

## *ZOOM IN*

### *The Question:*

#### **The MONUSCO Intervention Brigade: A test-case for the application of International Humanitarian Law and International Criminal Law to a robust UN peace-keeping operation**

*Introduced by Giulio Bartolini and Marco Pertile*

On 18 March 2013 the UN Security Council (SC) adopted resolution 2098, establishing an Intervention Brigade within the peacekeeping force MONUSCO. The trigger event was the seizure of Goma by the armed group M23 in November 2012.

The Intervention Brigade is part of the around 20,000-strong troops that form MONUSCO and is composed of three infantry battalions, one artillery and one Special force and Reconnaissance company, with troops mainly provided by South Africa, Tanzania and Malawi. For the first time, the mandate of a UN peacekeeping mission speaks openly of ‘targeted offensive operations’ with the aim to ‘neutralize’ and ‘disarm’ a number of armed groups. Such a mandate has been reiterated by UNSC resolution 2147 (2014) adopted on 28<sup>th</sup> March 2014, which has extended the UN operation in Congo up to the end of March 2015. The armed groups to be neutralized and disarmed are mentioned, in a seemingly non-exhaustive list, in the preamble of resolutions 2098 and 2147.

Following its deployment, the Intervention Brigade has achieved considerable success. The insurgents of M23 have been defeated and the operations of the Intervention Brigade have turned towards other militia groups operating in the region. The Intervention Brigade may even become a model for other peacekeeping/peace enforcement operations such as UNMISS in South Sudan and MINUSMA in Mali.

It is also of note that, for the first time, a UN force has been equipped with unarmed drones for intelligence gathering. As maintained by the UN Secretary-General (SG) in its last report on the mis-

sion, the planning of offensive operations against the FDRL, one of the organized armed groups located in the region, 'has been supported by information provided by the MONUSCO unarmed, unmanned aerial system' (UN Doc S/2014/157, para 39).

While the UN SG Reports on the Intervention Brigade are rather vague, not permitting an observer to clearly picture the dynamic military operations carried out against organized armed groups in support of the Congolese armed forces, they nonetheless confirm the direct involvement of UN personnel in clashes with non-state actors and, furthermore, the escalation of those clashes, which have also led to some casualties among the UN contingent. For instance, the UN SG Report published in March 2014 at the occasion of adoption of UN SC resolution 2147 affirms that 'Though purely offensive operations have yet to be undertaken by MONUSCO, the Mission is currently providing support to the offensive operations of the Congolese armed forces against ADF (...) [and] is also supporting armed forces operations currently under way against FRPI (...) through critical logistic support (UN Doc S/2014/157, paras 39-40). The UN SG Report of June 2014 confirms the increasing involvement of UN troops on the ground in military operations. It makes reference to support provided to the FARDC by the UN through 'attack helicopter(s) and ground troop(s)' resulting in their involvement in a series of operations marked by heavy fighting and the capture of a significant number of elements belonging to organized armed groups (UN Doc S/2014/450, paras 53-55). Subsequent reports, which are far from satisfactory in terms of transparency and precision, confirm nonetheless that 'MONUSCO supported FARDC operations (...) through joint planning, situational awareness, logistics and fire support' against a vast array of organized armed groups (see, in similar terms, UN Doc S/2014/956, para 32; UN Doc S/2014/698, para 56).

Understandably, such a scenario has led to increased interest in the legal issues surrounding the direct involvement of UN troops in military activities. Whereas the discussion of the applicability and the application of IHL to peacekeeping missions has become to a certain extent a threadbare issue, the unprecedented nature of the mandate established by UN SC resolutions 2098 and 2147 has given rise to a [lively academic debate](#). Indeed, it is submitted that there are reasons to strengthen the

debate on the Intervention Brigade, as several legal questions still deserve clarification.

A first group of questions concerns the applicability of International Humanitarian Law (IHL) to the Intervention Brigade and to MONUSCO. Under this perspective, one should probably start from the assumption that when peacekeepers engage in combat operations they become a party to the conflict and can be lawfully targeted. Similarly, the action of a peace enforcement unit such as the Intervention Brigade is covered by IHL and must fulfill its requirements. However, considering that the Brigade is part of MONUSCO, one might wonder what the effects of such participation to the conflict may be for the peacekeeping mission as a whole. Should one take the view that MONUSCO itself is now a party to the conflict? Or is participation to the conflict limited to the position of the Intervention Brigade? In relation to this, one should also understand what kind of armed conflict MONUSCO and the organized armed groups are involved in and what is the proper legal framework regulating the conduct of the hostilities. Additional questions should also be addressed to competent UN organs and contributing States. In particular, in light of the unprecedented role assumed by the Intervention Brigade, can one still take the view that the 1999 UN SG Bulletin on the observance by UN forces of IHL is sufficient to address current enforcement operations carried out by the UN? Would it be opportune to revise it to some extent?

A second group of questions concerns the qualification of the activities of the Intervention Brigade under International Criminal Law (ICL). Indeed, it is quite clear that the involvement of UN troops in an armed conflict has implications for ICL. More precisely, what is the impact of a direct involvement of UN troops in military activities for the application of the 1994 Convention on the Safety of United Nations Personnel and Associated Personnel (even if the DRC is not a party to this treaty) and Article 8 of the ICC Statute? Is the uncertain wording of the 1994 Convention apt to address legal problems arising from the nature of the conflict involving the UN? And again, along the same lines, what is the role of the SOFA concluded by MONUSCO in the repression of crimes committed against its personnel?

With a view to answering some of these questions, QIL asked Barbara Sonczyk and Yutaka Arai to take part in the growing debate on MONUSCO and the Intervention Brigade. Whereas Yutaka Arai fo-

cuses on issues concerning the applicability and the application of IHL, Barbara Sonczyk addresses issues of ICL with specific reference to the protection of peacekeepers under Article 8(2)(e)(iii) of the Rome Statute of the International Criminal Court. As our readers will see, both authors share the same starting point in their analyses: according to which the applicability of the relevant legal framework depends on issues of fact, such as the actual behaviour of the peacekeepers on the ground, rather than on legal issues such as the nature of their mandate.

