

Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN security forces

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Abstract

Mandates of United Nations (UN) peacekeeping missions increasingly include stabilisation and peace enforcement components, which imply a proactive use of force often carried out by national, regional or multinational non-UN partners, operating either in support of or with the support of the UN, acting as ‘proxies’. This article analyses the legal, policy and perception/security implications of different types of ‘peace operations by proxy’ and the additional challenges that such operations create for humanitarian action. It suggests some mitigating measures, including opportunities offered by the UN Human Rights Due Diligence Policy, for a more coherent approach to the protection of civilians, but also acknowledges some of the limitations to an independent UN-led humanitarian action.

Keywords: United Nations, peacekeeping, peace enforcement, stabilisation, humanitarian action, humanitarian principles, Human Rights Due Diligence Policy for UN support to non-UN security forces, protection of civilians.



Introduction

On 25 April 2013, the United Nations (UN) Security Council unanimously adopted Resolution 2100 establishing a 12,600-strong UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA) and authorising in parallel French troops to intervene in support of the mission. The complexity of the task ahead was illustrated by the declaration of the foreign minister of Mali, who welcomed the peacekeeping mission as ‘an important step in a process to stem the activities of terrorist and rebel groups’. He added, ‘this mission . . . will be concentrated, amongst other things, on stabilising the main urban centres in the North, restoring the authority of the state . . . the protection of civilians, the promotion and protection of human rights as well as humanitarian assistance’.¹

This UN peacekeeping mission epitomises many of the challenges faced by the conflict management tool that is peacekeeping, which has grown in size and complexity in response to the changing nature of conflicts. UN peacekeeping evolved from mostly small unarmed military observer missions on a ceasefire line between two states to what are now ‘multidimensional peacekeeping’ and ‘stabilisation’ operations. These include large military, police and civilian components and are now often given all-encompassing mandates – including, among other things, the protection of civilians under imminent threat and the provision of security for the delivery of humanitarian aid. Mandates of UN peacekeeping missions have also increasingly included strong stabilisation and peace enforcement components. These imply a more robust and proactive use of force under Chapter VII of the UN Charter, carried out by national, regional or multinational non-UN partners, operating either in support of or with the support of the UN mission. Modern UN-mandated peace operations are resolutely more robust than those of the past, with an increased resort to partners acting as ‘proxies’ in delivering the offensive part of the mandate.

The tension between peacekeeping and humanitarian action is not new, and the benefits and risks of UN integration for humanitarian space have been debated for years.² However, the growing number of UN peacekeeping operations with stabilisation mandates and the increasing tendency of UN peacekeepers

1 ‘UN Security Council approves creation of Mali peacekeeping force’, in *Reuters*, 25 April 2013, available at: www.reuters.com/article/2013/04/25/us-mali-crisis-un-idUSBRE93O0R420130425. All internet references were last accessed in January 2014.

2 See Espen Barth Eide, Anja Therese Kaspersen, Randolph Kent and Karen von Hippel, *Report on Integrated Missions: Practical Perspectives and Recommendations – Independent Study for the Expanded UN ECHA Core Group*, May 2005; and more recently Victoria Metcalfe, Alison Giffen and Samir

to work in partnerships with non-UN security forces call for the revisiting of this complex relationship.

The first part of the article offers a typology of the different types of 'peace operations by proxy' that have emerged in recent years, and the context in which they have developed. These partnerships take the form of UN engagement alongside, or in support of, non-UN regional forces, and in support of the national security forces of the host state. In the second part, we analyse the legal, policy and perception/security implications of these different partnerships and the additional challenges they create for humanitarian action. The third part of the paper explores ways to mitigate some of the tensions that these peacekeeping evolutions create for humanitarian action. It focuses on the Human Rights Due Diligence Policy on UN support to non-UN security forces made public in March 2013, which could become the basis for a more coherent UN approach to the protection of civilians (PoC), but it also acknowledges some of the limitations to an independent UN-led humanitarian action due to the eminently political nature of the world body.

Typology of increased UN peacekeeping engagement by proxy

Principles and evolving practice of the use of force in UN peacekeeping

Although peacekeeping is not mentioned as such in the UN Charter, it has become one of the most essential conflict resolution tools in the UN toolbox. What distinguishes UN peacekeeping from other bilateral or multilateral peace operations – beyond the universal membership of the organisation – are three prescribed basic principles: (1) the consent of the parties – host government and/or parties to the conflict; (2) impartiality; and (3) non-use of force except in self-defence and defence of the mandate.³ Another unique feature of UN peacekeeping is its multidimensional approach – bringing together military and civilians, with increasingly complex mandates combining political, security, protection, rule of law and human rights efforts.⁴

But while these basic principles are largely seen as the basis for the legitimacy, credibility and security of UN peacekeepers and the overall success of the operation, they have also been challenged by the evolving practice. UN peacekeepers have been deployed in increasingly complex and dangerous theatres where the consent of the parties to the conflict is tenuous at best and easily reversed, and where they may be expected to carry out robust action against

Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, Overseas Development Institute, December 2011.

3 UN Department of Peacekeeping Operations and Department of Field Support (DPKO/DFS), *UN Peacekeeping Operations: Principles and Guidelines (Capstone Doctrine)*, 2008.

4 This multidimensional approach to peacekeeping was formally endorsed by the Security Council in Resolution 2086 of 21 January 2013, which lists ten broad tasks that peacekeeping missions can be mandated with and 'calls upon the Secretary-General to take all measures deemed necessary to strengthen UN field security arrangements and improve the safety and security of all military contingents, police officers, military observers and, especially, unarmed personnel'.

'spoilers' – broadly defined as illegal armed elements that have stayed out of (or left) a peace process and represent a threat to the state and/or civilian population⁵ – or to protect civilians under imminent threat. Although the concept of 'robust peacekeeping' that emerged after the peacekeeping failures of the 1990s is not a new one and was first mentioned in the Brahimi Report,⁶ it was brought back to the forefront in 2008–2010.⁷ The term 'effective' peacekeeping is now generally preferred by troop-contributing countries – many of whom have generally been reluctant to embrace robustness, as it is more likely to result in the loss of peacekeepers' lives⁸ – but the fundamental tension between the use of force and respect for UN peacekeeping principles remains.

The Security Council opened a new chapter in this debate when it authorised, in March 2013, the deployment of a UN Intervention Brigade in the eastern Democratic Republic of the Congo (DRC). This unit was allowed to use offensive combat operations to 'neutralise and disarm' Congolese rebel groups,⁹ in particular the M23 rebels who had temporarily taken over the city of Goma in November 2012 in spite of the presence of about 1,500 UN peacekeepers.¹⁰ The Intervention Brigade is composed of about 3,000 troops from Tanzania, South Africa and Malawi, deployed for one year within the existing UN Stabilisation Mission in the DRC (MONUSCO). But many in the UN Secretariat and among member states are still reluctant to go that route. This was illustrated by the fact that Resolution 2098 was agreed upon 'on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping'. In the same vein, the subsequent Resolution 2100 establishing the MINUSMA clearly restated in its preamble the above-mentioned basic principles of peacekeeping, including the prohibition to use force except in self-defence or defence of the mandate.¹¹ This was done with the intention of clearly distinguishing UN peacekeeping – even when called a 'stabilisation mission' – from peace enforcement and offensive military action that others may be more willing and better suited to undertake, be they national, regional or multinational forces.

5 For example, the International Conference on the Great Lakes Region (ICGLR), a sub-regional organisation, has termed the armed groups FDLR and M23 as 'negative forces' in part to justify coordinated military efforts against these armed groups operating in the eastern Democratic Republic of the Congo. See ICGLR, 'Press release on the 4th ICGLR extraordinary summit on DRC to take place in Kampala', available at: www.icglr.org/index.php/en/press-releases/98-media-center/press-releases/231-4th-icglr-extraordinary-summit-on-drc-to-take-place-in-kampala.

6 Report of the Panel on United Nations Peace Operations (Brahimi Report), UN Doc. A/55/305-S/2000/809, 21 August 2000.

7 See Bruce Jones *et al.*, *Robust Peacekeeping: The Politics of Force*, Center on International Cooperation, 2010.

8 These reluctant states have generally been the traditional troop-contributing countries – such as Pakistan and Guatemala, who initially opposed the creation of the Intervention Brigade within MONUSCO – but also include Western troop-contributing countries that have robust capacities but are wary of public reaction to the loss of troops serving within peacekeeping operations.

9 SC Res. 2098, 29 March 2013.

10 See Arthur Boutellis, 'Will MONUSCO fall with Goma?', in *Global Observatory*, 3 December 2012, available at: <http://theglobalobservatory.org/analysis/394-will-monusco-fall-with-goma.html>.

11 SC Res. 2100, 25 April 2013.

Indeed, the Intervention Brigade remains an exception to the trend and UN peacekeepers remain unlikely to engage in offensive military operations and peace enforcement. Instead, and because of the complex and dangerous environments in which it operates, but also because of pressures from host governments (to keep rebel forces at bay, for example), the UN has found itself increasingly engaging in what could be called 'peace operations by proxy' – that is, UN peacekeepers partnering with national or regional non-UN security forces that are themselves involved in offensive military operations. These partnerships can be broken down into two broad categories, which are not mutually exclusive: (1) non-UN forces operating in support of UN forces; and (2) UN peacekeepers providing support to non-UN forces.

Non-UN forces operating in support of UN peacekeepers

This first type of peacekeeping partnership involves non-UN forces operating in support of UN forces, in a more or less formalised manner. For example, Resolution 2100 states that it:

Authorises French troops, within the limits of their capacities and areas of deployment, to use all necessary means, from the commencement of the activities of MINUSMA until the end of MINUSMA's mandate as authorised in this resolution, to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General.¹²

While many welcomed the presence of 1,000 French troops alongside the UN mission given the security threat posed by terrorists and affiliated groups, some have expressed concerns about the risks of being too closely associated with a counter-insurgency-type military operation, fearing that it would expose UN staff, including staff from humanitarian agencies, to reprisals. Yet this reflects a more general trend towards these so-called 'parallel' deployments of UN and (robust) national or regional non-UN forces – such as from the European Union (EU) – from the DRC to Chad and Côte d'Ivoire.¹³

While the North Atlantic Treaty Organisation (NATO) deployed larger peace operations in the Balkans and Afghanistan – the latter now drawing down – that were also authorised by the UN Security Council with an expectation of 'cooperation, coordination and mutual support' between both organisations,¹⁴

12 *Ibid.*, para. 18.

13 The French *Licorne* military forces deployed alongside the UN Operation in Côte d'Ivoire (UNOCI) played a critical role in the final days of the post-election crisis in April 2011. Before that, in the DRC, the UN called on a French-led EU Interim Emergency Multinational Force (IEMF) – 'Operation Artemis' – to restore security in Bunia and its surrounding areas in June 2003 (authorised under Resolution 1484). The IEMF was authorised for three months to open the way for the deployment of a larger and more robust UN 'Ituri brigade' equipped with attack helicopters and armoured personnel carriers. Although generally seen as a 'bridging mission', the authorisation of the European Union Force (EUFOR) for one year in support of the initial UN multidimensional Mission in the Central African Republic and Chad (MINURCAT) could also be considered a case of parallel deployment (SC Res. 1778, 25 September 2007).

14 SC Res. 2096, 19 March 2013.

the above-mentioned ‘parallel’ forces differ by their smaller size and the fact that they do not carry out large-scale combat operations. Although the presence of such troops may be the result of a bilateral agreement with the host government, they are also expected to coordinate and provide some support (mostly related to security) to the UN mission on the ground and to report on such activities.¹⁵ These ‘parallel’ forces differ, however, from hybrid operations such as the Africa Union–UN Hybrid Operation in Darfur (UNAMID), in that the former retain their own chains of command and rules of engagement (that is, they do not respond to the UN force commander) in order to ‘maintain the highest degree of operational autonomy possible, even where they are cooperating extremely closely’.¹⁶

While the UN has got better at developing joint assessments and planning processes as well as more effective coordination mechanisms and interoperability with non-UN organisations such as the EU, having multiple organisations running parallel operations on the ground with different chains of command and rules of engagement continues to create immense challenges. Furthermore, such ‘parallel’ deployments between UN and non-UN forces often do not guarantee the impartiality that the UN strives for, particularly when these forces carry out joint patrols and are ‘collocated’ in some of the same locations. This becomes even more of an issue when the UN is providing support to these regional or national non-UN forces engaged in combat operations, as is increasingly the case in practice.

UN providing support to non-UN forces

The post-Cold War international context has seen two main evolutions with major implications for UN peacekeeping that help to explain its growing tendency to engage in ‘peace operations by proxy’. First, the bulk of UN peacekeeping has shifted from mostly small missions monitoring ceasefires in inter-state conflicts in the Middle East to a large number of multidimensional missions dealing with intra-state conflicts and civil wars in Africa. Second, after a short-lived attempt at autonomous regional peace enforcement in Africa by the Economic Community of West African States (ECOWAS) in the 1990s in Liberia and Sierra Leone, regional African peacekeeping has re-emerged after the creation of the African Union (AU) in 2003.¹⁷

15 See, for instance, the initial UNOCI mandate under Resolution 1528 (2004), which authorises the French *Licorne* forces stationed in Côte d’Ivoire ‘to use all necessary means in order to support UNOCI in accordance with the agreement to be reached between UNOCI and the French authorities, and in particular to: – Contribute to the general security of the area of activity of the international forces, – Intervene at the request of UNOCI in support of its elements whose security may be threatened, – Intervene against belligerent actions, if the security conditions so require, outside the areas directly controlled by UNOCI, – Help to protect civilians, in the deployment areas of their units; – Requests France to continue to report to it periodically on all aspects of its mandate in Côte d’Ivoire’.

16 Richard Gowan and Jake Sherman, *Peace Operations Partnerships: Complex but Necessary Cooperation*, ZIF (Center for International Peace Operations), March 2012, p. 2

17 The AU has deployed three major peacekeeping missions to date, in Burundi (AMIB, 2003), Sudan/Darfur (AMIS, 2004), and Somalia (AMISOM, 2007), as well as other smaller electoral observation and support missions.

The first shift is responsible for about 80% of UN peacekeepers currently being deployed in Africa, but it has also resulted in an increased focus of UN missions on state- and institution-building as part of (early) peacebuilding and stabilisation efforts.¹⁸ The ‘extension of state authority’ has become a core function of peacekeeping.¹⁹ Such mandates generally imply the development and reform of the national security forces – army and police – of the host country, to enable peacekeepers to hand over security responsibilities as a key benchmark for the withdrawal of the UN mission. In a few cases, the UN has provided assistance to domestic military operations by the national army of the host country: the UN mission in the DRC (MONUC/MONUSCO)²⁰ providing fuel, food rations, transport, and tactical support to units from the Congolese army conducting operations against rebel groups, for example, or the UN mission in South Sudan (UNMISS) airlifting South Sudanese army soldiers and providing fuel to Sudan People’s Liberation Army’s helicopters.²¹ This presents a dual challenge, however, as these national forces may commit human rights violations, but also because it may more generally affect the perception of UN peacekeepers’ impartiality, as we shall see later in this article. Yet the UN mission, which is mandated to support the development of national institutions and whose continued presence depends on the host country’s consent, may find itself in a difficult position when asked by national authorities – which hold the primary responsibility to protect their own populations but often lack the means to do so – for such support.

The second shift and the emergence of the AU as a major peacekeeping actor on the continent are the result of a recognition that no single actor can effectively address the entire peacekeeping burden in Africa, but also that the AU has some comparative advantages over the UN in certain African contexts. On the one side, the AU and African troops can add political legitimacy and leverage to a peace operation, particularly when the host government may not welcome a UN presence. For instance, Khartoum initially opposed a UN deployment in Darfur, which eventually led to the deployment of the hybrid AU–UN mission UNAMID instead. On the other side, the AU has shown greater willingness to undertake peace enforcement missions that the UN and its troop-contributing countries would be reluctant to undertake based on the UN peacekeeping basic principles. There is also

18 The 2009 UN DPKO/DFS non-paper *A New Partnership Agenda* (New Horizon) first made reference to peacekeepers as ‘early peace builders’. Later in June 2011, the DPKO/DFS produced an ‘Early Peacebuilding Strategy’ that is meant to provide guidance to UN peacekeepers on prioritising, sequencing and planning critical early peacebuilding tasks (broadly defined as ‘those that advance the peace process or political objectives of a mission, ensure security and/or lay the foundation for longer-term institution-building’).

19 Jake Sherman, ‘Peacekeeping and Support for State Sovereignty’, in *Annual Review of Global Peace Operations 2012*, Center on International Cooperation, p. 12.

20 MONUSCO was created by UN Security Council Resolution 1925 of 28 May 2010 and is the successor to MONUC, with an expanded ‘stabilisation’ mandate.

21 Jort Hemmer, ‘We are laying the groundwork for our own failure: the UN Mission in South Sudan and its civilian protection strategy – an early assessment’, CRU Policy Brief No. 25, Clingendael Institute, January 2013.

a sense that the UN and its troop-contributing countries could not politically sustain the kind of casualties that AU troops have sustained in Somalia.²² However, because of the limited financial and logistical means of the AU, the UN and other partners have provided increasingly comprehensive logistical and financial support packages to some AU-led peace operations. The most extensive such support package has been provided to the AU Mission in Somalia (AMISOM), which has since late 2009 been supported under the UN peacekeeping budget covering most logistical and equipment costs (while the EU has continued paying for AU troop allowances).²³

To sum up, the recent tendency of UN peacekeeping to take on stabilisation mandates has resulted in the three concomitant evolutions described above: (1) UN peacekeepers themselves engaging in more robust peacekeeping (such as the Intervention Brigade in the DRC), which remains the exception; (2) non-UN forces operating in support of UN peacekeepers (such as in Mali); and (3) the UN providing support to non-UN forces (Somalia, the DRC). While all three call into question the principle of impartiality of peacekeeping missions, they also have very different implications depending on the context, the nature of the partnerships (the UN acting in support of a non-UN force or vice versa), and the regional and national security forces at stake.

Implications of UN support to non-UN security forces for humanitarian action

The evolution of UN peacekeeping in the last two decades has coincided with a growing involvement of UN entities in humanitarian action – including in key roles of leadership and coordination²⁴ – and with peacekeeping mandates that increasingly include the protection of civilians, under the impulsion of the Security Council. The present section will examine the implications for humanitarian action of ‘peace operations by proxy’ in terms of legal responsibility and policy coherence as well as perception and security.

- 22 UN Deputy Secretary-General Jan Eliasson suggested in a 2013 press conference that as many as 3,000 AU peacekeepers have been killed in Somalia in recent years. See Louis Charbonneau, ‘Up to 3,000 African peacekeepers killed in Somalia since 2007’, in *Reuters*, 9 May 2013, available at: www.reuters.com/article/2013/05/09/us-somalia-peacekeepers-deaths-idUSBRE94812020130509. Conversely, only a dozen casualties in a UN peacekeeping context would likely trigger an investigation and lead to a reassessment of the mission.
- 23 See Arthur Boutellis and Paul Williams, *Peace Operations, the Africa Union, and the United Nations: Towards More Effective Partnerships*, International Peace Institute, April 2013.
- 24 UN General Assembly Resolution 46/182 of 1991 entrusted the world body with the task of improving the coherence and coordination of humanitarian action, through the creation of a Department of Humanitarian Affairs (that became OCHA in 1998) and the position of Emergency Relief Coordinator. This leadership and coordination role of the UN was further consolidated in 2005 with the ‘humanitarian reform’ that created the ‘cluster’ system to improve coordination by sector and that strengthened the role of UN Humanitarian Coordinators.

Legal implications

While the International Committee of the Red Cross (ICRC) has long contended that international humanitarian law (IHL) is applicable to multinational forces involved in peace operations,²⁵ whether under UN auspices or under UN command and control,²⁶ this position was disregarded for a long time. Opponents to the applicability of IHL to multinational forces argued that the latter could not be considered as a 'party' to a conflict in the sense of the 1949 Geneva Conventions. It was indeed claimed that, given the impartial and objective nature of the mandate received from the international community and aimed at restoring international peace and security, multinational forces could not be deemed a 'belligerent' as understood in IHL. However, the unprecedented involvement of peacekeepers in 'robust' combat operations during the 1990s truly opened the debate and led to the adoption of the Secretary-General's Bulletin on the Observance by UN Forces of International Humanitarian Law in 1999.²⁷ In the words of the former principal legal officer of the UN's Office of Legal Affairs, the bulletin 'concluded the debate over the principle of applicability of international humanitarian law to UN peacekeeping operations'.²⁸ Although there are still disagreements as to the threshold triggering the applicability of IHL and its scope of application,²⁹ it is broadly recognised today that UN peacekeepers become a party to the conflict – and thus bound by IHL as such – when they directly participate in hostilities.³⁰ This applied, for instance, when MONUSCO's helicopter attacks targeted M23 rebels in 2012, in support to the Congolese armed forces.³¹

But what does it tell us about the legal responsibility of the UN for a specific violation of IHL committed by non-UN security forces when a peacekeeping mission provides administrative, logistical, or even tactical support, but does not commit the specific violation itself? First, Article 1(3) of the UN Charter states that one of the purposes of the world body is 'to achieve international co-operation . . . in

25 Jakob Kellenberger, former president of the ICRC, clearly stated that: 'It has always been the ICRC's view that peace forces must observe [IHL] when conditions for its applicability are met.' See Jakob Kellenberger, 'Keynote address at the 31st round table on current issues of international humanitarian law', International Institute of Humanitarian Law, San Remo, 4 September 2008, available at: www.icrc.org/eng/resources/documents/statement/peace-operations-statement-040908.htm.

26 Forces under UN command and control are usually referred to as 'blue helmets' and operate in the framework of a UN peacekeeping or peace enforcement operation, as opposed to multinational operations 'under UN auspices' which are mandated by a Security Council resolution but are under national or regional command. Examples of the latter include the French-led Operation Serval in Mali, mandated by SC Res. 2100 of 25 April 2013, and the NATO-led International Security Assistance Force in Afghanistan, mandated by SC Res. 1386 of 20 December 2001.

27 Secretary-General Bulletin, *Observance by United Nations Forces of International Humanitarian Law*, UN Doc. ST/SGB/1999/13, 6 August 1999.

28 Daphna Shrager, 'The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law: a decade later', in *Israel Yearbook on Human Rights*, Vol. 39, 2009, p. 357.

29 An issue addressed at length in other articles in the present issue of the *Review*.

30 D. Shrager, above note 28, recognises this assertion in her discussion of the threshold and scope of application of IHL.

31 Reuters, 'U.N. helicopters strike rebel posts in Congo', in *New York Times*, 18 November 2012, p. 8.

promoting and encouraging respect for human rights and for fundamental freedoms for all'. Support to national or regional forces committing IHL or human rights violations would be in contradiction with this very purpose. Second, such support could arguably render the UN complicit in violating international law and could engage the international responsibility of the organisation. The International Law Commission indeed considers that an international organisation is internationally responsible when it aids or assists a state or another international organisation – including regional bodies like the AU or NATO – in the commission of a wrongful act if '(a) the organisation does so with the knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that organisation'.³² As for the latter condition, it is generally agreed today that a violation of IHL – by which UN peacekeepers are bound, as discussed above, when they directly participate in hostilities – could be considered an internationally wrongful act triggering the responsibility of the international organisation.³³ The former condition, however, requires that the international organisation must have had the knowledge of the circumstances of the international wrongful act, an element that is inherently circumstantial and that depends on the nature of the relationship between the UN and the non-UN security force. Notwithstanding the high threshold established by the International Law Commission, it is worth noting that the UN itself – in its commentaries on an earlier version of the Draft Articles on the Responsibility of International Organisations – referred to the support provided by its mission in the DRC (then MONUC) to this country's armed forces as a potential case of aiding and assisting in the commission of a wrongful act.³⁴ Therefore, while it is debatable that the UN would be held responsible for a wrongful act committed by French forces in Mali – where they conduct military operations largely autonomously from MINUSMA, despite being mandated to support it – it is not unreasonable to argue the UN could be held responsible for wrongful acts committed by forces it directly supports, such as AMISOM in Somalia.

Although it is arguable that UN support to non-UN security forces could engage the international legal responsibility of the organisation in certain circumstances, this debate remains largely theoretical due to the lack of enforcement mechanisms and judicial remedies. Indeed, in practice the policy implications and the impact in terms of perception and security of such association to non-UN security forces have played a much greater role in shaping new UN policies in that respect.

32 See Art. 14 of the Draft Articles on the Responsibility of International Organisations, adopted by the International Law Commission at its 63rd session in 2011 and submitted to the UN General Assembly as a part of the Commission's report covering the work of that session (A/66/10), available at: http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf.

33 A situation covered by Art. 7 of the Draft Articles on the Responsibility of International Organisations, above note 32. This article covers 'Conduct of organs of a State or organs or agents of an international organisation placed at the disposal of another international organisation', which requires that the latter organisation exercise effective control over the conduct in question.

34 See UN Comments to the Draft Articles on the Responsibility of International Organisations, UN Doc. A/CN.4/637/Add.1, 17 February 2011, Comments to Draft Article 13, p. 18.

Policy implications

On the policy front, the increased tendency of the UN to rely on and support non-UN security forces in the implementation of its peace operation activities has implications in relation to the protection of civilians and to humanitarian action in general, based on the principles of impartiality, independence and neutrality.

Concerning the protection of civilians – a component increasingly included in the mandate of UN peacekeeping missions since 1999³⁵ – contradictions between the stated mandate of a UN mission and its implementation are quite obvious when the UN supports security forces directly responsible for widespread abuses against civilians. This was the case in 2009 when MONUC provided support to and engaged in joint operations with the Congolese armed forces (FARDC)³⁶ and, to a lesser extent, in Somalia when the UN-supported AMISOM forces retaliated to attacks by indiscriminately shelling urban areas and substantially endangering civilians.³⁷

Beyond the consequences linked to the immediate behaviour of non-UN security forces, there are more subtle policy implications related to the overarching objectives of UN support to non-UN forces. As previously discussed, this growing trend is concomitant with the increasing involvement of the UN in ‘stabilisation’ operations. Proponents of this approach argue that the objectives of stabilisation are, both in the short and long term, to protect civilians through immediate physical protection and by building an environment conducive to the respect of civilians through better governance, rule of law and sustainable peace. This is made explicit in the PoC strategy of MONUSCO, an entire pillar of which is based on the UN stabilisation strategy for the eastern DRC and aims to extend state authority in that volatile part of the country, including by providing support to the government’s security forces.³⁸ Yet, when it comes to protecting civilians, it presupposes that said security forces, which engage in combat operations, will strictly abide by IHL and take the utmost care to protect civilians in their conduct of hostilities. MONUSCO’s PoC strategy had identified this risk by warning that the mission ‘may need to modulate its support to the FARDC based on the latter’s behaviour and respect of IHL and human rights law’.³⁹

More fundamentally, this type of approach that aims to extend the state’s authority through support to its security forces both to bring stability and protect civilians introduces an element of partiality in apparent contradiction with the

35 The Security Council first recognised the connection between the protection of civilians in armed conflict and its mandate to maintain international peace and security in a Presidential Statement adopted on 12 February 1999 (S/PRST/1999/6) that was followed by its first thematic resolution on the protection of civilians (SC Res. 1265, 17 September 1999). For more information on the role of the Security Council in the protection of civilians, see Security Council Report, *Cross-Cutting Report on the Protection of Civilians in Armed Conflict*, 31 May 2012, available at: www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202012.pdf.

36 Human Rights Watch, *You Will Be Punished: Attacks on Civilians in Eastern Congo*, December 2009.

37 Human Rights Watch, *You Don’t Know Who to Blame: War Crimes in Somalia*, August 2011, pp. 16–18.

38 MONUSCO, UN System-Wide Strategy for the Protection of Civilians in the Democratic Republic of Congo, January 2010, para. 13 (on file with the authors).

39 *Ibid.*, para. 21.

impartiality required from humanitarian actors as per the widely respected Professional Standards for Protection Work developed by the ICRC.⁴⁰ From the DRC to Somalia and from Afghanistan to Mali, some authors have observed that ‘the UN openly relinquished any pretence of neutrality or impartiality, even though it lacks the requisite resources and structures to play a comprehensive or clearly strategic stabilisation role’.⁴¹ In other words, stabilisation mandates result in the UN giving up the impartiality expected from a protection actor while it usually fails to achieve the positive outcomes that successful stabilisation efforts are expected to have on civilian protection, for lack of the required resources and structures.

The lack of neutrality and impartiality of UN missions mandated to support non-UN security forces engaged in conflict also has obvious policy implications for broader humanitarian action. More often than not, this support is a modality of stabilisation efforts that tend to subsume humanitarian action into broader political objectives. In the context of a UN integrated mission – which brings all the different spheres of activities of the UN under the political leadership of the Special Representative of the Secretary-General (SRSG) and has been the norm in conflict and post-conflict settings since the UN Secretary-General’s Decision No. 2008/24⁴² – it can result in humanitarian preoccupations being sacrificed on the altar of political expediency. This was the case in the DRC in 2009, for instance, when the ‘protection cluster’, gathering a number of humanitarian agencies engaged in protection activities, officially complained to the SRSG, Alan Doss, that the latest report of the Secretary-General to the Security Council on MONUC represented an ‘inaccurate picture of the humanitarian situation’ in the country.⁴³ Similar concerns were reported around the same time in Somalia, where the SRSG, Ahmedou Ould-Abdallah, wanted humanitarian aid to be channelled through the Transitional Federal Government in order to legitimise it,⁴⁴ and could very well resurface in Mali in the context of the UN integrated stabilisation mission. As illustrated in these examples, a complex relationship exists between humanitarian action and political imperatives. Humanitarian action can at times serve broader political objectives, as in the Somalia case, by demonstrating the tangible and quick impact of a peace operation. Conversely, it can also contradict the dominant political narrative that wants to present the context in which a peace operation is deployed under a favourable light, as in the DRC case. In either instance, submitting humanitarian action to political objectives risks distracting

40 Standard 19 of the ICRC’s *Professional Standards for Protection Work* states: ‘A protection actor must be consistent and impartial when making reference to, or urging respect for the letter or spirit of relevant law, as applied to various parties to an armed conflict.’ ICRC, *Professional Standards for Protection Work*, October 2009, p. 39.

41 Sarah Collinson, Samir Elhawary and Robert Muggah, ‘States of fragility: stabilisation and its implications for humanitarian action’, in *Disasters*, Vol. 34, Supplement 3, October 2010, p. 290.

42 UN Secretary-General, Decision No. 2008/24 – Integration, 26 June 2008.

43 Human Rights Watch, above note 36, p. 153.

44 Ken Menkhaus, ‘Stabilisation and humanitarian access in a collapsed state: the Somali case’, in *Disasters*, Vol. 34, Supplement 3, October 2010, p. 334, available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7717.2010.01204.x/pdf>; Mark Bradbury, *State-Building, Counterterrorism, and Licensing of Humanitarianism in Somalia*, Feinstein International Center, Briefing Paper, September 2010, pp. 11–12, available at: www.humanitarianforum.co.uk/data/files/statebuilding_somalia.pdf.

from the humanitarian imperative to save lives and alleviate suffering based on an objective assessment of needs. Beyond the immediate impact this can have on operational decisions and policies, the submission of humanitarian aid to broader political objectives in the context of UN integrated missions can also have very serious implications in terms of perception of humanitarian actors – both UN and non-UN agencies, as we shall see below – by the population and other stakeholders, and therefore on the security of humanitarian personnel.

Perception and security implications

It is widely accepted that UN peacekeepers and humanitarian actors alike must be impartial⁴⁵ – and perceived to be so – in order for the UN mission to retain the ability to play good offices and mediator functions, and for humanitarian actors to access populations in need wherever they are, including in areas controlled by non-state armed groups. In turn, perception by a party to a conflict that UN peacekeepers or particular humanitarian organisations are partial and one-sided risks undermining their ability to achieve their respective mission and, in addition, might jeopardise the safety of their respective personnel. Yet it is argued here that perception of partiality of UN peacekeepers by armed groups does endanger not only the staff – military or civilian – of the peacekeeping mission itself but also the staff of humanitarian organisations, whether directly affiliated or not to the UN.

In the DRC, for example, the M23 rebels, who had in the past used PoC language as an integral part of their communication strategy⁴⁶ and alleged that civilians had been killed by UN helicopter attacks, threatened in April 2013 to ‘fight back’ in the event of an attack by the new MONUSCO Intervention Brigade.⁴⁷ This clearly illustrates the kind of security implications that the use of force by UN peacekeepers – and their real or perceived lack of impartiality – can have. During discussions at the UN Security Council on the creation of the Intervention Brigade, some troop-contributing countries expressed concerns that such a brigade might threaten the safety of the entire peacekeeping force. Yet others have argued that this is not really new, as MONUSCO was already authorised to conduct offensive operations under its Chapter VII mandate (and it did), where the rules of engagement authorise the use of force beyond self-defence.⁴⁸

45 Impartiality is understood here as even-handedness, as not favouring one party over another. However, for humanitarian actors, impartiality more specifically means that aid must be delivered on the basis of needs only and without discrimination. It is complemented by the principle of neutrality that requires not taking a side in hostilities and not engaging in controversies of a political, racial, religious or ideological nature.

46 Arthur Boutellis, ‘In the DRC communications war, rebels learn PoC language’, in *Global Observatory*, 12 July 2012, available at: <http://theglobalobservatory.org/analysis/324-in-the-drc-communications-war-rebels-learn-poc-language.html>.

47 Associated Press, ‘Congo’s M23 rebels threaten new UN brigade’, 30 April 2013, available at: <http://news.yahoo.com/congos-m23-rebels-threaten-un-brigade-115736055.html>.

48 Patrick Cammaert and Fiona Blyth, *The UN Intervention Brigade in the Democratic Republic of the Congo*, International Peace Institute, Issue Brief, July 2013, available at: www.ipinst.org/media/pdf/publications/ipi_e_pub_un_intervention_brigade_rev.pdf.

While this offensive mandate has perception and security implications for peacekeepers – uniformed and civilians – it is also likely to affect both UN-affiliated and non-UN humanitarian actors.⁴⁹ As noted in a study commissioned by the UN Integration Steering Group, ‘it is evident that how UN humanitarian actors are perceived is influenced by the manner in which the UN political or peacekeeping component is perceived’.⁵⁰ In the current UN-led humanitarian coordination system, this assertion arguably applies not only to UN humanitarian actors but also, more broadly, to all humanitarian aid agencies that are affiliated with the existing ‘cluster’ system under the overall leadership of a UN Humanitarian Coordinator.⁵¹ How humanitarian agencies are perceived by local communities, national and local authorities, and the parties to a conflict is crucial for humanitarian access and to ensure the security of aid personnel. A 2011 study commissioned by the UN Office for the Coordination of Humanitarian Affairs (OCHA) concluded that the most successful humanitarian agencies in highly insecure environments are those that prioritise acceptance by all relevant stakeholders, including the population, through sustained humanitarian dialogue and strict respect of the humanitarian principles of impartiality, independence, and neutrality.⁵²

Just like when UN peacekeepers engage directly in fighting, the UN’s partnerships with non-UN security forces that are parties to a conflict undoubtedly have an impact on how the UN political and peacekeeping component is perceived and, consequently, how humanitarian actors are seen. This was made explicit by the UN Secretary-General in late 2012 during discussions on the modalities of the creation of an African-led International Support Mission to Mali (AFISMA). In his November 2012 report, the Secretary-General, drawing on previous experience with AMISOM in Somalia, cautioned that the AU’s ‘request to the Security Council to authorise a UN support package for an offensive military operation raises serious questions’, adding that ‘the impact on the image of the UN . . . in addition to the implications for the safety and security of UN personnel in the region, must be weighed carefully’.⁵³ The Security Council ultimately authorised AFISMA in December 2012, but subsequently denied it the same kind of logistical and financial UN support package as AMISOM, instead opting for voluntary member state

49 Aurélie Ponthieu, Christoph Vogel and Katharine Derderian, ‘Without precedent or prejudice? UNSC Resolution 2098 and its potential implications for humanitarian space in Eastern Congo and beyond’, in *Journal of Humanitarian Assistance*, 21 January 2014, available at: <http://sites.tufts.edu/jha/archives/2032>.

50 V. Metcalfe, A. Giffen, and S. Elhawary, above note 2, p. 32.

51 The ‘cluster’ system was created as part of the 2005 UN-led ‘humanitarian reform’, with a view to strengthening humanitarian response capacity and effectiveness by ‘improving strategic field-level coordination and prioritisation in specific sectors/areas [‘clusters’] of response by placing responsibility for leadership and coordination of these issues with the competent operational agency’. In effect, at field level, these ‘clusters’ are coordination fora between aid agencies in different sectors of activities, such as protection, food security, health or logistics. ‘Clusters’ are usually placed under the leadership of a UN agency. See Reliefweb, *Glossary of Humanitarian Terms*, August 2008, p. 14, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/4F99A3C28EC37D0EC12574A4002E89B4-reliefweb_aug2008.pdf.

52 Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, UN Office for the Coordination of Humanitarian Affairs, 2011.

53 Report of the Secretary-General on the Situation in Mali, UN Doc. S/2012/894, 29 November 2012, para. 91.

contributions to a trust fund, echoing among other considerations the Secretary-General's concerns.⁵⁴

To be fair, one should recognise that, theoretically at least, UN support to national or regional security forces does not necessarily cast a negative image on the world body and, conversely, merely operating 'in parallel' may not be sufficient to disassociate the UN from a non-UN combat force – at least in the eyes of some parties to the conflict, as in Afghanistan.⁵⁵ If support is granted to security forces that are widely seen as legitimate and benefiting from the support of large swaths of the population, it is likely to shed a positive light on the organisation, provided it meets at least some expectations in terms of security. But even in this ideal scenario, from a strictly humanitarian perspective, such support is necessarily granted to one side and against one or several other parties to a conflict, most of the time non-state armed groups. This stands in contrast with the requirement of impartiality and neutrality of humanitarian actors highlighted above. Therefore, even in a best-case scenario where UN support is given to widely accepted and legitimate forces, it is likely to impact the perception by opposition armed groups and their supporters that UN humanitarian agencies and non-governmental organisations (NGOs) associated with them are partial and against them, endangering those organisations' staff and jeopardising access.

Mitigation measures and the way forward for humanitarian action

Aware of some of the implications and risks associated with the different partnerships with non-UN forces highlighted above, the UN has adopted policies that, although initially conceived to absolve the organisation of any legal liability, have the potential to address the need for coherence in the UN's approach to the protection of civilians, if implemented system-wide and consistently. In parallel, OCHA has adopted policies that are aimed at mitigating some of the implications of the perception of increased UN engagement by proxy, but which stop short of addressing the main challenge to principled humanitarian action: the deeply political nature of the world body.

From 'conditionality' to 'due diligence'

Real concerns about the potential legal responsibility of the UN for wrongful acts committed by the security forces that it supports first emerged in the DRC during the above-mentioned 2009 military operation by the FARDC to dismantle rebel

54 Security Council Report, 'Mali briefing and consultations on funding options and developments', in *What's in Blue*, 21 January 2013, available at: www.whatsinblue.org/2013/01/mali-briefing-consultations-on-funding-options-and-developments.php.

55 Antonio Donini, 'Between a rock and a hard place: integration or independence of humanitarian action?', in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 141–157.

groups, which was supported by MONUC.⁵⁶ Rather than improving the security situation for civilians, this operation led to the deterioration of humanitarian conditions and widespread human rights violations committed by both the rebels and the FARDC.⁵⁷ Concerns about the legal risks of UN peacekeepers being complicit in crimes committed by Congolese soldiers quickly surfaced and were formalised in a series of legal advices from the UN Office of Legal Affairs. In one such note, the legal office stated that ‘if the FARDC violate international humanitarian, human rights or refugee law in the course of the operation, MONUC must immediately intercede with the FARDC . . . with a view to dissuading the units concerned from continuing in such violations.’⁵⁸ It added that, should widespread and serious violations continue despite these efforts, ‘MONUC must cease its participation in the operation as a whole’.⁵⁹ In June 2009, the legal advice was endorsed by the UN Secretary-General’s Policy Committee, which prompted MONUC officials to develop a policy conditioning UN support to the FARDC to respect for international law. The ‘conditionality policy’, as it would later be known, was finally endorsed by the Security Council in its Resolution 1906, which further called on the Secretary-General to ‘establish an appropriate mechanism to regularly assess the implementation of this Policy’.⁶⁰

This adjunction by the Security Council resulted in a review mission dispatched from UN headquarters in spring 2010 that, according to senior UN officials, included wide consultations with other humanitarian and human rights actors present in the country.⁶¹ Although this policy was criticised by some observers as a convenient fig leaf to continued acts of violence by the FARDC,⁶² these consultations convinced the UN to extend the ‘conditionality policy’ to other UN missions; this was compounded by growing concerns about how AMISOM was conducting hostilities in Somalia. The policy should further bind not only peacekeeping missions but all UN entities in their dealings with non-UN security forces. In late 2010, the UN Policy Committee decided that the conditionality policy should apply globally and system-wide, and launched an internal inter-agency process led by the Department of Peacekeeping Operations and the Office of the

56 See Human Rights Watch, above note 36.

57 Philip Alston, former UN Special Rapporteur on Extrajudicial Executions, publicly stated in October 2009, after a ten-day mission to the DRC, that the MONUC-supported Kimia II operation ‘produced catastrophic results’ from a human rights perspective. See Press Statement dated 15 October 2009, available at: www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DRC.pdf.

58 Confidential note, leaked by the *New York Times*, from the UN Office of Legal Affairs to Mr. Le Roy, Head of the Department of Peacekeeping Operations, 1 April 2009, para. 10, available at: <http://documents.nytimes.com/united-nations-correspondence-on-peacekeeping-in-the-democratic-republic-of-the-congo#p=1>.

59 *Ibid.*

60 SC Res. 1906, 23 December 2009, para. 23.

61 Interviews with senior UN officials, New York, March 2013.

62 In July 2010, an expert on the DRC observed that ‘[t]he imperfect policy finally agreed on, far from significantly reducing the occurrence of FARDC crimes, serves the more limited purpose of shielding the UN mission from accusations of complicity in war crimes’. See Thierry Vircoulon, ‘After MONUC, should MONUSCO continue to support Congolese military campaigns?’, *Blog of the International Crisis Group*, 19 July 2010, available at: <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/vircoulon-after-MONUC-should-MONUSCO-continue-to-support-congolese-military-campaigns.aspx>.

High Commissioner for Human Rights to work on the development of a new policy. In July 2011, the Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP) was officially adopted as an internal policy applicable to all UN missions, offices, agencies, funds and programmes;⁶³ it was officially made public in March 2013.⁶⁴

Upgrading the ‘protection toolbox’: due diligence and engagement with non-UN security forces

The purpose of the HRDDP is to ensure that mistakes from the past, where UN missions provided support to security forces responsible for grave violations of human rights or IHL, do not happen again. It establishes a framework of due diligence, applying to all UN entities providing support to non-UN security forces, that includes three key elements: (1) a risk assessment of the likelihood that the concerned security forces will violate international law, to inform both the decision to give support and the drafting of mandates;⁶⁵ (2) transparent communication with the concerned authorities at the earliest possible stage, including by the highest in-country UN leadership;⁶⁶ and (3) an effective implementation framework laying down procedures and mechanisms to monitor, report and intervene with the relevant authorities when required.⁶⁷

A literal reading of the HRDDP gives the impression that, in line with the conditionality policy, its main purpose is to shield the UN from any legal responsibility incurred by the behaviour of the security forces that it supports. It refers to the importance of ‘maintain[ing] the legitimacy, credibility and public image of the UN’⁶⁸ and justifies withdrawing support ‘where continued support would implicate the Organisation in grave violations of international humanitarian, human rights or refugee law’.⁶⁹ But beyond the ‘defensive’ character of the policy, what makes it truly remarkable is the opportunity it creates for proactive and constructive engagement with UN-supported security forces to protect civilians. In that respect, if applied consistently, the HRDDP will add a tool to the UN’s ‘protection toolbox’ by providing a framework for systematic engagement with non-UN security forces on the protection of civilians in their conduct of hostilities, including in the context of stabilisation missions. Early risk assessments might also allow the Security Council to better take into account the risks inherent to such partnerships at the drafting stages of peacekeeping mandates, mitigating policy contradictions between stabilisation and PoC objectives. Interestingly, Security

63 UN Secretary-General, Decision No. 2011/18, 13 July 2011.

64 Identical letters dated 25 February 2013 from the Secretary-General addressed to the president of the General Assembly and to the president of the Security Council, UN Doc. A/67/775-S/2013/110, 5 March 2013.

65 UN Secretary-General, Decision No. 2011/18, annexed to UN Doc. A/67/775-S/2013/110, paras. 14–17 and 23.

66 *Ibid.*, paras. 18–19.

67 *Ibid.*, paras. 20–22.

68 *Ibid.*, para. 3.

69 *Ibid.*, para. 28.

Council Resolution 2100 of May 2013, creating the MINUSMA, did just that by requesting that:

MINUSMA take fully into account the need to protect civilians and mitigate risk to civilians, including, in particular, women, children and displaced persons and civilian objects in the performance of its mandate ... where undertaken jointly with the Malian Defence and Security Forces, in strict compliance with the Human Rights Due Diligence Policy.⁷⁰

Despite the relatively conservative language used in the text of the due diligence policy itself, it is increasingly seen and presented within the UN system as a proactive tool for engagement on human rights and humanitarian law issues. According to UN officials closely involved in the implementation of the HRDDP, the end purpose of the policy as such is not suspension of support – this would rather be considered as a failure – but to influence positively the behaviour of security forces towards compliance with international law, including greater respect for civilians.⁷¹

In the case of AMISOM in Somalia, the AU reacted to criticisms about its forces' bad record on human rights by reaffirming its commitment to IHL and establishing a Working Group on PoC within the AU Commission in February 2011 (prior to the adoption of the HRDDP). It also issued a new 'Indirect Fire Policy' included in the revised AMISOM rules of engagement in mid-2012, which 'formalised a stricter chain of command for the use of mortar and artillery fire and the establishment of "no-fire zones" where civilians were known to be present'.⁷² Although these positive policy developments cannot be directly credited to the HRDDP, this is certainly the kind of improvement that can be expected if it is applied consistently.

This framework for more consistent engagement with non-UN security forces on protection of civilians might alleviate some of the tensions described earlier between peacekeepers and humanitarian agencies, if it leads to improvements in the record of non-UN security forces protecting civilians while conducting combat operations. It requires, however, that peacekeepers themselves lead by example and are given the ability and the means to monitor these operations effectively. It remains true that the HRDDP will not address the more deeply entrenched contradictions highlighted above related to the loss of impartiality of UN peacekeepers when associated with broader peace enforcement or stabilisation efforts.

Thinking outside the integration box

UN peacekeepers' partnerships with national or regional security forces aimed at stabilising an area inevitably give the impression that the UN is not impartial and

70 SC Res. 2100, 25 April 2013, para. 26.

71 Interviews with senior UN officials, New York, March 2013.

72 Walter Lotze and Yvonne Kasumba, 'AMISOM and the protection of civilians in Somalia', in *Conflict Trends*, No. 2, 2012, p. 22.

may even become a party to the conflict, as in the case of the DRC.⁷³ Against this backdrop, most humanitarian actors are very concerned by the unstoppable trend toward increasingly integrated UN missions, which they see as subsuming humanitarian action to broader political objectives.⁷⁴ They are all the more worried when the UN mission is *de facto* supporting a party to the conflict, as illustrated by the strong reaction of the NGO community to the creation of a UN integrated mission in Somalia in March 2013.⁷⁵ The association of humanitarian agencies with political actors 'is particularly problematic in high-risk environments, where the UN mission is implementing a political mandate that is opposed or contested by one or more of the conflict parties',⁷⁶ as is necessarily the case when the UN supports the security forces of a party to the conflict, as in the DRC, Somalia, or Mali.

Aware of the tensions between integrated UN missions and a humanitarian coordination system led by the UN, OCHA has developed a policy proposing different degrees of integration of the UN humanitarian leadership and coordination within the structure of UN missions on the ground.⁷⁷ This policy aims to mitigate the effects of integration on the neutrality and independence of humanitarian action, and devises three modalities of structural integration depending on the context: (1) complete physical separation of OCHA and the Humanitarian Coordinator from the structure of the UN peacekeeping or political mission ('two feet out'); (2) complete structural integration ('two feet in'); and (3) a default option with a separate OCHA presence but integration of the Humanitarian Coordinator within the UN mission ('one foot in, one foot out').⁷⁸

However, it remains questionable whether these different arrangements would really make a difference when a UN mission is associated with a party to the conflict. First, it is unclear to what extent OCHA, itself part of the UN Secretariat, can impose the degree of structural integration it favours on UN leadership. For that matter, the tendency might go towards greater mingling of UN legislative bodies in deciding the structural arrangements within a mission. This is illustrated by Security Council Resolution 2093 on Somalia, which took the unprecedented

73 Philip Alston, former UN Special Rapporteur on Extrajudicial Executions, was the first senior UN official to publicly acknowledge that MONUC had become a party to the conflict in 2009. See Press Statement, above note 57.

74 See Marit Glad, *A Partnership at Risk? The UN-NGO Relationship in Light of UN Integration*, Norwegian Refugee Council, 2012, available at: <http://www.nrc.no/?did=9608295>.

75 Three NGO consortia (Interaction, ICVA and VOICE), representing more than 330 humanitarian and development NGOs, published a statement on 11 March 2013 expressing their dismay at SC Res. 2093, 6 March 2013, which integrated all UN functions under one UN umbrella in Somalia, *de facto* subsuming UN humanitarian coordination to the political mandate of the UN mission. Statement available at: www.ngovoice.org/index.php?page=2858. See also 'In Somalia, humanitarian NGOs against integration with United Nations', interview with Joel Charny, vice-president of Interaction, in *Global Observatory*, 26 April 2013, available at: www.theglobalobservatory.org/interviews/488-in-somalia-humanitarian-ngos-resist-integration-with-un-interview-with-joel-charny.html.

76 V. Metcalfe, A. Giffen and S. Elhawary, above note 2, p. 2.

77 UN OCHA Policy Instruction, 'OCHA's structural relationships within an integrated UN presence', 1 May 2009, available at: <http://afgarchive.humanitarianresponse.info/sites/default/files/OCHA%E2%80%99s%20Structural%20Relationships%20Within%20An%20Integrated%20UN%20Presence.pdf>.

78 *Ibid.*, pp. 6–7.

step of instructing the structural integration of the Humanitarian Coordinator within the political mission, leaving little leverage for OCHA to separate the humanitarian arm of the UN from the broader mission.⁷⁹ Secondly, it is questionable whether such subtle cosmetic structural arrangements really impact how UN actors as a whole are perceived by the population and opposition armed groups. Some relatively sophisticated armed groups might be willing to distinguish between the 'blue UN' logos of humanitarian and development agency vehicles and the 'black UN' of peacekeeping and political missions, as was reportedly the case in Afghanistan.⁸⁰ However, it remains doubtful that these different types of arrangements can dissipate the fundamental ambiguities created by multiple, and sometimes conflicting, UN mandates – ambiguities compounded by the drive towards greater UN integration. This is particularly true if an armed group wishes, for strategic or tactical reasons, to target the UN, in which case it may decide to aim at 'soft' UN targets rather than peacekeepers. This is arguably the reasoning that led Al-Shabaab to target the so-called 'UNDP compound' used by UN humanitarian agencies in Mogadishu in June 2013, rather than the heavily fortified airport area sheltering the UN political mission and AMISOM.⁸¹

In contexts where the UN develops a partnership with or directly supports a party to the conflict and consequently loses its impartiality, the likelihood is high that it will affect humanitarian actors inasmuch as they are associated with the UN mission on the ground. Dilemmas over humanitarian principles will become more acute as the UN remains on a dual course of increasingly integrated missions aimed at enforcing peace by proxy while still aspiring to lead operational coordination of humanitarian action. In these specific contexts, it seems legitimate to argue that, in some cases at least, 'the existing UN-led coordination system might have to consider disengaging from the operational theatre and privilege coordination and information-sharing at the strategic level',⁸² as opposed to operational coordination.

The increasing diversity of the humanitarian sector and the emergence on the global stage of relief actors that are not part of the mainstream UN-led humanitarian system, especially Muslim donor countries and Islamic charities, and that have different *modus operandi*, present new opportunities in that regard. During the famine that affected Somalia in 2011, tens of Arab or Muslim aid agencies operated in areas where traditional – mostly Western – humanitarian actors could not operate due to security reasons. The Organisation of Islamic Cooperation established a coordination office bringing together twenty-seven organisations that operated mostly in parallel to the UN-led coordination system, reportedly 'to fill the gaps left by the UN with regard to inaccessibility of aid

79 SC Res. 2093, 6 March 2013, para. 21.

80 Ashley Jackson and Antonio Giustozzi, *Talking to the Other Side: Humanitarian Engagement with the Taliban in Afghanistan*, Overseas Development Institute, HPG Working Paper, December 2012, p. 4, available at: www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7968.pdf.

81 Abdi Sheikh, 'Somali Islamist rebels attack U.N. base, 22 dead', in *Reuters*, 19 June 2013, available at: www.reuters.com/article/2013/06/19/us-somalia-blast-idUSBRE95I0AJ20130619.

82 Jérémie Labbé, *Rethinking Humanitarianism: Adapting to 21st Century Challenges*, International Peace Institute, November 2012, p. 23.

to certain areas of Somalia that are off-limits to international UN staff.⁸³ While these tectonic shifts in the international humanitarian system make the response more fragmented and create a number of challenges – for instance, in terms of uneven operational standards and increased risks of competition and duplication – they may also open new opportunities for humanitarian action where the UN's involvement in 'peace operations by proxy' compromises the impartiality, neutrality and independence of its humanitarian arm.

Conclusion

UN peacekeeping engagement by proxy is fraught with many risks, since the UN abandons its impartiality to stand by one side in a given conflict, which creates additional challenges for the already complicated relationship between peacekeeping and humanitarian action. However, such UN partnerships with national and regional non-UN security forces engaged in combat operations represent a growing trend that is likely to continue. They are the result of the evolutions and limitations of the peacekeeping tool, of the changing nature of conflicts and threats to international peace and security, and of the increasing importance in peacekeeping mandates of stabilisation and of the protection of civilians in support of the host state.

The questions and challenges that these developments raise are not merely rhetorical. One must therefore acknowledge these evolutions and the legal, policy, perception and security implications that they have for peacekeepers themselves and for humanitarian action. The tension between eminently political peacekeeping missions and humanitarian principles has always existed, but the increasing tendency of peacekeeping engagement by proxy dictates a pragmatic rather than rigid approach by humanitarian actors.

In some cases the risks can be mitigated, and the UN HRDDP presents a real opportunity for the UN to proactively engage with these non-UN partners and bring greater coherence to the UN's approach to the protection of civilians, in which the UN-led humanitarian coordination system has a role to play. Increasingly, however, the need to access all vulnerable populations pushes humanitarian actors to keep their distance from peacekeepers and, in extreme cases, from the UN-led humanitarian coordination system itself. While some actors can afford that – such as the ICRC or Médecins sans Frontières (Doctors without Borders), which decided to stay outside of the UN coordination system – not all actors can or are willing to, not least since existing humanitarian funding streams are intimately linked to this coordination architecture. These changes may require that the UN think outside of the integration box, and even contemplate disengaging from operational coordination when its impartiality is compromised.

83 Integrated Regional Information Network, 'Arab and Muslim aid and the West – "two china elephants"', 19 October 2011, available at: www.irinnews.org/Report/94010/Analysis-Arab-and-Muslim-aid-and-the-West-two-china-elephants.