armed actors or in support of government forces in light of the situation in the operating environment.

We are aware that the high-threat operating environment facing MINUSMA (the United Nations Stabilization Mission in Mali) in northern Mali similarly increases the likelihood of its also becoming a party to the conflict in that country. This is because even in the course of defending itself or protecting civilians, MINUSMA may be compelled to militarily engage terrorists and/or insurgents in sustained and/or intense hostilities. While this has not yet happened, we are prepared for the possibility.

We owe it to our men and women on the ground to speak about these issues with clarity, coherence, and transparency.

Remarks by Johan Heyns*

It is my pleasure to discuss the application and bearing of international humanitarian law, also known as the law of armed conflict, on United Nations peacekeeping operations. Considering today's topic, I will use the United Nations Stabilization Mission in the Democratic Republic of the Congo (known by its French acronym MONUSCO) as a prime example, but will make generalized statements that are applicable to the other United Nations peacekeeping missions.

The United Nations Department of Peacekeeping Operations currently manages 16 peacekeeping operations, with the likelihood of an additional mission to be authorized in the Central African Republic today (April 10, 2014). Peacekeeping is an immense undertaking, with the numbers of peacekeepers above 100,000 world-wide, the majority of whom are men and women in uniform.

I would respectfully disagree with characterizing United Nations peacekeeping operations as being at war, but will concede that some of the peacekeeping operations certainly have a fairly robust mandate. It is important to note that these mandates are derived from or necessitated by one of the core tasks of peacekeeping operations, protection of civilians. As you are well aware, the authority for peacekeeping missions—and by extension, to use military force—is derived from the resolutions adopted by the executive organ of the United Nations, the Security Council.

If I may step back to reflect upon the framework in which peacekeeping operations are conducted, it includes the United Nations Charter, international humanitarian law (including the four Geneva Conventions and its Protocols), and other international legal instruments including those relating to international human rights law. From a military perspective, I can assure you that the United Nations is acutely aware of the need for strict adherence to the international law standards provided by these instruments and has incorporated its tenets in our executive documents.[1]

To return to the subject at hand, and interchanging the term ''war'' with *military* activities in the context of peacekeeping operations, there has been an important evolution in the robustness of the military mandate for MONUSCO, as promulgated by the Security Council since 2013 and again in 2014, through its Resolutions 2098 (2013) and 2147 (2014). I quote from Resolution 2147, which authorizes MONUSCO to do the following:

* Office of Military Affairs, Department of Peacekeeping Operations, United Nations.

[1] Including, among others, the Secretary-General's Bulletin on IHL of 1999, and various texts on the rules of engagement.

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> 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), *in cooperation with the whole of MONUSCO*, prevent the expansion of all armed groups, neutralize these groups, and disarm them in order to contribute to the objective of reducing the threat posed by armed groups to state authority and civilian security in eastern DRC and to make space for stabilization activities.[2]

If I may emphasize a few key components, without misrepresentation out of context: MONUSCO is deliberately authorized to conduct *targeted offensive operations, robustly, in a highly mobile and versatile manner*, and *in strict compliance with international law, including international humanitarian law*. MONUSCO takes these daunting tasks very seriously, and more often than not, has erred on the side of caution. By illustration, although MONUSCO has been awarded the authority to operate either unilaterally or jointly with the FARDC, the MONUSCO leadership has decided to act *in support of the Armed Forces of DRC (FARDC),* with the ultimate objective of protection of civilians. This preference was made to honor the Congolese national responsibilities for protection of civilians.

Central to our discussion, though, is the imperative for MONUSCO to act *in strict compliance with international humanitarian law*. The guiding principle remains extant in all aspects of planning and execution, at all command levels, and an imperative in the context of mandate implementation for MONUSCO, being authorized to seize and maintain the initiative to launch offensive actions. The distinction of acting proactively instead of being reactive is applicable to a few missions, of which MONUSCO is again a suitable example: the MONUSCO leadership has decided to address the *sources* of the threat to civilian lives in a proactive manner, instead of reactively attempting to mitigate the threat to human lives. Protection of civilians as an *outcome* and not as an activity remains a central pillar of MONUSCO mandate implementation. This is the center of gravity for the Force at the strategic level—the logical basis of operational activities in MONUSCO.

However, I need to emphasize that the strengthened military mandate of MONUSCO forms part of a comprehensive strategy that tries to address the root causes of conflict at the national (DRC) and regional level. In the event that there is any danger to civilian lives, the planned military action is amended, and alternative ways to achieve the objective of protection of civilians are devised. For example, the Mission gives at all times preference to voluntary surrenders of members of armed groups. If deterrence is adequate to achieve the immediate objective, then no force is applied.

More so, compliance with international humanitarian law receives exhaustive attention during the training and preparation of military forces to be deployed to peacekeeping operations. Granted, the training for and preparations of military forces for peacekeeping missions are the responsibility of member states; emphasis on instruction on the legal principles and guidance for specific mission is conveyed to member states.

This responsibility is further reinforced via the rules of engagement governing the usage of military force, and similarly through the directives for the usage of force, governing the usage of force by police components, if applicable. To circle back to the

[2] Adopted by the Security Council at its 7150th meeting (Mar. 28, 2014), with reference to the paragraph under the heading ''Neutralizing armed groups through the Intervention brigade'' (emphasis added).

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responsibility to adequately prepare forces for participation in peacekeeping operations, and to ensure adherence to IHL, repeated lectures on the rules of engagement are conducted before and during deployment. This reminder strengthens the conduct of soldiers by providing clarity on how to act. Training is operationalized with scenario-basis instruction and exercises.

The MONUSCO Force has a procedural approach to incorporate appropriate legal advice and opinions into its plans, duly factoring in the principles of proportionality, collateral damage, and alternatives to the usage of force, and so on. MONUSCO does not merely pay lip service to this important aspect, but duly honors the guiding principles of peacekeeping, and with the full understanding of the responsibility to protect the population of the DRC.

In its conduct of day-to-day activities and during deliberate offensive actions, the MONUSCO military component provides the example of responsible military conduct to the FARDC. To augment this effort and to improve their conduct and behavior, the FARDC receives formal training from MONUSCO on law of armed conflict aspects. Incidentally, and in line with the mandate, the MONUSCO police component also formally trains the Congolese National Police to improve their respect for human rights.

MONUSCO is an integrated mission, and the military component appreciates that it is one of a multitude of ''tools'' available for mandate implementation. To achieve an integrated approach to mandate implementation, all activities are planned in an integrated manner, with the participants of the so-called substantive component of MONUSCO, and all activities are launched in this same integrated manner. The military component has a distinct and important role to play, with the use of force as the last option and not as a point of departure. Integrated, deliberate planning of well-considered military operations results in the launch of focused actions, with a specified and foreseen outcome to be achieved.

Notwithstanding the old saying that ''no plan survives the first shot,'' the environment in which the MONUSCO Force must conduct military operations is complicated by the approach I mentioned earlier: the MONUSCO military component acts in support of the FARDC, but does not control the FARDC. By extension, besides the approach of integrated planning, joint planning with the FARDC is preferable, if not mandatory, in order also to influence their behavior and conduct right from the start, according to the norms of the law of armed conflict. Although this may sound quite complicated, with the prospect of a likely delay in actions, MONUSCO accepts these factors in order to maintain the moral high ground, act responsibly, and engender behaviors in the FARDC that comply with international humanitarian law.

Pending the authority given by the Security Council and the support required by the host government, and taking into account the actual situation on the ground, similar mechanisms are established in the other UN peacekeeping operations to ensure respect for and compliance with international humanitarian law and the law of armed conflict.

Questions from the Moderator

Bruce Oswald

At what point, precisely, does IHL or the law of armed conflict apply when peace forces join an existing armed conflict?

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Marten Zwanenburg

If we say that IHL applies to peace forces in the same way as it does to regular forces, this does not mean that there are no difficulties in the application of IHL itself, whoever you try to apply it to. Peace forces increasingly operate alongside state forces and support state forces. If one looks at the traditional criterion for the application of IHL—''When does one become a party to an armed conflict?''—the answer for international armed conflict is quite easy, but that is not the situation with which we are faced in practice most often. In non-international armed conflict we have the criteria developed by the ICTY and the ICTR, in particular a minimum of organization on both sides and a minimum intensity of hostilities. The difficult question is: ''Do we have to apply these criteria to the peace force in isolation, or can we take the state that the peace force is supporting and the peace force *together*?''

In the past Tristan has written that it is not necessarily a matter of the peace force itself using force (which would be a requirement if we were looking at the peace force in isolation), but that it can be sufficient for the peace force to give certain support to state forces that are taking kinetic action. I understand the reasoning behind it, but I would call for some caution. We should be careful what we wish for: if we set the bar for the application of humanitarian law too low, it means not only that once IHL starts applying, certain protections apply, but also the underlying premise of IHL, which is that you can kill anyone who is your enemy. Other difficult questions include: ''What kind of support is needed for a peace force to become a party? Does it include logistic support, or is it restricted to combat support? Does it include combat service support?'' We should be careful not to stretch that concept too far.

The notion of ''internationalized armed conflict'' is set firmly in the context of classification of conflict. It seems that, when we talk about classification of conflict, the UN peace force can be a party too. There has been a shift in thinking, in the sense that a number of years ago, there was considerable (if not unanimous) support for the idea that if a UN operation became involved in a conflict, this would internationalize the armed conflict. The law of non-international armed conflict is largely premised on deference to state sovereignty, the original idea being that states were less willing for the law to apply and impose limitations on them when fighting nonstate actors. This was very much linked to the idea of state sovereignty; of course, the UN has no sovereignty in that sense.

This idea, if you agree with it, logically leads to the conclusion that the UN's involvement would internationalize the conflict. Nowadays, the view that finds most support is that if the UN supports a state in fighting a nonstate actor, the legal regime applicable to non-international armed conflict continues to apply. Taking any other view would mean that two different bodies of law would apply between the nonstate actor and the state on the one hand, and the nonstate actor and the UN on the other hand. As a result, it would be lawful to target UN peacekeepers, because the combatant's privilege would apply, whereas it would not necessarily be lawful to target state operators. That would be an incentive to target peacekeepers; therefore, the view described above seems the better view, or at least the one that is the most accepted at the moment.

Mona Khalil

It is very important to distinguish the triggers by which a UN peacekeeping force may become a party to the conflict. Unlike peace enforcement actors, peacekeeping missions may have peace enforcement tasks but are not by nature peace enforcement operations. It is

possible for a UN force to become a party to the conflict by virtue of its mandate; it is also possible for the applicability of IHL to be triggered by virtue of the nature and intensity of the assistance or support that the UN force provides either to the forces of the host country or, in theory, to forces of other armed actors in the ongoing armed conflict, including the forces of other member states or intergovernmental organizations. Primarily, however, the trigger should be found in the nature and intensity of the UN force's own actions on the ground and its own use of force. While we recognize these triggers as an organization, and while there is no doubt that IHL would apply to UN forces *if* and *when* they are engaged in a sufficiently intense military engagement with one or more of the armed actors on the ground, we caution those who are too quick to invoke IHL not to be ''trigger happy.'' We should be very cautious in assessing the real situation before reaching any conclusions in this regard.

As we saw recently with the misperception of the relationship between the UN forces in Mali, and Operation Serval operating in the country as well, many reached the conclusion that the United Nations had become a party to the conflict. The reality on the ground was very different. The operational relationship, both constitutionally pursuant to the Security Council resolution, and in actuality on the ground, was not as it had been perceived. Part of the misperception was caused by pronouncements of the French forces themselves who, in an effort to be magnanimous in sharing credit for their successes on the ground, misrepresented both the actual conduct of operations on the ground as well as the role of MINUSMA therein. In reality, Serval's only mandated relationship was to be there as a backup in the event that the UN forces could not defend themselves in extreme situations. They were not there to assist MINUSMA in carrying out its mandate any more than MINUSMA was there to help Serval carrying out its counter-terrorist operations. Therefore, while potentially the requisite operational relationship between the two *could* exist, it had not yet come anywhere near that, in the sense that at best, there was some joint patrolling and some deconfliction coordination, but there was no sustained use of force by MINUSMA, no joint operations, no actual trigger in play that would justify that.

The need for close consultation, as we have seen over the years between the UN and the ICRC, would in some cases guard against misperception and misinformation and allow for a more objective determination based on actual events on the ground. While we may not always agree, there is a tremendous amount of common thinking and common understanding that would allow us to reach similar conclusions in most cases. That may not extend to the temporal and geographic aspects, but in terms of the fundamental question—whether or not we have become party to the conflict—we can benefit from the ICRC's views, and they can benefit from our knowledge of the actual situation on the ground. Based also on Marten's intervention, I would also highlight that there is a big difference between our troop-contributing countries (TCCs) and the TCCs of NATO, for instance. The TCCs who are contributing to the UN are not themselves contemplating any participation in the conflict according to their national interest; they are serving their duty to the organization and are putting their troops at the Secretary-General's disposal, under unified UN operational command. It is generally accepted that the NATO enforcement operation in Libya, for instance, where NATO member states conducted Security Council-authorized operations under NATO command, the NATO member states were also acting in furtherance of their own national interests. TCCs that put their troops at the disposal of the UN's peacekeeping efforts are not and should not be perceived in the same way or through the same prism. UN forces becoming

party to the conflict should rarely, if ever, mean that the TCCs themselves become parties to the conflict.

Tristan Ferraro

I would like to provide some clarification of what Marten just indicated in reference to the so-called ''support-based approach'' that ICRC has recently developed. Marten seems to disagree with this approach, indicating that by using it, the ICRC is basically lowering the threshold of IHL applicability to peace forces. To provide you with the global picture, we have developed this approach against the background of the peace operation in Afghanistan. The facts are as follows. I was deployed at the time in Afghanistan facing this question as a legal adviser to the ICRC: What was the legal status under IHL of states participating in the International Security Assistance Force (ISAF) operations, in particular those not involved in kinetic operations but still contributing to the overall operations? Some states had no problem with recognizing that they were involved in NIAC. Besides the facts that NATO itself was involved in the non-international armed conflict in Afghanistan and that TCCs admitted to be parties to the armed conflict there, many other states, in particular European states, claimed that they were not themselves parties to that armed conflict, because they did not themselves fulfill the ''intensity'' criterion—meaning that the actions that were carried out in Afghanistan were short of the intensity requirement required by IHL.

We were then confronted with the question of states which were clearly and significantly contributing to the military operations and to the collective conduct of hostilities, but which were refusing to be considered parties to the armed conflict and arguing that their troops were protected from direct attack because they were not belligerents. When we start to discuss with these states—and you will notice the contradiction of this position—they claim that they are not parties, but some of these states had rules of engagement based on the conduct of hostilities and IHL paradigms. There is obviously a contradiction in saying that one is not party to an armed conflict and is protected from direct attack, but still can use the powers conferred by IHL to the party to an armed conflict. This completely defies the logic of IHL and blurs the essential distinction between civilians and combatants.

So when peace forces provide support to one of the parties to the pre-existing NIAC, we have developed this so-called support-based approach, which complements the determination of IHL applicability on the basis of the classic criteria for non-international armed conflict. If we observe that one of the countries involved in peace operation does not itself fulfill the ''intensity'' criterion in particular, but still significantly contributes to the military operations related to the pre-existing non-international armed conflict, we look at the kind of support it provides in this very specific situation and see whether the type of activities effectively carried out can turn the country into a party to the pre-existing NIAC. The rationale behind this approach that we have developed is to link to IHL specific actions carried out in support which form an integral part of the preexisting non-international armed conflict and cannot be dissociated from the latter. We think that this type of action, when closely connected to the collective conduct of hostilities, needs to be governed by IHL. The logical consequence of providing this kind of support so closely connected to the collective conduct of hostilities is to turn its author into a party to the pre-existing non-international armed conflict.

This has very practical resonance for us, because, for instance, we have been confronted in the past with peace operations in which some states recognized that they had been temporarily detaining individuals that were captured by other countries that were themselves party to the armed conflict. Clearly, these individuals were upon their capture protected by

IHL. But what does this mean in terms of legal protection conferred by IHL once someone has been transferred to control of a state which does not consider itself a party to the conflict? Does this mean that those individuals would suddenly be bereft of legal protection provided by IHL? Can those states still claim non-belligerent status while carrying out acts that are typical of a party to an armed conflict?

With the support-based approach, we have tried to provide an interpretation of the law that reflects IHL logic and catches in the IHL net those actions that clearly form part of an armed conflict and should therefore be regulated by this body of law. In this regard, our intent was not to lower the threshold of NIAC, but simply to interpret IHL in an evolving way in light of contemporary armed conflicts.

Bruce Oswald

How do we deal with the IHL tensions arising from UN personnel as combatants, and UN personnel acting as humanitarian actors, in the same intra-state conflict?

Mona Khalil

There are very real concerns, both legal and practical. In fairness, I have to confess that these tensions are present whether or not the UN becomes a party to the conflict. The military, civilian, and police components are meant to function as one within the mission, but increasingly, given the multidimensional and multidisciplinary integrated missions, they must also function with another set of UN actors, including classic humanitarian actors (such as WFP, UNDP, UNICEF, etc.) in addition to non-UN organizations acting as implementing partners who are also delivering assistance as part of the ''humanitarian family.''

When military components escort humanitarian actors (as they are mandated to do) to ensure the safe delivery of humanitarian assistance, the humanitarian actors want to see a separation—both physically and relationship-wise—both because of the nature of their role and of their character under IHL, and because of their need to preserve neutrality, impartiality, and non-association with military forces. And yet they potentially need this protection, depending on the operating environment. They don't want to be associated with the delivery of the protection. This position is, of course, further sensitized when the military component and the mission has become a party to the conflict. Yet that in itself does not create the tension—the tension already exists from the start.

There is a certain ''schizophrenia'' (for lack of a better word) on the part of the humanitarian actors. On the one hand, they want to uphold IHL, and they want the UN to recognize the potentiality and the eventuality of the UN forces becoming a party to the conflict, along with all the rights and obligations that come with it. But while they focus on the obligations, they are not particularly ready to embrace the rights that the UN force then enjoys upon becoming a party to the conflict. This focus is something that we ourselves share but that gives rise to concern when there is over-scrutiny and over-sensationalization by the international humanitarian and/or human rights community. By virtue of the authorization to use force to protect civilians under the POC mandates that we have, there is always the possibility that we ourselves unintentionally may have to put other civilians at risk in order to deliver our POC mandate. When we find ourselves in a situation where civilian casualties have occurred as a result of a use of force by the UN force (as we recently saw in the DRC), there is a sort of unrealistic expectation that the UN is held to a higher standard. Now we accept as the UN that we should be held to a higher standard. By the same token, we should not be subject to a different set of rules. UN peacekeepers face disproportionate scrutiny and criticism

in the event of civilian casualties, and we ourselves, of course, are bothered and disturbed by the fact that we ultimately are there to protect civilians—our mandate is born from that. But often in order to protect ourselves and/or to protect civilians, civilian casualties are inevitable. That is part of the framework of IHL and is perfectly legitimate under IHL. The ''schizophrenia'' also extends to the tension that arises between the UN as a humanitarian actor and the UN as a military actor, whether as a party to the conflict or otherwise.

Tristan Ferraro

There is a necessity to maintain the legal protection provided by IHL to peacekeepers when they are not involved in hostile actions. From an ICRC perspective, it has always been clear for us that the simple fact that a UN peacekeeping mission is deployed in a situation of armed conflict does not mean that it has become party to that conflict. If UN forces are deployed in a situation of armed conflict but are not party to the conflict, it is clear that they shall be considered as civilians for the purpose of IHL, as required by the binary approach of IHL (either you are a civilian or you are a combatant). Because they are civilian, they should benefit from all protections conferred by IHL to civilians.

The issue is: When UN forces have become parties to an armed conflict, e.g., as in DRC, is it possible to compartmentalize the force? For instance, some have distinguished the Intervention Brigade of the MONUSCO in DRC—whose tasks are clearly combat actions—from the other parts of the UN military component. We at the ICRC consider that as soon as the UN forces have become parties to an armed conflict, all the members of the military component of the mission have become combatants for the purpose of the principle of distinction under IHL, and therefore can be targeted irrespective of the function assigned to them. This is also based on the command and control structure of a UN operation. We have had discussions with former UN commanders asking how their operation functioned, for example, the fact that you are in *Province orientale* in DRC, and not assigned to combat action, does not mean that within the course of your mandate you will never be asked to deployed in the Kivu and be engaged in hostilities. You can be perfectly be deployed at any time in another place, and then exert combat activities. Once you are clearly part of this military component, there is a reasonable and reliable presumption that in the future you will be involved in combat operations. On this basis you are a legitimate target, and your status as a legitimate target clearly applies across the board irrespective of the function you perform, of the TCC you are coming from, and the task to which you have been assigned.

A number of international instruments are clearly linked to the issue of the protection of UN forces. Among them, the 1994 Safety Convention, which clearly specifies that in situations of non-international conflict to which the UN has become a party, UN forces will still benefit from protection from attacks, and that attacks will be criminalized. We have a problem with this instrument, because it clearly does not take into account the IHL perspective. It criminalizes actions that are lawful under IHL. However, we should not overestimate the impact of this instrument, in particular because the 1998 Rome Statute, for instance, has made clear that peacekeepers would not be the object of direct attacks as long as they were entitled to the protection afforded to civilians by IHL. This means that the Rome Statute recognizes that this protection against direct attacks falls when peacekeepers become engaged in a non-international armed conflict. The operation of the 1994 Safety Convention is therefore clearly mitigated and is not a problem any longer for the application of IHL.

Bruce Oswald

What are the key issues you see for the future for those of us who work in this field?

Marten Zwanenburg

One thing I would stress is that we should continue having this legal debate, but we should also very much focus on what we can do that in practical terms will increase respect for IHL. I mentioned training the peacekeepers themselves, something which obviously is done by the UN when forces become part of a UN operation. But ideally this would already have been done during the course of a peacekeeper's career in his/her troop-contributing country. In that sense, the role of the troop-contributing country is very important.

I was also very happy to note that Lieutenant Colonel Heyns mentioned another significant aspect, which is the training that peacekeeping forces impart to host state forces; those will be the forces that remain behind and that will likely be doing the fighting, perhaps even when the peacekeeping forces have left.

Mona Khalil

I share Tristan's view both happily but also with a little bit of concern. MONUSCO has to be set aside. It is easy to use your IHL applicability model on MONUSCO because there is not much controversy around the fact that, as the Force Intervention Brigade becomes party to the conflict, MONUSCO itself becomes party to the conflict. I do not think there is a difference of views on this point. However, applying the same model to other missions that lack a mandate trigger, as discussed earlier, raises serious concern. One should be able to make the argument that, in other contexts, the model of a civilian directly participating in hostilities may be more applicable to UNPKOs, because they do not enter as a party to the conflict, they do not have an inherent or mandated opposing relationship to any of the parties to the conflict, and it is really our direct participation in response to actions or events on the ground (i.e., use of force driven by or in response to bad acts by another party) that may trigger that. There is room to explore that possibility reasonably, if only for hypothetical purposes, even if you do not necessarily accept it as a starting premise.

We share your concern about the Safety Convention, primarily because it deprives us of the coherence and clarity that we need. Member states can use the Safety Convention to argue that the UN can never be a party to the conflict in a NIAC. This reinforces the views of those member states that don't foresee the UN forces themselves being parties to an IAC and therefore will never be parties to the conflict. The disconnect between the Safety Convention and the ST/SGB/1999/13, which, like the Rome Statute, clearly recognizes the possibility of the UN of becoming a party to a NAIC, has very serious legal and practical consequences.

This is only one of the challenges born out of the disconnect in the legal infrastructure, including the three instruments we just mentioned; there is also the question of penalization by the Security Council sanctions regimes. To the extent that MONUSCO had become a legitimate target, the Security Council nonetheless considers attacks on MONUSCO and FIB forces to be a violation of the sanctions regime. Just because it is acceptable under IHL does not mean it has to be acceptable under other legal regimes, including those that are within the prerogative of the Security Council under Chapter VII. At the same time the Security Council is asking us to respect IHL, in a sense, it is giving the MONUSCO and FIB force a protection that it may have lost under IHL. Again, if these perceived disconnects are

maintained knowingly—and it appears that they are—then we have to work out the implications, legal and practical, of what that means. If, however, the disconnects are a default position resulting from inertia or from a desire to avoid having a potentially divisive discussion in the Security Council, then we still need to get that clarity and transparency.

Johan Heyns

The predicament of MONUSCO is well understood by the leadership, and they bug the Office of Legal Affairs almost every week to get that clarity. For the soldier on the ground, whether he is a threat or not, I do not think that is meaning whether he has got the legal protection or not. There is a real threat of being shot at, of being engaged, whether you are inside the intervention brigade, or in another part of the force, or are a policeman or any UN person. And this threats remains even when driving around in a white vehicle with ''UN'' painted on the doors. That is what keeps the leadership awake. Those risks to the peacekeepers, to the international humanitarian workers, are addressed practically and on the legal side by such questions as: ''How do we conduct our business?'' ''How do we assess the danger and the threat?'' ''How do we develop our intelligence network, our situation awareness?''

We look at our profile, posture, and procedures to minimize these threats, trusting that legal advice on military action is applied as a principal procedure. This is fairly new, specifically in MONUSCO where operational plans are even shown to the legal adviser, whose opinion on whether to go forward or not is solicited. It is supposed to be done like that, but this was not necessarily the case ten years ago. This approach, which we are all accustomed to in our national defense forces in our respective countries, is starting anew in MONUSCO and is being exported to other peacekeeping forces, as well.

Tristan Ferraro

We also could have addressed issues such as the temporal scope of application of IHL, or whether the ''DPH approach'' could be an appropriate concept for peace forces involved in armed conflict. From an ICRC perspective, the challenges raised by peace operations are many, but I would like to identify the most important ones. The first is to try to engage with those states that are the most important troop-contributing countries in UN operations. It is true that we have a very good working relationship with Western states involved with peace operations. Moreover, when one looks at the composition of MONUSCO in DRC, one sees that we have a very good dialogue with the UN as well. And yet, for the time being, we have not really succeeded in engaging with countries such as Bangladesh, India, Jordan, Morocco, and Pakistan on issues linked to peace operations. But this dialogue is essential, as those countries are key players in contemporary peace operations.

The last point, which has not been addressed by this panel, but which remains a key issue and a key challenge, is the question of detention in peace operations. This include the legal basis for detention, the grounds and procedures for internment, and the crucial issue of transfer of detainees among coalition partners, but also between the peace force and the territorial state. That will have to be an issue for next time.