It summarized the main aspects of the PoC policy of MONUC that kept being emphasized in the subsequent resolutions of the SC.

In response to a request from the SG for additional means for MONUC in order to ensure the effective implementation of its mandate, the SC decided in November 2008 to strengthen MONUC to ensure better PoC in Kivu²⁵⁰. The Council expressed strong support to the MONUC in its efforts to restore peace in the Kivus, as well as its “extreme concern at the deteriorating humanitarian situation and in particular the targeted attacks against the civilian population, sexual violence, recruitment of child soldiers and summary executions, considering that this situation should be addressed as a matter of urgency”. It urged all parties to ensure timely, safe and unhindered access of all humanitarian actors and to comply fully with their obligations under international law, including IHL, human rights law and refugee law. The Council authorized “a temporary increase of MONUC’s strength by up to 2,785 military personnel”. It stressed that this temporary increase in personnel “aims at enabling MONUC to reinforce its capacity to protect civilians, to reconfigure its structure and forces and to optimize their deployment”. It also underscored the importance of MONUC implementing its mandate in full, including through robust rules of engagement.²⁵¹ Clearly the SC was authorizing MONUC to use force to ensure PoC amongst other tasks.

Later in December 2008, the SC reiterated its concern at the deterioration of humanitarian situation; renewed the mandate of MONUC, stressing on PoC as a priority element.²⁵² The Council also extended the deployment of MONUC until 31 December 2009 and requested it “to attach the highest priority to addressing the crisis in the Kivus, in particular the protection of civilians” and to concentrate progressively during the coming year its action in the eastern part of the country.

The SC also outlined the main tasks of MONUC mandate in order of priority, the first of which is the PoC, humanitarian personnel and UN personnel and facilities.^{253 254}

²⁴⁹ Resolution 1794 of 21 December 2007. In this resolution, the Council called on DRC authorities to put an end to impunity, by bringing to justice without delay perpetrators of grave violations of human rights and of international humanitarian law, with special attention to those responsible for recruitment and use of children as well as for grave violations against women and children, in particular sexual violence, to fully support the human rights mapping exercise initiated in the country by the High Commissioner for Human Rights, and to establish a vetting mechanism to take into account when they select candidates for official positions, including key posts in the armed forces, national police and other security services, the candidates’ past actions in terms of respect for international humanitarian law and human rights” The Council further recalled MONUC’s mandate “to assist in the promotion and protection of human rights, investigate human rights violations with a view to putting an end to impunity, assist in the development and implementation of a transitional justice strategy, and cooperate in national and international efforts to bring to justice perpetrators of grave violations of human rights and international humanitarian law.” The Council also reaffirmed the obligation of all parties to comply fully with the relevant rules and principles of international humanitarian law relating to the protection of humanitarian and UN personnel, and also demands that all parties concerned grant immediate, full and unimpeded access by humanitarian personnel to all persons in need of assistance, as provided for in applicable international law. Finally, the Council requested MONUC, in view of the scale and severity of sexual violence committed especially by armed elements in the DRC, to undertake a thorough review of its efforts to prevent and respond to sexual violence, and to pursue a comprehensive mission-wide strategy, in close cooperation with the UNCT and other partners, to strengthen prevention, protection, and response to sexual violence, including through training for the Congolese security forces in accordance with its mandate, and to regularly report, including in a separate annex if necessary, on actions taken in this regard, including factual data and trend analyses of the problem. Finally the Council encouraged MONUC to enhance its interaction with the civilian population, in particular internally displaced persons, to raise awareness about its mandate and activities”; Resolution 1794 (2007) of 21 December 2007, paras 16-29.

²⁵⁰ Resolution 1843 (2008) of 20 November 2008.

²⁵¹ Resolution 1843 (2008) of 20 November 2008, paras. 3-4.

²⁵² Resolution 1856 (2008) of 22 December 2008. The Council also condemned targeted attacks against the civilian population, sexual violence, recruitment of child soldiers and summary executions, as well as the attacks against UN troops; and stressed the urgent need for the Government of DRC, in cooperation with MONUC and other relevant actors, to end those violations of human rights and IHL.

²⁵³ MONUC was authorized “to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out the tasks” relating to PoC. The Council again emphasized that the PoC “must be given priority in decisions about the use of available capacity and resources, over any of the other

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On 23 December 2009, the SC extended the deployment of MONUC until 31 May 2010, and requested the SG to conduct a strategic review of the situation in the DRC and MONUC's progress toward achieving its mandate.²⁵⁵ It also urged the DRC Government "to establish sustainable peace in the eastern part of the country, to effectively protect the civilian population, to develop sustainable security sector institutions which fully respect the rule of law, and to ensure respect for human rights and the fight against impunity by strengthening the capacity of the judicial and correctional systems" (3). It recognized "the interrelated nature of the effective protection of civilians, reduction and removal of the threat of armed groups, and comprehensive and sustainable security sector reform, and underlines that efforts made in each of these key areas contributes significantly and with complementarity both to the aim of improving the humanitarian situation and to the strategic objective of peace and stability in the DRC". It then determined the mandate of MONUC, working in close cooperation with DRC government. This mandate included (a) Ensuring the effective protection of civilians, humanitarian personnel and UN personnel and facilities" in accordance with resolution 1856 (2008) and as outlined in the paragraphs 7 to 18 of the resolution 1906 (2009) itself.²⁵⁶

The Council renewed the authorization given to MONUC to use all necessary means to carry out the tasks of its mandate relating to PoC. It gave further guidance on the content and the guiding principles the PoC of MONUC, formulated under the title: "Protection of civilians, including humanitarian personnel and human rights defenders, and United Nations personnel and facilities". It emphasized that the PoC (...) "must be given priority in decisions about the use of available capacity and resources, over any of the other tasks"²⁵⁷ of the mandate. It recalled that PoC "requires a coordinated response from all relevant mission components" and encouraged MONUC to enhance interaction, under the authority of the SRSR "between its civil and military components at all levels and humanitarian actors, in order to consolidate expertise on the protection of civilians". This precision enshrines the principle that PoC is a whole of the mission mandate and not only a military task as it appeared in the early practice of SC regarding mandating PoC tasks. The SC also requested MONUC to build on best practices and extend successful protection measures on protection piloted in North Kivu, in particular

tasks". It also underscored the importance of MONUC implementing the mandate in full, including through robust rules of engagement and requested the SG to ensure that MONUC's concept of operation and rules of engagement are updated to bring them fully in line with the provisions of this resolution and to report on it to the SC and TCCs. The PoC element of the mandate included : "(a) Ensuring the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict; (b) Contributing to the improvement of the security conditions in which humanitarian assistance is provided, and assisting in the voluntary return of refugees and internally displaced persons; (c) Ensuring the protection of UN personnel, facilities, installations and equipment; (d) Ensuring the security and freedom of movement of UN and associated personnel; (e) Carrying out joint patrols with the national police and security forces to improve security in the event of civil disturbance". Other aspects of the mandate included Disarmament, demobilization, monitoring of resources of foreign and Congolese armed groups; Training and mentoring of FARDC in support for security sector reform ; Territorial security of the DRC; supporting the strengthening of democratic institutions and the rule of law, Resolution 1856 (2008) of 22 December 2008, para 4.

²⁵⁴ Resolution 1856 (2008) of 22 December 2008, para 8. The SC also requested MONUC (para 13), in view of the scale and severity of sexual violence" committed especially by armed elements in DRC, to strengthen its efforts to prevent and respond to sexual violence, including through training for the Congolese security forces in accordance with its mandate, and to regularly report on actions taken in this regard. The Council also requested that operations led by the FARDC against illegal foreign and Congolese armed groups should be planned jointly with MONUC and in accordance with IHL, human rights and refugee law and should include appropriate measures to protect civilians (14). It also took note of the measures taken by MONUC to address instances of sexual exploitation and abuse and of the zero-tolerance policy and requested the SG to continue to fully investigate the allegations of sexual exploitation and violence by civilian and military personnel of MONUC, to take the appropriate measures for protection from sexual exploitation and sexual abuse.

²⁵⁵ Resolution 1906 (2009), para 2.

²⁵⁶ Other aspects of MONUC mandate include (b) Carrying out enhanced activities of disarmament, demobilization and reintegration (DDR) of Congolese armed groups and of disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) of foreign armed groups, including as set out in paragraphs 19 to 28 below and paragraphs 3 (n) to 3 (p) of resolution 1856 (2008); (c) Supporting the security sector reform led by the Government of the DRC.

²⁵⁷ Resolution 1906 (2009), para 7.

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the establishment of Joint Protection Teams (JPTs), Early Warning Centres (EWCs), communications liaisons with local villages and other measures, to other areas, particularly South Kivu”.²⁵⁸ This time the Council identified concrete methods of PoC on the ground, going beyond general guidelines. In addition to such guiding principles, the SC made specific demands to the intention of the main stakeholders on the ground, including parties to the conflict, to respect their obligations under international law to protect civilians.²⁵⁹

4.-The implementation of the PoC mandates of MOUNC: from caution to more robust and innovative measures

a.-MONUC PoC during the first years remained largely nominal

MONUC was established on 30 September 1999 with strength of 500 military troops. In February 2000, the SC approved the deployment of 5,537 peacekeepers to monitor the implementation of the 10 July 1999 ceasefire²⁶⁰ MONUC is provided a chapter VII and was entrusted with a PoC mandate. Nonetheless, the ceasefire remained widely disregarded fighting and massacres continued in different parts of the DRC. DRC represented one of these cases where a peacekeeping operation was being deployed where there was no peace to keep. SG reports on the situation in RDC continued to give accounts on fighting and a very difficult humanitarian situation in the country. Also the deployment of authorized troops, apart from the fact that they are too little to make a big difference in terms of PoC, was too slow, due to thee security challenges on the ground, the difficulty to gather the troops needed and the reticence of the UN to take important risks for the troops, not to mention the many logistic

²⁵⁸ Ibid., para 9.

²⁵⁹ The SC demanded “all armed groups, in particular the Forces Démocratiques de Libération du Rwanda (FDLR) and the Lord’s Resistance Army (LRA)” to immediately cease all forms of violence and human rights abuse against the civilian population in the DRC, in particular gender-based violence, including rape and other forms of sexual abuse. It demanded the Government of the DRC, to “immediately take appropriate measures to protect civilians, including women and children, from violations of international humanitarian law and human rights abuses, including all forms of sexual violence”, urging it to ensure the full implementation of its “zero-tolerance policy” with respect to discipline and human rights violations, including sexual and gender-based violence, committed by elements of the FARDC, and to investigate all reports of such violations with the support of MONUC, and to ensure that all those responsible be brought to justice through a robust and independent process. Further, the Council demanded that all armed groups immediately stop recruiting and using children and release all children associated with them. It also called upon the Government of the DRC to continue to work with MONUC, the Monitoring and Reporting Mechanism and other relevant actors to finalize the elaboration of an Action Plan to release children present in FARDC and to prevent further recruitment. The Council also requested SG “to continue to fully investigate the allegations of sexual exploitation and abuse by civilian and military personnel of MONUC, and to take the appropriate measures” and to ensure that technical support is provided, in pre-deployment and in theatre, to MONUC’s T/PCCs to include guidance and training for military and police personnel on the PoC from imminent threat and appropriate responses, including on human rights, sexual violence and gender issues. The Council was addressing the problem of sexual abuse of local population by UN personnel who can be considered as a PoC aspect. The Council also requested the SRSg “to identify women’s protection advisers (WPAs) among MONUC’s gender advisers and human rights protection units in line with MONUC’s comprehensive strategy against sexual violence. In this way, MONUC was to strengthen its capacity for both gender mainstreaming and fight against violence against women. Resolution 1906 (2009, paras 11, 12, 13 and 18.

²⁶⁰ Resolution 1291 of 24 February 2000.

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challenges UN peacekeeping operations were facing as a general rule.²⁶¹ The deployment of MONUC troops continued to be slow, amid huge security and humanitarian challenges on the ground.²⁶² Such a situation affected the capacity of MONUC to contribute in the PoC.²⁶³ In fact, MONUC adopted a timid role even when civilians were at risk.²⁶⁴

The SG continued to report many episodes of violence. One of such is the ethnic tensions in the Ituri area in the east of DRC, where tensions between Lendu and Hema communities increased dramatically on 19 January 2001 when Lendu tribesmen attacked a Ugandan People's Defence Force (UPDF) and an RCD-ML position at Bunia airfield, the fighting resulting in serious casualties, and was followed by attacks mounted by the Hema population on Lendu civilians.²⁶⁵ The Secretariat also, while continuing to attract the attention of the SC on the challenges on the ground and emphasizing on the need for the security of civilians to be taken into account²⁶⁶, kept a cautious stance with regard to what the UN can

²⁶¹ While MONUC was authorized to have up to 5537 troops, since February 2000, it remained with less troops. As of 15 September 2000, MONUC had a total of 258 liaison officers and military observers on the ground (See: Fourth Report of the Secretary-General on the UN Organization Mission in DR Congo (S/2000/888), 21 September 2000, para 37). The slowness of the deployment of troops on the ground was such that signatories of the Lusaka ceasefire agreement complained about this situation. Already in November 1999, the SG reported that Political Committee, an organ created under Lusaka ceasefire agreement and made of representatives of the signatories, expressed concern about "the slow pace at which the United Nations was handling the request for the deployment of peacekeepers" in the DRC. It noted that similar situations in other regions "normally receive more prompt and appropriate response" from the UN and called upon the latter to address the situation in the DRC "with the urgency and seriousness it deserves". (Second report of the secretary-general on the UN preliminary deployment in the DRC, 1 November 1999, UN doc: S/1999/1116, para 9.). This reflected some feeling from African representatives that UN was giving more importance to other regions, which was very current in the aftermath of Somalia and Rwanda.

²⁶² As an illustration of such challenges, the SG reported in December 2000 that : "66. Recent months have seen an increase in leadership struggles in the rebel movements, rising inter-ethnic rivalries and increasing resentment among Congolese ethnic groups vis-à-vis the Tutsi in general. These developments have put the civilian population in greater danger than previously reported. There has also been a marked increase in the number of warlords in remote areas who have engaged in a pattern of systematically destroying the institutions of civil society, and manipulating the regions' clan system and ethnic groups against each other. The violence between opposing members of the Hema and Lendu tribes in the north-eastern region of the DRC is particularly worrisome and civilian casualties are mounting (para 66). He added that " The Mayi-Mayi militia and predominantly Hutu armed groups have continued to commit widespread human rights abuses. They have regularly attacked villages, forced people to hand over their belongings and killed them if they refuse to do so. In this context, the high incidence of murder of women and children of Rwandan origin should be noted. It has also been reported that Hutu armed groups use rape as a weapon of war", Fifth Report of the Secretary-General on the UN Organization Mission in DR Congo (S/2000/1156), 6 December 2000, paras 66-67.

²⁶³ The SG reported in September 2000 that the deteriorating humanitarian and human rights situation throughout the DRC is yet another cause for grave concern. Civilians continued to pay an unacceptably high price for the conflict. It is extremely worrisome that intensive military confrontations have hindered access by humanitarian agencies to many areas, including the eastern part of the Congo, leaving vulnerable populations without much-needed assistance. The continuing fighting and widespread insecurity have also worsened the situation of children and require sustained action aimed at protecting their rights.²⁶³ Fourth Report of the Secretary-General on the UN Organization Mission in DR Congo (S/2000/888), 21 September 2000, 81.

²⁶⁴ Ray Murphy, "UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians", op. cit., p. 216.

²⁶⁵ Sixth report of the Secretary-General on the UN Organization Mission in DR Congo, S/2001/128, 12 February 2001, para 26.

²⁶⁶ For instance, in April 2011, the SG attracted the attention of the SC to the security vacuum that will be caused by foreign troops in certain parts of DRC territory and the negative effects that this can have on civilian populations, calling for the UN to keep this into account and address it. The SG declared: "I take very seriously the dangers that might confront those populations with the departure of the foreign forces, which is imperative, and I believe members of the Council share those concerns. Nor can any observer fail to be moved by the overwhelming humanitarian needs of all the people of the Democratic Republic of the Congo and the enormity of the human rights violations inflicted on women, men and children alike. Therefore, the United Nations should examine what it can do to help prepare for the situation which may develop in the Democratic Republic of the Congo following the withdrawal of foreign forces, which are now responsible for the security of the civilian population in the areas under their control.", See: Seventh report of the Secretary-General on the UN

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do to mitigate the threats against civilians. In fact, the SG was reticent to engage MONUC in any kind of coercive action, despite its Chapter VII mandate authorizing it to use force to protect civilians, and despite demands from the parties to the conflict trying to push MONUC into using force to disarm armed groups. MONUC had advised JMC and the Political Committee²⁶⁷ that the UN “is unlikely to endorse a plan which assumes that it will “enforce” disarmament under a Chapter VII mandate” adding that “It is also doubtful that the troops and resources necessary to implement such a mandate would be made available even if it were adopted”.²⁶⁸ With regard to PoC, Annan noted that “MONUC currently has neither the mandate nor the strength to assume responsibility for the security of the civilian population”. It was clear that the MONUC mandate to protect civilians remained quite nominal during its first years of deployment.

This explained why MONUC could not do much when serious incidents of violence that seriously affected civilians in DRC occurred. Two examples of such instances are the incidents in Kisangani in 2002 and those in Bunia in 2003, to name just a few.

In mid-May 2002, the city of Kisangani witnessed an outbreak of violence that claimed the lives of at least 50 persons. On 14 May, at least six people were killed, five of whom were victims of mob violence, apparently because they were considered to be Rwandans.²⁶⁹ Killings of civilians and looting ensued for several days. The RCD-Goma (a rebel movement nominally controlling the city) troops were reportedly reinforced during the afternoon of 14 May by an additional 120 soldiers flown in from Goma. These soldiers were said to be speakers of Kinyarwanda, spoken in Rwanda and parts of the eastern area of the DRC.²⁷⁰ During this crisis, MONUC could not do much to stop the killings. Its main action consisted in repeated attempts to meet with de facto the authorities to demand that they exercise restraint in restoring order and providing shelter to some individuals who claimed that their lives were at risk at the hands of RCD-Goma; its ability to determine exactly how many people lost their lives in the violence in Kisangani was limited.²⁷¹ Events in Kisangani triggered demonstrations in Kinshasa against MONUC, accused of not doing enough to prevent the killings in an attempt to urge it to adopt a stronger line against RCD-Goma and to protect the civilian population.²⁷²

This was an illustration of the unpreparedness of MONUC to play an important role in the PoC where the government was unable to fulfill such role, despite a mandate authorizing it to do so. It can be explained by the gap between the mandate and the military and material capacities on the ground, in addition to the doctrinal considerations that make the States and the Secretariat reluctant to use force in peacekeeping context. The SG explained this clearly in his eleventh report on MONUC. He reminded that the SC “has already decided, in its resolution 1291 (2000), that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect civilians under imminent threat of physical violence” He added that “While MONUC will do its utmost, it does not have the means to provide broader protection to civilians at large”. He explained that despite the deployment of additional MONUC troops to Kisangani, MONUC faced “a significant dilemma, since public expectations that MONUC will protect civilians at risk of violence will also rise”. He clearly stated that MONUC troops currently deployed in the DRC “are not equipped, trained

Organization Mission in DR Congo, 17 April 2001: S/2001/373, para. 118, See also, para. 102 of the same report.

²⁶⁷ These are organs created by the Lusaka cease-fire agreement and made of the military and political representatives of the signatories of the agreement.

²⁶⁸ Seventh report of the Secretary-General on the UN Organization Mission in DR Congo, 17 April 2001: S/2001/373, para. 94.

²⁶⁹ An assessment of OHCHR and MONUC concluded that the figure of those killed and/or disappeared at over 100. The crisis began on 14 May with an apparent mutiny, when dissident RCD-Goma soldiers seized the local radio station (and called upon the population to rise up against the “Rwandan invaders”).²⁶⁹ The dissidents’ broadcast contained a variety of exhortations, ranging from “chasing out” the Rwandans to killing them. The broadcasters also claimed the support of the Government of the DRC, and called upon MONUC and its Radio Okapi to relay their request for reinforcements to the Government. Some local residents, apparently including RCD-Goma soldiers, then took to the streets; Eleventh report of the Secretary-General on the UN Organization Mission in DR Congo (S/2002/621), 5 June 2002, para 5.

²⁷⁰ Ibid., para 6.

²⁷¹ Ibid., paras 5, 9.

²⁷² Ibid., para 12.

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or configured to intervene rapidly to assist those in need of such protection”.²⁷³ This was a clear acknowledgement of the gap between capacities, mandate and expectations in relation to PoC that characterized MONUC.

The SG went on to say that “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 contingents considerably to permit them to intervene more actively”²⁷⁴. He stated that, as in other peacekeeping operations, the basic responsibility of providing PoC rests with the local authorities, who must act in a manner consistent with internationally accepted standards of human rights”²⁷⁵. This precision reflected how the Secretariat viewed its role in PoC, a secondary role to complement that of local authorities. This was inspired by both considerations of realism, given the lack of capacities of MONUC, and doctrine, as the UN peacekeeping is still understood as based on the classic principles of consent, impartiality and non-use of force except in legitimate defense. Despite some evolution in the interpretation of these principles, the dominance of the classical doctrinal conception keeps very resistant amongst some representative of the Secretariat and the TCCs and peacekeepers themselves.

Following the events in Kinsangani, the SC called upon UN member States to contribute personnel to enable MONUC to reach its authorized strength of 5,537, taking note of the recommendation by the SG for a troop ceiling increase. The Council expressed its intention to consider authorizing it as soon as further progress has been achieved.²⁷⁶ It reaffirmed the MONUC’s mandate to take the necessary action in the areas of deployment of its armed units and as it deems it within its capabilities” – to protect United Nations and co-located Joint Military Commission personnel, facilities, installations and equipment, – to ensure the security and freedom of movements of its personnel, – and to protect civilians under imminent threat of physical violence”.²⁷⁷

Events in Bunia, in Ituri, in 2003, were another instance that demonstrated the incapacity of MONUC to ensure PoC amid chaos. The situation in Ituri had been tense long before 2003.²⁷⁸ A report of the OHCHR issued in February 2003 made an account of serious human rights violations in the Ituri

²⁷³ Ibid., para . 71

²⁷⁴ Ibid., para . 72.

²⁷⁵ Ibid.

²⁷⁶ Resolution 1417 (2002) of 14 June 2002, paras 3-5. The Council also condemned “ethnically and nationally based calls for violence and the killings and attacks against civilians and soldiers that followed the events that took place on 14 May and thereafter in Kisangani”. It declared looking forward to receiving the joint report and recommendations by MONUC and the OHCHR on the violence in Kisangani, and reiterated that “it holds the Rassemblement Congolais pour la Democratie-Goma, as the de facto authority, responsible to bring to an end all extrajudicial executions, human rights violations and arbitrary harassment of civilians in Kisangani, and all other areas under RCDGoma’s control, and that it demands the demilitarization of Kisangani”²⁷⁶. The Council also condemned the “the exploitation of ethnic differences in order to incite or carry out violence or human rights violations, deplores the humanitarian impact of such abuse, and in this regard expresses particular concern at the situation in the Ituri region and in South Kivu, calling on the de facto authorities in the regions affected to ensure the protection of civilians and the rule of law”

²⁷⁷ Resolution 1417 (2002) of 14 June 2002, para 7.

²⁷⁸ As reported by the SG.....Ituri has for decades been afflicted by a series of violent clashes, particularly between the Lendu, the Hema and their affiliated groups. However, the Lendu-Hema tension does not represent a typical majority-minority conflict as witnessed elsewhere. Since June 1999, the tension in Ituri has reached an unprecedented level, with - according to the DRC Government - up to 20,000 people having lost their lives. Recently, in the whole of Ituri, which has a population of 4.6 million, some 500,000 people were newly displaced, with 60,000 displaced in Bunia alone. The precarious security situation was vividly illustrated by the assassination in April 2001 of six International Committee of the Red Cross workers by unidentified assailants some 30 kilometres from Bunia, which is speculated to have been an effort to keep the eyes and ears of the international community. The ongoing extreme violence is often attributed to a lack of impartial administration; to the power struggle between the leaders of the RCD-K/ML; to rivalry between prominent business people over economic interests; to perceived or real interference by some UPDF (Ugandan army) elements on the ground; and to ongoing efforts to build up ethnically based militias by various sponsors who have different political, military and economic motivations., Special report of the Secretary-General on the UN Organization Mission in DR Congo (S/2002/1005), 10 September 2002, paras. 25-26.

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district.²⁷⁹ The resurgence of ethnic clashes between Lendu and Hema communities, following the beginning of the withdrawal of Ugandan force from Ituri was posing a serious security challenges affecting the safety of civilians, trapped in militia violence and lawlessness.²⁸⁰ MONUC did not have the military or police capacities needed to deal with the situation, despite its PoC mandate, and the DRC government had no control over that part of its territory.²⁸¹ In face of that situation,²⁸² the SG requested the SC to authorize the deployment of a multinational force for a limited period to deal with the situation, pending the strengthening of MONUC.²⁸³ In parallel, the SG had requested France and the European Union (EU) to contribute in the deployment of such force.²⁸⁴ The SC having authorized such force, it was deployed under the name Operation Artemis under French command, to stabilize the situation.

b.-Toward a more robust military action by MONUC to protect civilians

Subsequently, following the strengthening of MONUC military capacities (particularly from March 2004), its troops became more active in securing the province of Ituri and in launching actions to protect civilians. MONUC conducted military operations to address the deterioration of security conditions in Ituri. Its Ituri Brigade used force to defend itself against attacks from armed militia, to protect civilians under threat and to defend humanitarian personnel²⁸⁵. In December 2004, the SG

²⁷⁹ Report of the United Nations High Commissioner for Human Rights to the Security Council on the situation of human rights in the Democratic Republic of the Congo (13 February 2003), doc S/2003/216, 24 Feb 2003. 24. Two recent missions to Bunia (carried out by MONUC from 28 to 30 January 2003 and by OHCHR on 3 and 4 February 2003) confirmed gross violations of human rights including group rapes of women, extrajudicial executions and looting and burning of homes. These abuses occurred between August 2002 and January 2003. In Nyakunde, well over 2,000 killings were reported and the population has fled to the forest. The missions also confirmed the existence of scores of mass graves in Bunia and its environs. Similar atrocities have been reported in Kindu. Reports of group rapes being carried out on a frequent basis have been confirmed in North and South Kivu.

²⁸⁰ On these events, see : ICG, *Congo Crisis : Military Intervention in Ituri*, 13 June 2003, p. 8 et ss.

²⁸¹ Deuxième rapport spécial sur la MONUC, Doc. NU : S/2003/566 du 27 mai 2003, § 16.

²⁸² As the SG explained “MONUC, through its enhanced presence backed up by the deployment of a brigade-size force (...) has a vital role to play in support of the still fragile Ituri political process. I am extremely concerned about the Mission's current limited presence in Ituri, especially in view of the immense gap between its capabilities and the high expectations of the population. The international community has a collective responsibility to address the rapidly deteriorating security situation in Bunia. I appeal to the Security Council to urgently approve the deployment of a task force to Bunia, as well as the concept of operations for a MONUC brigade-size force as described in paragraphs 51 to 54 above.” The SG indicated that “the deployment of such a force would not be possible before the end of July even under the best of circumstances, leaving a dangerous interim gap in this highly volatile area, before calling the on Security Council to urgently consider the rapid deployment to Bunia of a highly trained and well equipped force, under the lead of a Member State, to provide security at the airport as well as other vital installations in that town and protect the civilian population, as a temporary bridging arrangement before the possible deployment of a reinforced UN presence. He continued that such a deployment - for a limited period of time - should be authorized by the Security Council under Chapter VII of the Charter, Second special report of the Secretary-General on the UN Organization Mission in DR Congo (S/2003/566), 27 May 2003, paras 98-99.

²⁸³ Lettre du 15 mai 2003, adressée au Président du Conseil de sécurité par le Secrétaire général, Doc. NU : S/ 2003/574 du 28 mai 2003. Dans une déclaration publique en date du 12 mai 2003, le Secrétaire général de l'ONU se dit « profondément alarmé par la détérioration de la situation sécuritaire à Bunia » et « en appelle au Conseil de sécurité afin qu'il prenne les mesures effectives pour prévenir une détérioration de la situation ».

²⁸⁴ T. TARDY, « L'Union européenne, nouvel acteur du maintien de la paix : le cas Artemis en République démocratique du Congo », in J. COULON (dir.), *Guide du maintien de la paix*, Athéna- 2005, p. 41.

²⁸⁵ According to the SG, « 11. While security in Ituri had improved earlier this year, the situation deteriorated sharply during the reporting period. Between 1 September and 15 December, the MONUC Ituri brigade sustained some 40 incidents of direct fire from armed militias in various locations. On 20 September, 300 armed militias, believed to belong to FRPI, attacked the village of Lengabu, killing 14 civilians and burning over 90 houses. The Bunia Public Prosecutor has begun judicial proceedings against some of the assailants, and the OCHA and other humanitarian partners have provided assistance to the local population. In early December, MONUC took control of Ndrele and Mahagi from FAPC militias, which had been abusing local civilians and

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announced that MONUC, with its increased presence in the Kivus, will proactively support the FARDC in disarming FDLR and use force to protect civilians.²⁸⁶ MONUC also, jointly with FARDC, protected returnees fleeing from violence in Burundi, following the massacre that occurred in Gatumba (Burundi) in August 2004, targeting Banyamulenge communities and having repercussions in DRC.²⁸⁷ Beginning of January 2005, MONUC responded to attacks from hostile militia²⁸⁸ against the backdrop of ethnic cleavages. Its troops conducted operations to strengthen the security, dismantle military camps, protect facilities of displaced people, enable provision of humanitarian assistance and disarm militia elements²⁸⁹. Since November 2003, Ituri Brigade of MONUC had consolidated its positions in Bunia and deployed to seven locations in the interior of the region and that with the extension of the brigade, stability returned to some areas. The SG cited the example of Fataki where some 10,000 internally displaced persons have returned since the deployment of the brigade on 5 November 2005.²⁹⁰ Another aspect of the robust actions of MONUC is supporting the joint operations with the FARDC. Mid-2005, the MONUC North Kivu brigade carried out operations in close coordination with FARDC against armed elements in the province to facilitate free and safe access for civilians and to enhance security in the major population centers. Joint MONUC/FARDC operations have also been conducted in FDLR-held areas to limit that group's freedom of movement²⁹¹. In July 2005, MONUC and FARDC conducted two major operations, Operation Falcon Sweep and Operation Iron Fist, destroying six empty FDLR camps, with the aim of encouraging those military elements to repatriate or move to more remote areas where they do not pose a threat to the local population.²⁹² Toward 2006, MONUC's strategy on the ground in Kivu had shifted more from reaction to pursuit. Between 2005 and 2007 several offensive operations were deployed in the country's East. In November 2006, MONUC successfully defended the population against rebels belonging to Laurent Nkunda's Congress for the Defense of the People (CNDP). By acting robustly, MONUC prevented the CNDP from reaching North Kivu's capital Goma, preventing more violence.²⁹³ During the second half of 2006, in Ituri, MONUC and FARDC continued joint operations to protect the civilian population and compel recalcitrant militia groups to disarm.²⁹⁴ While these actions aimed at

preventing children from entering the disarmament process. In the following days, over 80 combatants enrolled in the disarmament programme and the human rights situation in the area improved considerably", Sixteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 31 December 2004, UN doc: S/2004/1034, para 11.

²⁸⁶ Sixteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 31 December 2004, UN doc: S/2004/1034, para 34.

²⁸⁷ Ibid., para 59.

²⁸⁸ Such militia included : (l'Union des patriotes congolais/Lubanga, UPC/L and Front des nationalistes intégrationnistes (FNI)).

²⁸⁹ Dix- septième rapport du Secrétaire général sur la MONUC, 15 mars 2005 UN doc : S/2005/167, § 14.

²⁹⁰ Fifteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 25 May 2005, UN doc: S/2004/25. Other robust actions in which MONUC was involved during 2005 included using military pressure to weaken FDLR in the Kivus in support of the FARDC; robust military action, in the form of cordon-and-search operations and the setting up of checkpoints, aimed at loosening FDLR command over those who may wish to voluntarily turn their weapons in to MONUC and be repatriated to Rwanda. MONUC was also assisting FARDC in developing a concept of operations for the forcible disarmament of FDLR, including the provision of logistic support. It also took specific actions aiming to address sexual violence in DRC, in cooperation with DRC authorities. It conducted investigations on killings and acts of rape, including violations committed by members of FARDC, and referring its finding to the military prosecutorial authorities. Under its mandate to protect civilians, MONUC endeavored to strengthen its actions to reduce acts of aggression against the civilian population, including widespread sexual violence. See: Seventeenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 25 March 2005, UN doc: S/2005/167, paras. 41, 49 and 81.

²⁹¹ Eighteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 2 August 2005, UN doc : S/2005/506, para 32.

²⁹² Ibid., 2 August 2005, para 34.

²⁹³ July Raynaert, "MONUC/MONUSCO and Civilian Protection in the Kivus", in

Author: Julie Raynaert, IPIS, 2010, p. 16.

²⁹⁴ Twenty-Second report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2006/759, 21 September 2006, para . 41.

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PoC were conducted mainly in the east of DRC, MONUC did also intervene in other regions of the country. In May 2006, in the relatively calm Katanga region, MONUC deployed an additional battalion of four companies, which an already present battalion.²⁹⁵

During the year 2007, Ban Ki Moon, repeatedly stated that MONUC was determined to use its mandate under Chapter VII to support the efforts of the government to stabilize the country, to counter armed groups and protect civilians.²⁹⁶ Following SC Resolution 1856 of December 2008, MONUC continued working with the DRC army, both through mentoring and technical support, and through joint operations against armed groups, with the purpose of furthering PoC. In 2009, MONUC assisted FARDC in the planning of follow-up operations against FDLR. The joint FARDC-MONUC operation, “Kimia II” aimed at the PoC while pursuing the neutralization of FDLR by preventing it from reoccupying former positions and cutting its lines of economic sustenance. MONUC was also providing logistical and fire support to FARDC in the context of that operation to ensure that all FARDC units involved in those operations abide by IHL and prioritize the protection of civilians.²⁹⁷

During 2009 and 2010 two joint FARDC/MONUC military operations: Kimia II and Amani Leo. These operations were directed against Democratic Forces for the Liberation of Rwanda (FDLR), still operating in the eastern Congo. MONUC’s role in these operations consisted mainly in providing the FARDC logistical support, such as transport facilitations, vital supplies including ammunition, weapons, food and fuel and by offering occasional fire support under strict conditions.²⁹⁸

c.- Various methods of action, in addition to the military means

MONUC displayed some creativity in addressing PoC by having recourse to various tools, besides the military actions. One of such tools was the Joint protection teams (JPTs): multidisciplinary teams made of staff from political affairs, civil affairs, DDR, human rights and child protection staff. JPTs were tasked with a number of protection related activities, including helping MONUC forces foster and improve communications with local authorities and communities to maximize information sharing, enhancing early warning and offering protection advice where necessary. The JPTs also analysed local political and social dynamics in order to improve the effectiveness of protection interventions.²⁹⁹ JPTs issued sometimes important recommendations such as those that led to the creation of MONUC-protected corridors, where over 5,000 civilians from the area of Kashebere were evacuated pre-

²⁹⁵ Ibid., para . 48.

²⁹⁶ In March 2007, the SG invoking the Chapter VII mandate of MONUC, announced that the operation would continue to support the Government of DRC in creating a stable security environment in the country, within its capabilities and where it is deployed, by protecting civilians under imminent threat of violence, securing national borders and monitoring illegal arms flows, protecting humanitarian personnel and securing UN personnel and activities. By support for FARDC operations, MONUC would compel recalcitrant local armed groups to join the DDR process, maintain pressure on foreign armed groups and interdict illegal economic activities and support for illegal armed groups. He also announced that security responsibilities of MONUC would be gradually turned over to the Congolese authorities in line with clear, agreed benchmarks to be achieved through an enhanced SSR programme supported by MONUC (Twenty- Third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2007/156, 20 March 2007, paras. 46- 47). Later, in November 2007, the SG reported that MONUC will concentrate its efforts in Ituri, the Kivus and northern Katanga, where it will continue to focus on the PoC and other humanitarian activities. It will also support FARDC in developing and conducting operations aimed at stabilizing these areas and dismantling illegal armed groups, enabling the Congolese army and police to assume as soon as possible their full responsibility for security and the protection of the population, and assisting the Government to re-establish its authority in the area. MONUC, within its mandate and capabilities, and as requested by the Government, will also support regional stabilization and confidence-building initiatives, such as joint verification mechanisms or increased border patrols agreed bilaterally or through multilateral discussions.²⁹⁶ The SG also reaffirmed that PoC was central to the resolution of the crisis in the eastern DRC and that MONUC will continue to focus on its mandate for the protection of civilians and to work in close cooperation with the Government and the Congolese security forces to this end (Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 14 November 2007, S/2007/671, paras. 54, 80).

²⁹⁷ Twenty-seventh report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo(S/2009/160), 29 March 2009, para. 15.

²⁹⁸ July Raynaert, “MONUC/MONUSCO and Civilian Protection in the Kivus”, IPIS, 2010, p. 19.

²⁹⁹ Twenty-seventh report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo(S/2009/160), 29 March 2009, para 61.

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emptively in anticipation of an attack against FDLR by the FARDC-RDF coalition forces, as well as to the MONUC-facilitated deployment of FARDC to Pinga for protection purposes.³⁰⁰ The SG reported of the recourse to JPTs on many occasions.³⁰¹

Mobilisation of police for PoC is another tool. In March 2008, MONUC dispatched a formed police unit together with an infantry company and several teams of military observers to assess the situation protect civilians and cooperate with provincial authorities.³⁰² MONUC also actively assisted FARDC Congolese national police (PNC) in combating impunity, by providing operational support to authorities of the DRC with a view to conducting investigations into allegations of human rights violations. MONUC also deployed a joint investigation team to follow up on allegations of human rights violations by FARDC and PNC. On 23 October 2009, in the context of the Government's "zero-tolerance" policy, the FARDC commander of operation Kimia II issued a directive on the formation of joint FARDC-MONUC commissions of inquiry to verify reported FARDC violations in the Kivus.³⁰³

d.-Increasingly strategic approach

From 2005 onwards, the implementation of PoC mandate of MONUC was marked by an increasingly strategic approach. This was favored by the SC, which insisted on the prioritization of PoC tasks. It was also obvious in the improvement of coordination amongst actors involved in PoC. At the political level, the SC had directed the PoC should have priority over other tasks of MONUC. Already in 2005, the SG declared in one of his reports that PoC is "continues to be an important unifying theme for MONUC and the UN family. He added that joint coordination mechanisms have been established at the central and provincial levels, in which the Mission's civilian, police and military components work closely with the OCHA, UNHCR, UNICEF and the humanitarian community. The objective of these mechanisms is to promote a pragmatic field based approach to civilian protection, including direct protection activities by MONUC peacekeepers."³⁰⁴

To improve the effectiveness of the humanitarian system a "protection cluster" of humanitarian agencies was established early in 2006, with the objective of preventing and reducing violence against civilians; and ensuring protection interventions to respond to abuse, exploitation and violence against civilians. The cluster met at the national level under the leadership of UNHCR and MONUC. It was mirrored in the provinces most affected by conflict. It enabled coordinated action plans to address

³⁰⁰ Twenty-seventh report of the Secretary-General..., op. cit., para 62.

³⁰¹ Twenty-seventh report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo (S/2009/160), 29 March 2009, para 61; Twenty-eighth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 30 June 2009, UN doc: S/2009/335, para 38. In this last report, the SG informed that during the reporting period, MONUC initiated measures to enhance PoC including the deployment of over 25 Joint Protection Team (JPT) missions in 12 different locations in North Kivu to facilitate humanitarian access and to determine protection needs of communities that might be affected by military operations against FDLR.

³⁰² Twenty-fifth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 2 April 2008, S/2008/218, para. 18.

³⁰³ Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo (S/2009/623), 4 December 2009, para. 31.

³⁰⁴ Twentieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 28 December 2005, UN doc: S/2005/832, para. 60. In line with the objective to promote a pragmatic field based approach to civilian protection, MONUC and other UN actors on the ground, on their initiative or upon call of the SC, developed strategies and coordination mechanisms at the operation level. In 2005, the SG indicated that the DSRSG, who is also the Humanitarian Coordinator, Resident Coordinator, Deputy Designated Official and UNDP Resident Representative, chaired regular meetings of the Humanitarian Action Group, which includes the UN country team, donors and non-governmental organizations. Such group facilitated enhanced coordination regarding humanitarian response, security, capacity-building and reconstruction programmes, while ensuring that the UN system speaks and acts with a shared sense of purpose. Within such a group a framework for the PoC was developed through which MONUC military police and civilian staff are preparing common approaches for the PoC against violence, especially sexual violence; the reintegration of internally displaced persons, refugees and ex-combatants into their communities of origin; and the security of all UN staff and humanitarian workers, Eighteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 2 August 2005, UN doc: S/2005/506, para 67.

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specific risks faced by vulnerable children, including children separated from their families or associated with armed forces and groups; and sexual violence.³⁰⁵

In April 2008, MONUC reported achieving a high level of civilian-military coordination by developing a strategic approach to protection activities. As part of MONUC's joint protection concept, humanitarian and protection priorities and population considerations were integrated into its military planning for all eastern provinces through a series of civilian-military exchanges, the development of maps and matrices and the deployment of mobile operating bases for civilian protection.³⁰⁶ The operationalization of the Mission's joint protection concept helped to protect civilians during the FARDC offensive against CNDP forces in North Kivu. In addition to securing the key urban and population centers, MONUC provided direct protection to more than 150,000 civilians who were sheltering in the nearby internally displaced person sites: 50,000 in the five sites around Mugunga in the vicinity of Goma and 100,000 in the general area of Kiwanja and Rutshuru.³⁰⁷

MONUC also developed a security and stabilization strategy to lay the groundwork for the Mission's eventual withdrawal, in particular from the eastern part of the DRC. To implement the strategy, MONUC strengthened its civilian, police and military presence in the east. The strategy is aimed at PoC by rapidly stabilizing areas in the east where armed groups were expected to disband. It was to combine and prioritize elements from existing frameworks, including the Government's Priority Action Programme, the 2008 Humanitarian Action Plan and the Mission's mandate implementation plan.³⁰⁸

e.--Challenges faced by MONUC in the PoC

MONUC's action for the PoC had its challenges. A recurrent challenge was the gap between the needs and the capacities: MONUC forces were often insufficient and lacking the needed material to act efficiently. On many occasions, the SG reported of the lack of helicopters or of the troops needed to execute MONUC's mandate adequately.

MONUC faced many crises having an implication for PoC, which illustrate most of the challenges. One of such was the deterioration of security in Bukavu during the period (May-2003-June 2004) as a consequence of military activities of dissident military rebels led by Laurent Nkunda, who were fighting the FARDC. In May 2004, MONUC was confronted with a crisis as thousands of rebels entered Bukavu, where 800 MONUC peacekeepers were present the peacekeepers. MONUC found itself between the rival forces and did not present the advancement of the rebels. MONUC was unable to resist the thousands of rebels and many peacekeepers fled into their compounds, leaving the population to defend themselves. The crisis claimed at least 88 lives and displaced about 25,000 civilians. This led to anti-MONUC protests and was considered as a political low point for the peace mission.³⁰⁹

Another challenge was the security of peacekeepers themselves who were exposed to hostile attacks while on duty. An example of such incidents is attacks in February 2005 that killed 11 peacekeepers in Ituri, and injured others, while they were on routine patrol to protect some 8000 internally displaced people.³¹⁰ A challenge was also dysfunctional chain of command in the MONUC with contingent

³⁰⁵ Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo, 13 June 2006, UN doc: S/2006/389, para. 42.

³⁰⁶ Twenty-fifth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 2 April 2008, UN doc: S/2008/218, para. 45.

³⁰⁷ Ibid., para. 40.

³⁰⁸ Ibid., para. 35.

³⁰⁹ July Raynaert, "MONUC/MONUSCO and Civilian Protection in the Kivus", in Author: Julie Reynaert, IPIS, 2010, p. 16.

³¹⁰ As reported by the SG: "16. On 22 February, UPC attacked MONUC peacekeepers at Nizi, wounding two peacekeepers from Pakistan. On 25 February, nine MONUC peacekeepers from Bangladesh were killed in a well-planned and coordinated ambush at Kafé (80 kilometres north of Bunia, on Lake Albert). The peacekeepers were on a routine foot patrol to protect a camp of some 8,000 internally displaced persons in the area. The ambush may have been in response to the increasing pressure that MONUC had exerted on militia groups over the previous weeks, notably the 24 February arrest of numerous FNI militia members in its Datule stronghold. It may also have been designed to discourage CIAT, which was in Bunia as part of its efforts to ensure the extension of State administration to the area. The ambush also took place immediately after a meeting of the

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commanders privileging directives from their capitals over those of force commander.³¹¹ An additional challenge was the implication of peacekeepers in exploitation and abuse of civilian people in the areas of deployment.³¹² To address this latter challenge, which is not specific to the situation in DRC, the SG introduced a zero policy aiming at fighting this serious problem. A further challenge within the MONUC context has been, the involvement of FARDC, directly supported by the UN, in serious human rights violations, or negative humanitarian consequences of their operations such as displacement of populations fleeing combats, with all attendant consequences. This led to the instauration of some conditionality regarding the support of MONUC operations, subjecting it to respect for human rights and IHL.

5.-The transformation of MONUC into MONUSCO

a.-The mandate of MONUSCO: PoC confirmed as a priority

Resolution 1925 (2010) of 28 May 2010 marks a new phase in the history of MONUC and UN presence in Congo. It followed the strategic review of MONUC by the Secretariat. In its preamble, the Council recalled its commitment to the classical principles UN action in the country including the sovereignty, territorial integrity and political independence. It acknowledged the progress made in the DRC reminding the challenges it has had to overcome during the past 15 years. It then stressed the primary responsibility of the Government of the DRC for ensuring security in its territory and protecting its civilians with respect for the rule of law, human rights and IHL situation in areas affected by armed conflicts. It also condemned the targeted attacks against the civilian population, widespread sexual violence, recruitment and use of child soldiers and extrajudicial executions. It welcomed the commitments made by the Government of the DRC to hold accountable those responsible for atrocities in the country, noting its cooperation with the ICC, and stressed the importance of actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country and of regional cooperation to this end.³¹³

Tripartite Commission in Kampala, at which MONUC briefed the participants on its robust approach to the maintenance of peace in Ituri", , Seventeenth SG report on the UN Organization Mission in DR Congo (S/2005/167), 25 March 2005, para 16.

³¹¹ See: Ray Murphy, "UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians", op. cit., p. 214. The author identifies as one of the flaw in the MONUC mission was the lack of commitment of the troop contributing states to the mandate, many of whom were alleged to have pursued their own interests. This problem has been a recurrent problem in the UN peacekeeping operations, notably in Somalia in the 1990s. A report of OIOS (2014), identified a persistent pattern of peacekeeping operations not intervening with force when civilians are under attack. As main reasons to this, the OIOS cited amongst other things, the divergences amongst TCCs, and between them and SC members on interpretation of the mandate, notably on the issue of the use force; the unwillingness of some contingents to take risks; and the de facto dual line of command regulating the use of force by missions. The OIOS reported of practice whereby TCCs exercise a de facto dual line of command over their troops serving in peacekeeping missions to regulate the use of force in missions. Some TCCs reportedly impose written and unwritten "national caveats" on their contingents, effectively ruling out the use of force, due to a lack of willingness on their part put their troops in danger. Also, some commanders in the field routinely seek advice from their capitals when commands were issued within the mission and acted on that advice even if it conflicted with that of the mission Force Commander or a Brigade Commander, OIOS Report on Implementation of PoC mandates of UN peacekeeping operations (2014), op. cit., paras, 13-35.

³¹² The SG reported in his Sixteenth report that " 65. MONUC and the United Nations Secretariat continue to follow up vigorously on allegations of sexual exploitation and abuse. Between June and September 2004, an Office of Internal Oversight Services investigation into sexual misconduct in Bunia revealed that 8 of some 72 allegations could be corroborated. The majority of these allegations pertain to soliciting the services of prostitutes, which is a violation of the code of conduct. All of these cases are being followed up to ensure that the proper disciplinary action is taken", Sixteenth SG report on the UN Organization Mission in DR Congo (S/2004/1034), 31 December 2004, para 65.

³¹³ The Council also recalled its thematic resolutions 1325 (2000) and 1888 (2009) on women, peace and security, its resolution 1894 (2009) on the PoC in armed conflicts, and its resolution 1882 (2009) on children and armed conflict, and the conclusions of the its Working Group on Children and Armed Conflict pertaining to

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The Council made reference to the report of the SG of 1 April 2010, endorsing his view that the DRC “is now entering a new phase of its transition towards peace consolidation”. It stressed the need for a strong partnership between the UN and the Government to face these challenges is needed. The Council determined that the situation in the DRC “continues to pose a threat to international peace and security in the region” and decided to extend the mandate of MONUC until 30 June 2010. It further stated that, “in view of the new phase that has been reached” in the DRC, MONUC shall, as from 1 July 2010, bear the title of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). MONUSCO shall be deployed until 30 June 2011 and shall comprise, in addition to the appropriate civilian, judiciary and correction components, a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 personnel of formed police units. The Council authorized MONUSCO, while concentrating its military forces in the east of the country, to keep a reserve force capable of redeploying rapidly elsewhere in the country³¹⁴.

The Council emphasized that the Government of the DRC bears primary responsibility for security, peacebuilding and development in the country, and encourages it to remain fully committed to protecting the population through the establishment of professional and sustainable security forces, to promote non-military solutions as an integral part of the overall solution for reducing the threat posed by Congolese and foreign armed groups and to restore full State authority in the areas freed from armed groups.

The Council also established benchmarks against which it will evaluate the evolution of MONUC.³¹⁵ Further, it called upon the UN system, along with international partners, to focus its efforts on helping the Government of the DRC “to consolidate the conditions to ensure effective protection of civilians” and sustainable development in the country and requests the SG to continue to coordinate all the activities of the UN system in this country through a continued cooperation between MONUSCO and the UNCT³¹⁶. The Council also emphasized that the PoC “must be given priority in decisions about the use of available capacity and resources and authorizes MONUSCO to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out its protection mandate”³¹⁷.

The Council entrusted MONUSCO with a mandate made of two main prongs in order of priority: Protection of civilians on the one hand; and Stabilization and peace consolidation on the other hand³¹⁸.

parties in the armed conflict of the DRC. It condemned all attacks against UN peacekeepers and humanitarian personnel and commends the valuable contribution that the MONUC has made to the recovery of the DRC from conflict and to the improvement of the country’s peace and security and emphasized the importance of the continued support of the UN and the international community for the long-term security and development of the DRC.

³¹⁴ Resolution 1925 (2010), para. 4.

³¹⁵ The SC decided that future reconfigurations of MONUSCO should be determined on the basis of the evolution of the situation on the ground and on the achievement of the following objectives to be pursued by the Government of the DRC and MONUSCO: (i) the completion of the ongoing military operations in the Kivus and Orientale Province, resulting in minimizing the threat of armed groups and restoring stability in sensitive areas, (ii) an improved capacity of the Government to effectively protect the population through the establishment of sustainable security forces with a view to progressively take over MONUSCO’s security role; and (iii) the consolidation of State authority throughout the territory, through the deployment of Congolese civil administration, in particular the police, territorial administration and rule of law institutions in areas freed from armed groups. Resolution 1925 (2010), para. 6; Such benchmarks which are the consequence of UN efforts to ensure a better follow up and efficiency of its peace operations, are present in subsequent resolutions of the Security Council relating to MONUSCO : (Resolution 1991 (2011) of 28 June 2011, para 4; Resolution 2053 (2012) of 27 June 2012, para 4; Resolution 2211 of 26 March 2015, para 6.

³¹⁶ Resolution 1925 (2010), para. 9.

³¹⁷ Resolution 1925 (2010), para. 10. Similar statement will be reproduced in most resolutions of the Security Council relating to MONUSCO, notably: Resolution 1991 (2011) of 28 June 2011.

³¹⁸ The Stabilization and consolidation mandate includes (l) Taking fully into account the leading role of the Government, in close cooperation with other international partners, the efforts of the Congolese authorities to strengthen and reform security and judicial institutions; (m) Assist the Government, along with international and bilateral partners, in strengthening its military capacity, including military justice and military police, in particular by harmonizing efforts and facilitating exchanges of information and lessons learned and, as the Government requests it, assist in the training of FARDC and military police battalions, support military justice

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The PoC mandate includes tasks relating to : Ensuring the effective PoC, including humanitarian personnel and human rights defenders, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict; b) Ensuring the protection of UN personnel, premises and equipment ; (c) Supporting the efforts of the Government to ensure the PoC from violations of IHL and human rights abuses, including all forms of sexual and gender-based violence, to promote and protect human rights and to fight impunity, including through the implementation of the Government's "zero-tolerance policy" with respect to discipline and human rights and humanitarian law violations, committed by elements of the security forces, in particular its newly integrated elements; (d) Supporting national and international efforts to bring perpetrators to justice, including by establishing Prosecution Support Cells to assist the FARDC military justice authorities in prosecuting persons arrested by the FARDC; (e) Working closely with the Government to ensure the implementation of its commitments to address serious violations against children, in particular the finalization of the Action Plan to release children present in the FARDC and to prevent further recruitment, with the support of the Monitoring and Reporting Mechanism; (f) Implementing the UN system-wide protection strategy in the DRC, operationalizing it with MONUSCO's protection strategy built on best practices and extend useful protection measures, such as the Joint Protection Teams, Community Liaison Interpreters, Joint Investigation Teams, Surveillance Centres and Women's Protection Advisers; (g) Supporting the Government's efforts, along with international partners and neighboring countries, to create an environment conducive to the voluntary, safe and dignified return of internally displaced persons and refugees, or voluntary local integration or resettlement; (h) Supporting the efforts of the Government to bring the ongoing military operations against the FDLR, the Lord's Resistance Army (LRA) and other armed groups, to a completion, in compliance with international humanitarian, human rights and refugee law and the need to protect civilians, including through the support of the FARDC in jointly planned operations (...) including through its political mediation efforts, the completion of activities of DDR of Congolese armed groups or their effective integration in the army, which would remain subject to prior adequate training and equipment; (j) Supporting activities of DDRRR of foreign armed groups members, including the FDLR and the LRA, and supporting strategies towards a sustainable solution of the FDLR issue, including repatriation, reinsertion or resettlement in other areas, or judicial prosecution as appropriate, with the help of all countries, especially those in the region; (k) Coordinating strategies with other UN missions

institutions and mobilize donors to provide equipment and other required resources; (n) Support the reform of the police led by the Government , including by providing training to battalions of the Congolese National Police (PNC) and mobilizing donors to provide basic supplies, recalling the urgent need for the Congolese authorities to adopt the appropriate legal framework; (o) Develop and implement, in close consultation with the Congolese authorities and in accordance with the Congolese strategy for justice reform, a multi-year joint UN justice support programme in order to develop the criminal justice chain, the police, the judiciary and prisons in conflict-affected areas and a strategic programmatic support at the central level in Kinshasa; (p) Support, in close cooperation with other international partners, the efforts by the Congolese Government to consolidate State authority in the territory freed from armed groups through the deployment of trained PNC, and to develop rule of law institutions and territorial administration, with respect to the Government's Stabilization and Reconstruction Plan (STAREC) and the International Security and Stabilization Support Strategy (ISSSS); (q) Provide technical and logistical support for the organization of national and local elections, upon explicit request from the Congolese authorities and within the limits of its capacities and resources; (r) With respect to the urgent need to fight illegal exploitation and trade of, natural resources in the Democratic Republic of the Congo, support the Government's efforts and enhance its capabilities, along with international partners and neighbouring countries, to prevent the provision of support to armed groups, in particular support derived from illicit economic activities and illicit trade in natural resources, and consolidate and assess, jointly with the Government of the Democratic Republic of the Congo, the pilot project of bringing together all State services in five trading counters in North and South Kivu in order to improve the traceability of mineral products; (s) Assist the Government in enhancing its demining capacity; (t) Monitor the implementation of the measures imposed by paragraph 1 of resolution 1896 (2009), in cooperation, as appropriate, with the Governments concerned and with the Group of Experts established by resolution 1533 (2004), 7 seize or collect any arms or related materiel whose presence in Democratic Republic of the Congo violates the measures imposed by paragraph 1 of resolution 1896 (2009) and dispose of them as appropriate, and provide assistance to the competent customs authorities DRC in implementing the provisions of paragraph 9 of resolution 1896 (2009).

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in the region for enhanced information-sharing in light of the attacks by the LRA and, at the request of the Government of the DRC to provide logistical support for regional military operations conducted against the LRA in the DRC, in compliance with the international humanitarian, human rights and refugee law and the need to protect civilians.

MONUSCO was given an important PoC mandate, which consisted in complementing the efforts of the government of DRC that remained fragile due to a number of factors and given its lack of control of its territory particularly the east, and of supporting it fulfilling its obligations, through capacity building, mentoring and technical support. This mandate was also to complement that of the UNCT in DRC, which was to take over progressively from MONUC as the DRC regained more stability.

The MONUSCO PoC mandate reflected the UN doctrine and policy on the role of UN peace operations in PoC. The mandate was also taking into account the realities of DRC, notably the presence of illegal armed groups, local and foreign ones, which action was recognized as one of the main threats to PoC in the country, as well as the regional dimension of such threats, given the intricate links that existed between the situation in eastern DRC and in its eastern neighbors particularly Rwanda and Uganda.

Subsequent resolutions of SC confirmed this mandate, enriching it and specifying it further and adjusting it to the developments on the ground. In June 2011, the SC extended the mandate of MONUSCO, reaffirming that it must be given priority. The Council also reminded of the primary responsibility of the government encouraging it “to remain fully committed to protecting the civilian population through the establishment of professional and sustainable security forces and the rule of law and respect for human rights, to promote non-military solutions as an integral part of the overall solution for reducing the threat posed by Congolese and foreign armed groups and to restore full State authority in the areas freed from armed groups”.³¹⁹ This statement reflects the conception of PoC not only as a military task but also as a task that requires the creation of protective environment. The Council called upon MONUSCO and the UNCT to collect information on and identify potential threats against the civilian population, as well as reliable information on violations of IHL and human rights law, bring them to the attention of the Congolese authorities as appropriate, and to take appropriate action in accordance with the UN system wide protection strategy in harmonization with MONUSCO's protection strategy.³²⁰ The Council also took note of the initiatives taken by the UN and the African Union to facilitate regional action against the LRA and to protect civilians, welcoming the steps taken by MONUSCO to enhance information sharing and coordination with those conducting military operations against the LRA, and encouraging MONUSCO to continue to keep close contacts with LRA-affected communities.³²¹ It also encouraged the Government to continue to build on its cooperation with the SRSB on Children and Armed Conflicts and the SRSB on Sexual Violence in Conflict and to meet its commitments to adopt and implement an action plan to halt the recruitment and use of children by its armed forces (FARDC), in close collaboration with MONUSCO.³²² Later, Resolution 2053 (2012) encouraged MONUSCO to enhance its interaction with the civilian population to raise awareness and understanding about its mandate and activities and to collect reliable information on violations and abuses of international humanitarian and human rights law perpetrated against civilians.³²³

b.- The crisis related to M23 attacks on Goma and the strengthening of MONUSCO through an Intervention Brigade

By its resolution 2076 (2012) of 20 November 2012, the SC reacted to the events in eastern Congo, where the rebel movement, known as 23 March Movement (M23), occupied the city of Goma, causing many civilian casualties. The Council expressed deep concern regarding the resumption of attacks by the M23 and the entry of the M23 into the city of Goma on 20 November 2012, as well as the continuation of serious violations of IHL and abuses of human rights law by the M23 and other armed

³¹⁹ Resolution 1991 (2011) of 28 June 2011, para 1.

³²⁰ Ibid., para 8.

³²¹ Ibid., para 14.

³²² Ibid., para 15.

³²³ Resolution 2053 (2012) of 27 June 2012, para 24.

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groups”. It called all perpetrators, including individuals responsible for violence against children and acts of sexual violence, to be apprehended, brought to justice and held accountable for violations of applicable international law. Acting under Chapter VII of the Charter, the Council condemned the resumption of attacks by the M23 in North-Kivu and the entry of the M23 into the city of Goma on 20 November 2012³²⁴, demanded its immediate withdrawal and the cessation of any further advances by the M23, enjoining its members immediately and permanently disband and lay down their arms and demanding the restoration of State authority of the Government of the DRC in Goma and in North-Kivu.³²⁵ It also condemned “the M23 and all its attacks on the civilian population, MONUSCO peacekeepers and humanitarian actors, as well as its abuses of human rights, including summary executions, sexual and gender based violence and large scale recruitment and use of child soldiers” reiterating that those responsible for crimes and human rights abuses will be held accountable.³²⁶ The Council also requested the SG to report on options, and their implications, for the possible redeployments, in consultation with T/PCC, of MONUSCO contingents and additional force multipliers, observation capabilities and troops within the current authorized ceiling, which, in regard to the current crisis, could improve the ability of MONUSCO to implement its mandate, including to protect civilians and report on flows of arms and related materiel across the borders of Eastern DRC, and in this context expresses its intention to keep the mandate of MONUSCO under review.³²⁷ The Council also commended the active steps taken by MONUSCO to implement its mandate.³²⁸ These developments illustrated the fragility of the security situation in DRC in eastern Congo where M23 movement was able to occupy Goma, despite the presence of MONUSCO forces and that of FARDC, and to harm civilians. They also illustrate the difficulty that MONUSCO had despite its robust mandate to counter armed groups, identified as one of the main sources of threat against civilians.

The persistence of such challenge will lead to a further strengthening of the military capacities of MONUSCO, thanks to the creation of a special Intervention Brigade (IB), made of troops from SADC countries,³²⁹ with specific mandate to fight armed groups considered to be a major threat to PoC. By its Resolution 2098 of 28 March 2013, the Council, taking note of the special report of the SG on the DRC and the Great Lakes region and of its recommendations therein, including regarding the establishment of an “Intervention Brigade” within MONUSCO, based on the idea initially conceived by the ICGLR and supported by SADC, decided to extend the mandate of MONUSCO until 31 March 2014. It also decided that MONUSCO shall, “for an initial period of one year and within the authorized troop ceiling of 19,815, on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping, include an “Intervention Brigade” consisting inter alia of three infantry battalions, one artillery and one Special force and Reconnaissance company with headquarters in Goma, under direct command of the MONUSCO Force Commander, with the responsibility of neutralizing armed groups (...) and the objective of contributing to reducing the threat posed by armed groups to state authority and civilian security in eastern DRC and to make space for stabilization activities”³³⁰ The Council added that the IB will have a clear exit strategy and that the Council will consider its continued presence “in light of its performance and whether the DRC, which has the primary responsibility for safeguarding its sovereignty and territorial integrity, has made sufficient progress in implementing its commitments under the PSC Framework, as well as the establishment and implementation of a national security sector reform roadmap for the creation of a Congolese “Rapid

³²⁴ Resolution 2076 (2012) of 20 November 2012, para 1.

³²⁵ Ibid., para 2.

³²⁶ Ibid., para 3.

³²⁷ Resolution 2076 (2012) of 20 November 2012, para 9.

³²⁸ Ibid., para 13.

³²⁹ By September 2013, the IB was made of a total of 2,153 elements from Malawi, South Africa and the United Republic of Tanzania deployed by 31 August, against an authorized strength of 2,956. Around 750 soldiers from Malawi, as well as enablers such as additional attack helicopters and unarmed and unmanned aerial surveillance systems, were yet to deploy, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 30 September 2013, Un doc: S/2013/581, para 37.

³³⁰ Resolution 2098 of 28 March 2013, para 9.

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Reaction Force” able to take over responsibility for achieving the objective of the Intervention Brigade”³³¹

The Council reformulated the mandate of MONUSCO, authorizing it, through its military component to take all necessary measures to perform the following tasks, through its regular forces and its Intervention Brigade as appropriate:³³²

(a) Protection of civilians

(i) Ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence, including civilians gathered in displaced and refugee camps, humanitarian personnel and human rights defenders, in the context of violence emerging from any of the parties engaged in the conflict, and mitigate the risk to civilians before, during and after any military operation;

(ii) Ensure the protection of UN personnel, facilities, installations and equipment;

(iii) Work with the Government of the DRC to identify threats to civilians and implement existing response plans to ensure the protection of civilians from abuses and violations of human rights and violations of international humanitarian law, including all forms of sexual and gender-based violence and grave violations against children, and requests MONUSCO to ensure that child protection concerns are integrated into all operations and strategic aspects of MONUSCO’s work and accelerate the implementation of monitoring, analysis and reporting arrangements on conflict-related sexual violence as called for in resolution 1960 (2010), and employ Women Protection Advisers to engage with parties to conflict in order to seek commitments on the prevention and response to conflict-related sexual violence;

(b) Neutralizing armed groups through the Intervention Brigade in support of the authorities of the DRC, on the basis of information collation and analysis, and taking full account of the need to protect civilians and mitigate risk before, during and after any military operation, carry out targeted offensive operations through the Intervention Brigade (...) 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 human rights due diligence policy on UN-support to non-UN forces (HRDDP), to prevent the expansion of all armed groups, neutralize these groups, and to disarm them in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC and to make space for stabilization activities;

(d) Provision of support to national and international judicial processes Support and work with the Government of the DRC to arrest and bring to justice those responsible for war crimes and crimes against humanity in the country, including through cooperation with States of the region and the ICC.

The SC also requested MONUSCO’s civilian component to support the implementation of the tasks outlined in above.³³³ It requested the SG to take the necessary measures to ensure full compliance of MONUSCO with the UN zero-tolerance policy on sexual exploitation and abuses and to keep the Council informed if cases of such conduct occur.” Clearly the Council wanted to stress the fact that PoC is both a military and civilian task and that abuses of civilian population by UN personnel was also an important element in the PoC agenda.³³⁴

The military operations of the IB, in combination with those of FARDC, eventually led to the defeat of M23 and the surrender of its members in November 2013. Following this, the SC welcomed the declaration of the end of the M23³³⁵. It stressed the importance of ensuring that the M23 does not regroup and resume military activities, as well as the importance of the Government of the DRC actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country and of regional cooperation to this end, including through its ongoing cooperation with the

³³¹ Ibid., para 10.

³³² Ibid., para 12.

³³³ Resolution 2098 of 28 March 2013, para 13.

³³⁴ Ibid., para 15.

³³⁵ Resolution 2136 of 30 January 2014. In this resolution, the Council welcomed the end of M23 and the corresponding declaration by the Government of DRC, and the signing in Nairobi on 12 December 2013 of the documents concluding the Kampala talks facilitated by Uganda as president of the International Conference of the Great Lakes Region (ICGLR).

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ICC.³³⁶ It encouraged MONUSCO to use its existing authority to assist the government of the DRC in this regard.³³⁷ MONUSCO was thus requested to assist the government in fighting impunity.

The recourse to the IB reflects the incapacity or the lack of willingness of UN troops on the ground to engage in dangerous operations on the ground. This is due in part to the limited capacities of UN operations in the face of the huge challenges in the Congo, but also to the divergent interpretations TCCs have of their mandate, notably with the respect to the use of force.

c.-Towards an exit strategy, despite continuing humanitarian challenges

Despite the progress, the situation in DRC remained challenging in terms of PoC. On 26 March 2005 the SC declared that it remained “greatly concerned by the humanitarian situation that continues to severely affect the civilian population, in particular in eastern DRC”, expressing deep concern regarding “the very high number of internally displaced persons in the DRC, at more than 2,7 million, and the over 490,000 refugees from eastern DRC caused by the various Congolese and foreign armed groups active in the region” (Preamble).³³⁸

The Council extended the mandate of MONUSCO until 31 March 2016, including its IB.³³⁹ It welcomed the strategic review of MONUSCO and the wider UN presence fully endorsing its recommendations, including on the transformation of the MONUSCO force to become more efficient and effective. It reiterated that multi-dimensional peacekeeping requires “a comprehensive approach” and requested MONUSCO’s military, police and civilian components to work together in an integrated way.³⁴⁰

The Council also reaffirmed that the PoC “must be given priority in decisions about the use of available capacity and resources”³⁴¹, and authorized MONUSCO to take all necessary measures to perform the following tasks, bearing in mind that these are mutually reinforcing tasks:

(a) Ensuring, within its area of operations, effective PoC under threat of physical violence, including by deterring, preventing and stopping armed groups from inflicting violence on the populations, paying particular attention to civilians gathered in displaced and refugee camps, humanitarian personnel and human rights defenders, in the context of violence emerging from any of the parties engaged in the conflict, and mitigating the risk to civilians before, during and after any military operation;

(b) Ensuring the protection of UN personnel, facilities, installations and equipment and the security and freedom of movement of UN and associated personnel;

(c) Working with the Government of the DRC to identify threats to civilians and implement existing prevention and response plans and strengthen civil-military cooperation, including joint-planning, to ensure the protection of civilians from abuses and violations of human rights and violations of IHL, including all forms of sexual and gender-based violence and violations and abuses committed against children and persons with disabilities, and requests MONUSCO to ensure that child protection and gender concerns are integrated into all operations and strategic aspects of MONUSCO’s work and accelerate the coordinated implementation of monitoring, analysis and reporting arrangements on conflict-related sexual violence and the swift deployment of WPAs in order to seek commitments on the prevention and response to conflict-related sexual violence;

(d) Supporting and working with the authorities of the DRC to arrest and bring to justice those allegedly responsible for genocide, war crimes and crimes against humanity and violations of IHL and violations or abuses of human rights in the country notably through cooperation with the ICC;

The Council included in its resolution a section on Gender issues, child protection, and interaction with civilian population, where MONUSCO is requested to “take fully into account gender considerations as a cross-cutting issue throughout its mandate and to assist the Government of the DRC in ensuring the participation, involvement and representation of women at all levels, including in stabilization activities, security sector reform (SSR) and disarmament, demobilization and reintegration (DDR)

³³⁶ Resolution 2136 of 30 January 2014, para 11.

³³⁷ Ibid.

³³⁸ Resolution 2211 of 26 March 2015.

³³⁹ Ibid., para. 1.

³⁴⁰ Ibid., para. 2.

³⁴¹ Ibid., para. 7.

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processes, as well as in the national political dialogue and electoral processes. MONUSCO is also requested³⁴² to take into account child protection as a cross-cutting issue throughout its mandate and to assist the Government in ensuring that the protection of children's rights. MONUSCO was also encouraged to enhance its interaction with the civilian population to raise awareness and understanding about its mandate and activities through a comprehensive public outreach programme, to identify potential threats against the civilian population and collect reliable information on IHL violations and human rights abuses against civilians.

In a section dedicated to Human Rights and Humanitarian issues, the Council urged the DRC³⁴³ to arrest and hold accountable those responsible for violations of IHL or violations and abuses of human rights, in particular those that may amount to war crimes and crimes against humanity, as well as those involving violence or abuses against children and acts of sexual and gender-based violence. The SC stressed the importance of cooperation with the ICC, and urged the government of DRC to undertake judicial reform needed to ensure impunity. It further called upon the Congolese authorities to ensure the prosecution of those responsible for the grave human rights violations and abuses committed in the context of the 28 November 2011 elections³⁴⁴, encouraging it to continue its cooperation with the SRSB for Children and Armed Conflict and the SRSB on Sexual Violence.³⁴⁵ These directives emphasized on the need to fight impunity as one of the priorities of MONUSCO and an aspect of the PoC.

In a section on Exit strategy, the Council stressed underlying principles that should govern such a strategy. This should be gradual and progressive, tied to specific targets to be jointly developed by the Government of the DRC and MONUSCO, in consultation with UNCT and other stakeholders.³⁴⁶ The Council encouraged the Government of the DRC to make effective steps to enter into a regular strategic dialogue with the UN, and to jointly develop a roadmap and exit strategy for MONUSCO, including its IB.³⁴⁷ It also requested the SG to continue to make recommendations on the transition and reconfiguration of the UN presence in the country, based on the comparative advantages of the Mission and the UNCT.³⁴⁸

6.- PoC under MONUSCO in practice

MONUSCO's mandate was subject to regular assessments by the Secretariat, notably DPKO and DFS, jointly with UNCT and the government of DRC, which confirmed the strategic approach initiated with MONUC. MONUSCO continued to have recourse to a series of military and civil measures aimed at the PoC. These contributed to the improvement of the security situation and had some positive impact on the PoC, without eliminating the related threats and challenges.

a.-Military PoC measures

Military PoC measures have included the support of military operations conducted by the FARDC against armed groups with the aim of stabilization and PoC; conducting a series of military measures, including robust operations, directly in support of the same objectives. Since its establishment, MONUSCO took part directly in tens of operations in support of the FARDC.³⁴⁹ It also had recourse to

³⁴² Resolution 2211 of 26 March 2015, para. 11.

³⁴³ Ibid., para. 29.

³⁴⁴ Ibid., para. 30.

³⁴⁵ Ibid., para. 31.

³⁴⁶ Ibid., para. 39.

³⁴⁷ Ibid., para. 40.

³⁴⁸ Ibid., para. 42.

³⁴⁹ Examples of such operations included: Operation Shop Window launched by MONUSCO with the aim of putting pressure on the armed groups, improving the protection of local populations, reinforcing contact with local populations, preventing armed groups from pursuing their operations and supporting the Government in its efforts to capture the perpetrators of the attacks in the areas where the attacks of 30 July to 2 August occurred (See: Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2010/512), 8 October 2010, para. 10 (Hereinafter "SG Report on MONUSCO, 8 October 2010")); Operation Usalama Wa Umma (Secure the People) conducted in North Kivu between 18 and 22 December 2011 jointly by MONUSCO FARDC in the areas of Kimua and Luvungi, on the border between Masisi and Walikale territories (Report of the Secretary-General on the United Nations

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short term measures to enhance PoC under imminent threat. This included the use of quick reaction forces and standing and mobile patrols around hotspots, and to protect the internally displaced persons camps and sites.³⁵⁰

These operations however were not sufficient to eliminate the threats against civilians or neutralize armed groups. In addition, military operations could cause displacement of civil populations, occasion violations against civilians by FARDC elements and reprisals from armed groups against innocent civilians. While supporting joint military operations (JMOs) with the FARDC, MONUSCO continued to implement the conditionality policy to address challenges of human rights violations by FARDC. Upon request of FARDC, MONUSCO screened and cleared a number of battalions in North Kivu tasked with holding areas from which FDLR and residual armed groups have been dislodged in the context of Operation Amani Leo.³⁵¹ The conditionality policy continued to be an important element of MONUSCO policy on the ground.³⁵² Neither MONUSCO nor FARDC were in a position to eliminate the different threats against civilians.

Toward the end of 2012, a new security challenge emerged in eastern Congo, with former rebel group CNDP, now under the name M23, consolidating control over significant parts of the North Kivu province. On 20 November 2012, after intense fighting involving the FARDC and MONUSCO, M23 occupied Goma where it remained until on 2 December 2012. In that context, attacks against civilians intensified and the humanitarian situation deteriorated significantly. Regional tensions were fueled by reports of active external support continuing to be provided to M23³⁵³. MONUSCO appeared unable and unwilling to face this armed group efficiently. This led to a regional initiative to back MONUSCO with an IB from countries of the region, with the aim of addressing illegal armed groups such as M23.³⁵⁴ The IB was authorized by the SC a part of MONUSCO with the mandate to protect civilians and contribute in the neutralization of armed groups.³⁵⁵ The IB conducted robust military operations in eastern Congo, notably against armed groups such as FDLR and M23, and backing the FARDC, while being under the overall command of MONUSCO. This facilitated the weakening of FDLR and the military defeat of M23 in November 2013.

Organization Stabilization Mission in the Democratic Republic of the Congo (S/2011/20), 17 January 2011 (Hereinafter “SG Report on MONUSCO on 17 January 2011”), para 6.); Operation Hatua Yamana (Formidable Reach) conducted jointly with FARDC in Walikale territory between 29 December 2010 and 7 January 2011 (SG Report on MONUSCO on 17 January 2011, op. cit., para 6.); Support given by MONUSCO between 6 and 15 February 2011, the FARDC operation Mapema Mupya (New Dawn) in the Kanyabayonga area in North Kivu, which was aimed at deterring armed group activity and enhancing the protection of civilians (Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 12 May 2011, UN doc: S/2011/298, para 14).

³⁵⁰ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, UN doc: S/2013/96, 15 February 2013 (Hereinafter “SG Report on MONUSCO, 15 February 2013”), para. 34.

³⁵¹ SG Report on MONUSCO, 8 October 2010, op. cit., para. 46-47. At one instance in June 2010, MONUSCO suspended its support to the FARDC 911th battalion in Orientale province owing to the serious and persistent human rights violations committed by some of its elements. Subsequently, 6 officers of concerned battalion had been arrested and transferred to the relevant judicial authorities.

³⁵² SG Report on MONUSCO on 17 January 2011, op. cit., para 43.

³⁵³ SG Report on MONUSCO, 15 February 2013, op. cit., para. 2.

³⁵⁴ As reported by the SG, these new developments led regional leaders, within the framework International Conference on the Great Lakes Region Regional Inter-Ministerial Committee, to act towards the sending of an international force made of regional troops to intervene against armed groups in DRC. Tanzania had previously offered to provide troops and a commander for such a force. At its extraordinary summit of 8 December 2012, held in Dar es Salaam, the Southern African Development Community (SADC) decided to deploy its standby force in the eastern Democratic Republic of the Congo within the framework of the proposed Neutral International Force. On 27 and 28 December, an AU consultative meeting on the security arrangements to be established in the eastern DRC, issued details on various options to be considered for establishing the Neutral International Force. Following consultations between UN secretariat and regional actors to harmonize the approaches between the role of the regional force and the MONUSCO, it was agreed that it will be an intervention brigade, and that it be working with MONUSCO under a unity of command, See: SG Report on MONUSCO, 15 February 2013, op. cit., paras. 31-33.

³⁵⁵ Resolution 2098 of 28 March 2013, para 12.

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The military defeat of M23 and the subsequent extension of State authority to liberated areas were highlighted as important achievements that had improved the security situation in many areas.³⁵⁶ However, despite this progress Congolese and foreign armed groups, including the Allied Democratic Forces (ADF), Forces démocratiques pour la libération du Rwanda (FDLR) and the many Mayi-Mayi groups continued to pose a threat to the civilian population and the overall stability and development of the eastern DRC.³⁵⁷

In December 2014, following another assessment of MONUCO, the SG noted that the IB remained an important tool in a broader strategy to end the recurrent cycles of violence in eastern DRC and the Great Lakes region.³⁵⁸ He underlined that JMOs with FARDC were more effective, as FARDC often had better intelligence and the capacity to hold areas freed from armed groups, and given that such operations increased national ownership and determination and contributed to preventing human rights violations by FARDC.³⁵⁹ He noted that such advantages notwithstanding, unilateral operations by MONUSCO were indispensable in cases where the Government fails to protect civilians under threat.³⁶⁰ Neutralization of armed groups continued to a high priority of MONUSCO. MONUSCO adopted a more robust posture, presence and profile, in particular against ADF and FDLR.³⁶¹ Starting from late December 2013, five important JMOs against armed groups were conducted with the Congolese armed forces. MONUSCO continued to provide critical logistical support to the armed forces.³⁶²

One of the challenges to the PoC in eastern Congo remained the incapacity of the FARDC to fulfill their mission professionally due to a number of weaknesses. In February 2013, the SG reported that “FARDC suffers from systemic weaknesses, which are compounded by an inadequate budget, as well as insufficient administrative and logistical systems, including weapons and ammunitions management. The fast-tracked integration of unvetted, armed-group elements into FARDC as part of peace settlements signed by the Government has resulted in the destabilization of its command and control structures and undermined its level of conduct and discipline. The continued grave human rights violations committed by some members of FARDC are also emblematic of its lack of professionalism. As a consequence, the operational performance of FARDC has not been that expected of a professional national army”.³⁶³

In his Special report of February 2013, the SG, noting the challenges posed by the continuous threat to civilians coming from armed groups and compounded by the incapacity of the FARDC to face such a challenge adequately, proposed a new approach to the role of MONUSCO³⁶⁴. He proposed that MONUSCO prioritize and streamline its activities in eastern Congo with the aim of contributing to the realization of 6 key objectives.³⁶⁵ Two of these objectives are directly related to the PoC : The first is

³⁵⁶ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo submitted pursuant to paragraph 39 of Security Council resolution 2147 (2014) (UN doc: S/2014/957), 30 December 2014 (Hereinafter “SG Report on MONUSCO, 30 December 2014”), para 15.

³⁵⁷ Ibid., para 16.

³⁵⁸ SG Report on MONUSCO, 30 December 2014..

³⁵⁹ Ibid., para 26.

³⁶⁰ Ibid., para 26.

³⁶¹ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2014/157), 5 March 2014, para 39.

³⁶² Ibid., para 40.

³⁶³ Special Report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes region (S/2013/119), 27 February 2013 (Hereinafter “SG Special Report on DRC and Great Lakes region, 27 February 2013”), para 12.

³⁶⁴ Ibid., para 67.

³⁶⁵ The 6 key objectives in question are : (a) the promotion and facilitation of inclusive and transparent political dialogue among all stakeholders with a view to furthering reconciliation and democratization; (b) the successful completion of military operations against foreign and Congolese armed groups and the reduction of the threat that they pose to a level that can be managed by national security authorities, in strict compliance with international humanitarian human rights and refugee law and the human rights due diligence policy on United Nations support to non-United Nations security forces; (c) the disarmament, demobilization, repatriation, reintegration (DDRR) and resettlement of foreign armed groups, and the disarmament, demobilization and

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the successful completion of military operations against foreign and Congolese armed groups and the reduction of the threat that they pose to a level that can be managed by national security authorities, in strict compliance with IHL, human rights and refugee law and the human rights due diligence policy on UN support to non-UN security forces. The second is the creation of a well-sustained, equipped, trained and vetted national rapid reaction force, within the broader objective of security sector reform, adequately trained in IHL, human rights and refugee law, and incorporating effective mechanisms to ensure the PoC in all of its operations, which would eventually have the capability of assuming security responsibilities from MONUSCO. The SG proposed that the mandate of MONUSCO should be reviewed to reflect the six key priorities outlined above.³⁶⁶ MONUSCO, while working on an exit strategy, keeps working on these priorities.

b.-Non-Military PoC Tools

MONUSCO continued to rely on a number of PoC tools other than the military operations. These include chiefly JPTs, investigations in human rights and early warning mechanisms/centers.

During 2010, in South Kivu, MONUSCO dispatched JPTs and/or human rights investigation teams to look into several reported attacks against civilians by armed groups and national security elements in Shabunda and Mwenga territories. MONUSCO increased staff from relevant components to participate in JPT, which enabled the Mission to field 47 JPT missions since my previous report.³⁶⁷ Through the OHCHR, MONUSCO established provincial-level senior management groups for protection in North and South Kivu, with the aim of enhancing early-warning capabilities and monitoring of the implementation of JPTs recommendations. These measures complemented the deployment of 46 community liaison interpreters in 35 strategic temporary and company operating bases in eastern DRC.³⁶⁸ MONUSCO continued to have recourse to JPTs to monitor potential threats to the civilian population to assess the situation in vulnerable areas and identify protection needs and mitigating measures.³⁶⁹

Another important aspect of MONUSCO work in PoC, is the development of alert systems and liaison with the communities. This involves EWCs in remote areas established in partnership with humanitarian NGOs assisting vulnerable communities.³⁷⁰ It developed alert systems through the recourse to community liaison assistants. For instance, MONUSCO deployed 82 community liaison assistants in Orientale Province and North Kivu between November 2012 and January 2013. It relied on local communities and humanitarian actors to alert assistants about attacks or threats, triggering a response from national security forces or MONUSCO.³⁷¹ MONUSCO had recourse to high-frequency transmitters in the Luvungi area, which was at the centre of the attacks of 30 July to 2 August 2010 and was exploring ways of improving radio communications and the possible use of mobile phones in areas where civilian protection is a particular concern.³⁷²

In 2014, MONUSCO reported of improved PoC tools including its early warning and response mechanisms at all Mission levels. Such improvement enabled immediate military responses from the

reintegration (DDR) of Congolese combatants, including the demobilization and reintegration of some elements within FARDC, and the start of a viable community-based reintegration process for former combatants; (d) the establishment of a minimum level of sustainable State authority and control in the conflict-affected areas in eastern DRC, most critically through the deployment of trained and equipped police and judicial and corrections officials, on the basis of a national vision and strategies for the security and justice sectors; (e) support for the establishment of an effective national civilian structure to control key mining activities and manage in an equitable manner the extraction and trade of natural resources in eastern Democratic Republic of the Congo; and (f) the creation of a well-sustained, equipped, trained and vetted national rapid reaction force, within the broader objective of security sector reform, adequately trained in international humanitarian, human rights and refugee law, and incorporating effective mechanisms to ensure the protection of civilians in all of its operations, which would eventually have the capability of assuming security responsibilities from MONUSCO.

³⁶⁶ SG Special Report on DRC and Great Lakes region, 27 February 2013, op. cit., paras 67-68.

³⁶⁷ SG Report on MONUSCO, 8 October 2010, para. 42

³⁶⁸ Ibid.

³⁶⁹ SG Report on MONUSCO on 17 January 2011, op. cit., para 31; Report on MONUSCO, 15 February 2013, op. cit., para. 35.

³⁷⁰ SG Report on MONUSCO of 8 October 2010, op. cit., para. 42.

³⁷¹ SG Report on MONUSCO, 15 February 2013, op. cit., para. 35.

³⁷² SG Report on MONUSCO, 8 October 2010, op. cit., para. 35.

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Mission to protect civilians from armed groups.³⁷³ In the locality of Beni, the UN police opened two free hotlines through which the population could contact the PNC.³⁷⁴ In some provinces, community protection committees were established to manage local protection plans aimed at improving preventive responses by MONUSCO and Congolese authorities.

Another tool is the investigation and the recording of human rights violations with a view to fighting against impunity. On 31 August 2010, OCHA cited information gathered in health centres by the territorial commission against sexual violence, reporting some 214 cases of rape in Shabunda territory and 74 in Mwenga territory. Also in South Kivu, with MONUSCO support, the Military Prosecutor opened an investigation into reports that 10 women had been raped by FARDC elements.³⁷⁵ A MONUSCO human rights investigation team found that some elements of the Congolese security forces to be responsible for human rights violations during and in the aftermath of the attack.³⁷⁶ MONUSCO and the UN system in the DRC provided support to the Commission established in 2010 by the government of DRC to enable bringing perpetrators of human rights violations to justice.³⁷⁷ The documentation of human rights violations, including those related to sexual violence was at the center of MONUSCO activities. In fact, the high incidence of rape and other acts of sexual violence throughout the DRC remained a matter of serious concern.³⁷⁸

MONUSCO undertook additional measures to enhance the PoC and support Congolese judicial efforts to hold perpetrators to account.³⁷⁹ Measures to enhance PoC included the development of new standard procedures for the Mission regarding the PoC.³⁸⁰ Also, MONUSCO's Senior Management Group (SMG) on Protection, which includes UNHCR, as protection cluster lead, and the OCHA, endorsed the establishment of community alert networks. Under this initiative, the distribution of some 300 mobile phones to community focal points was begun in 2010. MONUSCO and partners continued to work with the Government of the DRC to encourage the expansion of mobile phone network coverage throughout the country.³⁸¹ Further, MONUSCO, in cooperation with other stakeholders including humanitarian NGOs, developed its early warning systems in vulnerable areas, and distributed high-frequency radios in selected villages that lack mobile network coverage, notably in the Kivus. MONUSCO also deployed additional community liaison interpreters to cover five more locations in North Kivu.³⁸² Another positive development was the enhancement of coordination mechanisms, to improve civilian protection. Humanitarian partners of MONUSCO were integrated into the SMG on Protection and into the protection working groups at the provincial level. In addition, UN agencies, funds and programmes increasingly participated in JPTs and the follow-up of recommendations from these was improved.³⁸³ These are examples of tools MONUSCO has been using to implement its mandate on PoC. Related activities have not been sufficient in view of the enormity of the challenges in DRC.

The security challenges, the difficult humanitarian situation³⁸⁴, the absence of State authority in various parts of the country and the prevalence of armed groups³⁸⁵, in addition to the enormity of threats the

³⁷³ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2014/698), 25 September 2014, para 50.

³⁷⁴ Ibid., para 51.

³⁷⁵ SG Report on MONUSCO, 8 October 2010, op. cit., para. 13.

³⁷⁶ Ibid., para. 22.

³⁷⁷ Ibid., para. 9.

³⁷⁸ Ibid., para. 43.

³⁷⁹ SG Report on MONUSCO on 17 January 2011, op. cit., para 6.

³⁸⁰ Ibid., para., 39.

³⁸¹ Ibid., para. 40.

³⁸² Ibid., para. 41.

³⁸³ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2011/298), 12 May 2011, para 32.

³⁸⁴ As the SG reported in 2014, DRC remains a complex operating environment, with four competing emergencies, namely violence and armed conflict, malnutrition, epidemics and natural disasters. Seven million people are estimated to be in need of assistance throughout the country, including 5.2 million targeted in the 2015 Humanitarian Response Plan. Some 2.7 million people are internally displaced, mainly in North and South Kivu, Katanga and Orientale Province. While some internally displaced persons have returned to their areas of

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civilians are facing are amongst these challenges. The activities thus described illustrate that PoC is not a merely military task. The SG highlighted the importance of these dimensions of PoC. He stated that “Although the physical protection of civilians from violence remains important, added focus should be placed on protection through political and civilian processes, reconciliation efforts at the community level, and the establishment of a protective environment in close coordination with the UN country team and other protection actors.”³⁸⁶

origin, new displacements continue to occur owing to continued insecurity, SG Report on MONUSCO, 30 December 2014, op. cit., , para 34.

³⁸⁵ SG Report on MONUSCO, 8 October 2010, op. cit., para. 79.

³⁸⁶ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2014/956), 30 December 2014, para 45.

III.-Conclusions and Recommendations

This research, relying mainly on the UN documentation and practice as well as on academic and other sources, has retraced the genesis and history of the emergence of the PoC in armed conflict in the peace and security agenda of the UN, the SC in particular. It has shed light on the concept of PoC placing it into its legal and historic contexts, as well as its organizational framework, and clarifying the links it has with human rights and international peace and security. It also explained the rationale of its emergence as an issue of peace and security in the agenda of the SC in its role as the UN organ with primary responsibility for the maintenance of international peace and security. It has retraced the main historic steps and the major relevant events in the history of the UN, including the failures of the UN peacekeeping in Rwanda and Bosnia, and the lessons that the UN endeavored to draw from them. It has shown how these developments contributed and led to the emergence of the PoC as a main issue of international peace and security in the current history of international relations and as a major challenge for the international community, particularly the UN.

The study, while reminding that the SC has various tools to deal with the PoC as an issue of international peace and security, given the important powers it is invested with by the UN Charter, has singled out the tool of peacekeeping operations as one of the main instruments at the disposal of the UN to address the PoC in armed conflicts, as the main focus of the study. Therefore, the definition of peacekeeping and the review of its evolution, as well as the clarification of its role and its relation with the SC appeared as an important preliminary step not only for highlighting the importance of this important crisis management tool that the peace operations have become but also for understanding the rationale of the research, clarifying its object, and preparing the ground for the following developments.

The study is composed of an introduction, and two main chapters, followed by a section on conclusions and recommendations. The introduction outlined the aims of the research announcing its main parts in addition to introducing the context and clarifying some terms. The first Chapter is dedicated to the linkages between SC, Peacekeeping and the PoC. It explored the emergence and development of the PoC as an important issue of international peace and security. After clarifying the role and mandate of the SC and explaining the evolution of UN peacekeeping, it shed light on the history of the attempts to use this tool to face the need to protect civilians in armed conflict in the post-Cold war period, and lessons learned from the failures that characterized it. While so doing, the study focused on the main internal reflections conducted by the UN on such experiences and the conclusions to which they led. It showed how these conclusions were decisive in the emergence and development of a UN doctrine and policy on the PoC in armed conflict as an important issue of international peace and security.

The second section of Chapter I is dedicated to the evolution of the UN doctrine and policy on PoC since the emergence of this question in the agenda of the SC as a priority in the end of the 1990s, till to date. It relies primarily on the thematic resolutions and statements of the SC on the PoC, as well as to the regular reports of the SG on the matter, all of which constitute a valuable and indispensable source for understanding the evolution of the UN doctrine and policies on the matter while paying special attention to peace operations as a tool for the PoC. This permitted to conclude that while the UN has achieved important steps in defining a doctrine and strategy for the PoC as part of its peace and security mandate, many challenges remain on the ground, hindering the full achievement of the objectives pursued by said strategy.

Chapter II of the study focused with more detail on the role of the UN peace operations as a tool for the PoC and the practical use made of them by the SC to that effect. It is made of 3 sections. A first section gives a brief and general overview of the main trends that characterized the recourse to UN peace operations for the PoC since the entrusting of such mandate to UNAMSIL in Sierra Leone in 1999. It shows that the PoC has evolved in the mandates of the UN peace operations from a relatively secondary aspect of these mandates to a central element given priority, theoretically at least, of all other aspects of peace operations mandates, although some recent peace operations such as MINUSMA and MINUSCA did not follow this trend. This section also shows that the despite the announced prioritization of the PoC, achievements on the ground remained limited.

The second section is dedicated to the UN guidelines governing the use of peace operations for the PoC, particularly those that have been developed recently (2015) to fill the doctrinal and definitional gap that persisted for many years, despite the important developments that occurred in the UN doctrine

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and policy since 1999. In fact, these guidelines, developed mainly by the Secretariat (DPKO and DFS, notably) summarize the main policy objectives, principles and priorities of the UN policy in the use of peace operations as a tool for the PoC. They constitute a valuable tool for understanding the meaning of the notion of PoC within the UN and its implications for the UN peace operations and the various stakeholders including the UN member states, notably T/PCCs, and the humanitarian actors. The guidelines present PoC as a whole of mission task as opposed to being a purely military task, with the implications in the roles of military, police and civilian components of UN multidimensional peace operations. Their adoption in 2015, after years of UN practice on the ground and lessons learned, constitute a very welcome step that helps clarify a notion that has not always been well understood, including amongst the actors most involved in implementing it.

The third section is dedicated to a case study of the UN practice in the matter of the use of peace operations for the PoC, in one of the most representative illustrations of the evolution of UN doctrine and practice of PoC through peacekeeping: the case of the DRC, where the UN, beginning from 1999 has had multidimensional operation with PoC mandate (MONUC) which has evolved to become MONUSCO in 2010. These two peace operations are representative not only of the evolution of the use of peacekeeping for the PoC but also very illustrative of the achievements and challenges that can be expected from a UN peace operation in the field of the PoC, in a country where civilians have for many years been subject to many forms of threats to their security for years. A study of the historic and political contexts of MONUC and MONUSCO, their genesis, the evolution and implementation of their mandates, has enabled us to see how concretely the SC endeavors to use peace operations for the PoC, and what challenges this poses, in a way that enables to give a fuller picture of the UN action in this field. The choice of MONUC and MONUSCO in DRC, which have been a laboratory for the experimentation of what UN peace operations can do to protect civilians, confirmed the existence of huge challenges, despite the normative developments as well as the development of inventive tools for the PoC.

While the study could not cover with the same detail other peace operations as it was envisaged initially, due to time constraints and to the important amount of information to exploit, it has enabled to respond to the main questions that inspired this study. It has also been a great opportunity to understand better the implications of the PoC, and its conceptual differences with other kin concepts such as the R2P. Nonetheless, it remains limited in scope and in depth due to the abovementioned constraints.

Based on the conclusions of the various parts of this study, I believe that the following recommendations, if well implemented, could help the UN improve the performance of its peace operations in the PoC in areas of conflict where their services are needed:

1. All UN member States shall take the measures necessary to respect their obligations under IHL and human rights law to protect civilians within their jurisdiction without discrimination and to abstain from any actions that affect the rights of civilian population. States who have not ratified the relevant international instruments should ratify them and ensure their effective applicability, and those who are already party to such treaties should ensure they are given effect in their jurisdiction.
2. The UN must increase its attention to the need to protect human rights in general, ensure the PoC in armed conflict in particular, by giving them a real priority in practice. Permanent members of the SC should work for a consensus around the need to not use veto to prevent actions that aim at putting an end to the plight of civilians in armed conflict.
3. The UN, particularly the SC, should work towards the creation of proper military forces of the UN as stipulated by the article 43 and following, of the Charter, so as to ensure that the UN can respond decisively in case of need of military intervention to ensure security of civilians, and preventing armed groups involved in serious violations of human rights, from continuing to affect the civilians.
4. The SC should increase its efforts for ensuring that human rights are taken into account in all situations it is dealing with. It shall use its powers to hold accountable all those who violate the rights of civilians and subject them to violence, notably through targeted sanctions against individuals and groups directly involved.
5. The UN as a whole, the SC in particular, should fully implement the recommendations of the major reports of the panels of experts, relating to the improvement of the efficiency of peace keeping operations and the ensuring of more effective protection of civilians in armed conflict.

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6. All member States should share the burden of providing troops and police to the UN peace operations, by contributing with well equipped and trained troops. Members of the SC, particularly the permanent ones, shall take their primary responsibility in the field of peace and security seriously and contribute decisively to providing the UN with the means necessary to implement its policies of human rights protection and PoC, including through the provision of troops, police contingents and necessary equipment enabling the peace operations to fulfill their mandate efficiently.
7. The UN should engage serious dialogue with States where violations of human rights and IHL are occurring or about to occur on the need to prevent and redress such violations, and on the responsibility of all competent authorities, including state organs, and political or military groups, to ensure compliance with their international obligations. This should be high level political dialogue focused on the commitments of concerned parties and the need for the UN as custodian of the international standards at stake to ensure its responsibility to protect in case the authorities are unwilling or unable to fulfil their role.
8. All armed groups and political movements fighting for some political objectives or any other reasons should endeavor to fully rest their obligations under IHL and Human Rights law.
9. The UN Secretary General should increase the effectiveness of his leadership role to convince the member States and the SC and GA on the need to have the means needed to act decisively to ensure the implementation of the UN decisions and policies regarding the PoC, and work on proposing concrete and well-studied measures to that effect.
10. The UN agencies and bodies should all coordinate their efforts for the PoC and take measures to ensure their staff are well aware of the importance of the respect of human rights and the effective implementation of the UN Rights Up front initiative.
11. The Civil and military leaders of the UN peace operations should be provided with the means they need to ensure protection of civilians on the ground, and be held responsible for any failures to that effect. TCCs should train their contingents in IHL and human rights, provide them with the needed equipment and abstain from interfering in the orders and defectively given through the UN proper chains of command. They also should exercise with loyalty to the principles of the organization, report candidly on the realities ground and exercise initiative and leadership.
12. UN troops involved in sexual abuse and exploitation or any other violations of human rights and IHL should be held efficiently responsible for their acts, through more swift means of accountability offering the guarantees of fair trial and the expediency needed.
13. The UN staff and troops, in the headquarters and in the grounds should be regularly made aware of the UN guidelines and rules governing the protection of human rights of civilian populations, through training and sensitization, and made aware of their role of responsibilities on this ground. They must be loyal to the principles of the organization and respect human rights in all circumstances.
14. The UN SG should come up with all initiatives he deems necessary to increase the efficiency of the PoC on the ground, including measures aiming at the protection of whistleblowers while ensuring safeguards against any possible use of such mechanisms by potential whistleblowers.
15. The UN should systematically draw the lessons of their actions on the ground with respect to the PoC, and use them to improve the performance of their peace operations everywhere, and ensure the dissemination of such information to all stakeholders.
16. The UN shall engage serious discussions and establish collaboration with the members States directly, and through regional organizations, on the ways to ensure better PoC in zones of crisis and strife, in a synergistic way.
17. The UN should invest more in the prevention of violations of the human rights of civilians, through a clear and ambitious policy and programme of action, endowed with the means necessary, from the regular budget of the Organization.
18. The UN should take into account the needs of specific and vulnerable groups in all its interventions aiming at the protection of civilians, including the needs of women, children, IDPs, refugees, undocumented people, people with disabilities, and any marginalized groups in each context.
19. The UN should not shy away from naming and shaming the States, groups and individuals involved in actions that may lead to serious violations of human rights or involved in such violations.
20. The UN should work for increasingly the efficiency of its human rights programme with the aim of increasing the culture of compliance with IHL and human rights obligations amongst the State members.

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21. The UN should increase the coordination amongst its components to ensure better protection of human rights within the States and prevent and redress violations of Human Rights. In this context, the OHCHR and UN agencies forming parts of the UNCTs, should direct their staff in these countries to report professionally and candidly about the human rights situations in the countries of their deployment.
22. The GA should increase the budgetary funds of the UN dedicated to peacekeeping operations and protection of human rights, ensuring that all States contribute meaningfully to the efforts to prevent and redress human rights violations.
23. The UN should increase the efficiency of its justice support programmes within the countries, to make sure they yield into concrete results in terms of truly increasing the efficiency of justice systems in these countries, by holding all stakeholders accountable for the results, and pursuing a more truly results based human rights based approaches, in the most concrete way possible.
24. The UN should engage more efficiently with States on the need to strengthen governance systems in accordance with internationally agreed on standards, notably in relation to respect of human rights of all people without discrimination, to fight corruption in all its forms and to strengthen democratic mechanisms in a way that ensures sharing of power, true self-determination for all people within the States without discrimination, and with justice and equality.
25. The UN should make full use all other tools that can complement the role of the UN peace operations to ensure the respect of human rights of civil populations and their protection from violence, including sanctions and other military measures, while ensuring synergy and constructive complementarity between the different tools.
26. With regard to the situation in the DRC, the UN should ensure that MONUSCO has all the means it needs to protect civilians, hold the DRC government and the armed groups, accountable for their responsibility to PoC, while giving them all appropriate encouragement and support. The UN should be careful before withdrawing MONUSCO to ensure the foundations of sustainable peace are in place.

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